

TITLE

Uses and Disclosures of Protected Health Information—Opportunity to Agree or Object Required

PURPOSE

In accordance with 45 CFR § 164.510, this procedure provides guidance to The University of Arizona (UA) Health Care Components (HCCs) regarding the use and disclosure of Protected Health Information (PHI) when the individual has been provided with the opportunity to agree or object to the use or disclosure.

REVIEW/REVISIONS

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- 06/2015

REFERENCES AND RELATED FORMS

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- Capitalized terms are defined in HIPAA Privacy Program Guidance (Definitions of Key Words) and 45 CFR Parts 160 and 164
 - OCR Guidance (HIPAA and Same-Sex Marriage in the Privacy Rule):
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/samesexmarriage/index.html>

STANDARDS

HCCs must implement procedures and practices that comply with the applicable provisions of 45 CFR § 164.510 regarding the uses and disclosures of PHI that require the individual be provided with an opportunity to agree or object to the use or disclosure.

1. PHI subject to this procedure:
 - a. Information used in facility directories;
 - b. Information used in patient care or for payment for care; and
 - c. Information for notification (e.g. to family) purposes.
2. Notice of Privacy Practices: PHI that is subject to the requirement of an opportunity to agree or object must be addressed in the HCC's Notice of Privacy Practices (NPP).
3. If the individual is present and has the capacity to make healthcare decisions:
 - a. The HCC must obtain the individual's agreement; or
 - b. The HCC must provide the individual the opportunity to object and the individual does not object; or
 - c. It can be reasonably inferred from the circumstances, using professional judgment that the individual does not object to the disclosure.
4. If the individual is not present, due to an incapacity or emergency circumstances: The HCC may use or disclose the PHI that is directly relevant to the person's involvement with

the individual's health care and It is in the individual's best interest for the PHI to be disclosed.

- a. Please note: the Privacy Rule includes the terms "spouse" and "marriage" in the definition of Family Member. Consistent with the United States v. Windsor (2013) decision, OCR clarified that the term "spouse" includes individuals who are in a legally valid same-sex marriage sanctioned by a state, territory, or foreign jurisdiction (as long as, as to marriages performed in a foreign jurisdiction, a U.S. jurisdiction would also recognize the marriage). The term "marriage" includes both same-sex and opposite-sex marriages, and family member includes dependents of those marriages. All of these terms apply to individuals who are legally married, whether or not they live or receive services in a jurisdiction that recognizes their marriage. See <http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/samesexmarriage/index.html>
5. Disaster Situations: PHI may be used or disclosed to a public or private entity authorized by law or by its charter to assist in disaster relief efforts.
 - a. Examples of public disaster relief agencies include law enforcement or other first responders, and public health departments. The Red Cross is the principal private entity authorized by its charter to assist in disaster relief efforts.
 - b. The above rules for use and disclosure of PHI for involvement in an individual's care and notification (depending upon whether the individual is present or not) apply as long as they do not interfere with the public or private entity's ability to respond to a disaster relief situation.
 6. Documentation: If applicable, the HCC must document the offer of the opportunity to object and the individual's response.