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JUL 31 2014

LANCASTER COUNTY CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF DESIGNATING )  
LANCASTER COUNTY AS A "HYBRID ENTITY", )  
APPOINTING A PRIVACY OFFICER(S), AND )  
ADOPTING POLICIES REGARDING THE )  
CONFIDENTIALITY OF PROTECTED HEALTH )  
INFORMATION PURSUANT TO THE )  
ADMINISTRATIVE SIMPLIFICATION PROVISIONS OF )  
THE HEALTH INSURANCE PORTABILITY AND )  
ACCOUNTABILITY ACT OF 1996, AND THE )  
HEALTH INFORMATION TECHNOLOGY FOR )  
ECONOMIC AND CLINICAL HEALTH (HITECH) ACT )  
OF 2013

RESOLUTION NO. R - 14 - 0042

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 1997), Lancaster County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of a county are exercised by the Board of County Commissioners; and

WHEREAS, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), calling for the administrative simplification of health care transactions and adoption of regulations ensuring the privacy and security of patient health information; and

WHEREAS, the U.S. Department of Health and Human Services enacted privacy and security regulations with respect to the use and disclosure of "Protected Health Information" (PHI); and

WHEREAS, the U.S. Department of Health and Human Services enacted the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2013; and

WHEREAS, Lancaster County has departments, programs, or functions which are "covered health care components" under HIPAA;, however, Lancaster County also has a number of departments, programs or functions which fall outside the scope of HIPAA and

WHEREAS, Lancaster County determined that it should designate itself as a "hybrid covered entity" for purposes of HIPAA implementation and compliance and must designate which County functions are within HIPAA's scope and which are not; and

WHEREAS, after careful analysis, Lancaster County determined the following departments, programs or functions are “covered health care components” under HIPAA:

- Lancaster County Mental Health Crisis Center
- Lancaster County Clerk, but only to the extent it performs “business associate” type functions on behalf of a covered component of Lancaster County
- Lancaster County Attorney’s Office, but only to the extent it performs “business associate” type functions on behalf of a covered component of Lancaster County
- Lancaster County Budget & Fiscal Office, but only to the extent it performs “business associate” type functions on behalf of a covered component of Lancaster County
- Lancaster County Records Management, but only to the extent it performs “business associate” type functions on behalf of a covered component of Lancaster County’
- Employee Health Plans including medical insurance, vision plan, dental plan, flexible spending account, and COBRA administration of the health plans; and
- City-County Information Services Division, but only to the extent it performs “business associate” type functions on behalf of a covered component of Lancaster County.

WHEREAS, the above-stated list of covered health care components may be amended from time to time due to changes in County operations or the law; and

WHEREAS, with respect to the covered health care components, Lancaster County must develop policies that address HIPAA’s administrative privacy requirements, including, appointing a Privacy Officer, training all members of the workforce who are likely to have access to PHI, implementing appropriate administrative, technical and physical safeguards to protect privacy of PHI, affording individuals appropriate protections and controls over their PHI, identifying business associates, limiting authorized disclosures to the minimum necessary, providing a process for individuals to make complaints concerning the policies/practices, applying sanctions against workers who violate privacy policies/practices and mitigating any known harmful effects resulting from a violation of the privacy policies/practices.

NOW, THEREFORE, BE IT RESOLVED by the Lancaster County Board of Commissioners, as follows:

1. In 2003, Lancaster County was designated a “hybrid entity” for the purpose of HIPAA compliance. The above-stated list of departments, programs or functions are designated as the covered health care components of Lancaster County, a hybrid entity.
2. The Department head of the Lancaster County Mental Health Crisis Center is hereby designated as the Privacy Officer within that department.

3. The updated Lancaster County HIPAA Privacy Policies, attached hereto and incorporated herein by this reference, are hereby adopted with an effective date of August 5, 2014. Such policies shall be utilized, as applicable, by the covered health care components. The appointed Privacy Officer(s) are hereby authorized to amend the HIPAA Privacy Policies without further action of this County Board provided such amendments are consistent with state and federal law.

DATED this 5 day of August, 2014, at the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE LANCASTER COUNTY BOARD OF COMMISSIONERS

  
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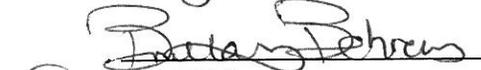
  
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Schorr Absent

APPROVED AS TO FORM

This 5 day of  
August, 2014.

  
for JOE KELLY  
County Attorney

**HIPAA PRIVACY  
POLICIES AND PROCEDURES**

**LANCASTER COUNTY**

**REVISED AUGUST 5, 2014**

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### Forms:

- **Form A – Client Access to Records**
- **Form B – Authorization for Release of Health Information**
- **Form C – Accounting of Disclosures**
- **Form D – Disclosure Tracking Log**
- **Form E – Amendment/Correction of Health Record Request**
- **Form F – Restriction of Use and Disclosures Request**
- **Form G – Request for Confidential Communications**

## INTRODUCTION

In 1996 Congress adopted the Health Insurance Portability and Accountability Act (HIPAA). As part of the Act, Congress called for regulations promoting administrative simplification of healthcare transactions as well as regulations ensuring the privacy and security of patient information. The Department of Health and Human Services has since adopted regulations to implement these goals. The regulations apply to "covered entities" which include health plans, healthcare clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction covered by HIPAA. Lancaster County has designated itself a "hybrid entity" under the act because it has both non-covered components and covered components. The regulations include three distinct parts: transaction standards; privacy; and security.

County functions/agencies that have been identified as health care providers, meaning they furnish, bill or receive payment for health care in the normal course of business, include the Mental Health Crisis Center and the medical units at the Detention Center for Youth and Corrections Department. However, of these agencies only the Mental Health Crisis Center is currently transmitting covered transactions in electronic form. Therefore, only the Mental Health Crisis Center is a "covered" health care component that must comply with the HIPAA Privacy Rule.

Other County functions that have been identified as "covered" under the Act because they meet the definition of "health plans" include the County sponsored health, dental and vision plans, the County Flexible Spending Account and COBRA Administration.

In addition, the County Clerk, County Attorney, County Finance, and Records Management Department may perform "business associate" type functions for the covered health care components identified above. For instance, Records Management stores Mental Health Crisis Center records. As such, it is included within the covered health care component with respect to those covered functions it performs for those departments.

The following policies address the key requirements of the HIPAA Privacy Rule. At a minimum, each covered health care component identified above must comply with these policies. These policies may be amended to ensure consistency with agency operations and applicable state and federal laws. All privacy policies and any amendments thereto must be approved by the Privacy Officer and County Attorney.

These policies were first approved April 14, 2003

Updated policies approved August 5, 2014

## **PRIVACY OFFICER**

### **POLICY:**

Lancaster County, a hybrid entity, has determined each covered health care component shall have a designated Privacy Officer responsible for the coordination and implementation of all privacy and confidentiality efforts within the health care component. The Privacy Officer and his/her designees may have other primary job functions in addition to privacy responsibilities.

The Privacy Officer shall serve as the primary agency contact for privacy issues and concerns regarding the use and disclosure of protected health information and for client rights regarding protected health information. The Privacy Officer shall address issues concerning the use and disclosure of protected health information for the agency including, requests from individuals for access, amendment, disclosure accounting, restriction, confidential communications or complaints regarding privacy practices/policies.

With assistance from the County Attorney's Office, the Privacy Officer shall oversee all activities related to the development, maintenance, and adherence to policies and procedures regarding the use and disclosure of individually identifiable health information in accordance with state and federal laws and best business practices.

### ***Citations:***

- §164.530 – Administrative Requirements

## **NOTICE OF PRIVACY PRACTICES**

### **POLICY:**

Except for inmates, an individual has a right to adequate notice of the uses and disclosures of his/her protected health information (PHI) and the County's legal duties with respect to such PHI.

The law dictates a specified set of core elements that a valid Notice of Privacy Practices must contain. Therefore, all County employees must use the Notice of Privacy Practices form approved for their agency. The County shall disclose PHI only in conformance with the contents of the Notices of Privacy Practices. The County will promptly revise its Notice of Privacy Practices whenever there is a material change to the uses or disclosures of PHI, to the individuals' rights, to its legal duties, or to other privacy practices that render the statements in the Notice no longer accurate.

### **PROCEDURES:**

#### **I. Distribution of Notice**

The County will distribute its Notice of Privacy Practices as follows:

- A. Provide to any person who requests it.
- B. Provide to each individual the County agency has a direct treatment relationship with no later than the first service delivery, including service delivered electronically, after the Privacy compliance date of April 14, 2003.
- C. In emergency treatment situations, the Notice shall be provided to the individual as soon as reasonably practicable after the emergency treatment situation.
- D. Have Notice available at the physical service delivery site.
- E. Post Notice in a clear and prominent location at the physical service delivery site.
- F. Prominently post and make electronically available the Notice on any web site the County maintains that provides information about its customer services or benefits.
- G. The County may provide the Notice to an individual by E-mail but only if the individual agrees to electronic notice in writing and such agreement has not been withdrawn.

## **II. Obtain Written Acknowledgment of Receipt**

- A. Except in an emergency treatment situation, the County agency involved shall make a good faith effort to obtain a written acknowledgement of receipt of the Notice.
- B. If acknowledgement is not obtained, document why and efforts made to obtain it.

## **III. Documentation**

The agency shall retain copies of the signed Acknowledgement of Receipt of Notice of Privacy Practices or, if not signed, documentation of the good faith efforts made to obtain such written acknowledgment. Such documentation shall be retained for at least six years from the date it was created or from the date it was last in effect, whichever is later.

## **IV. Notice of Privacy Practices for Employer-Sponsored Group Health Plans**

The County sponsors health plans for its employees. The County must provide each participant in its self-funded group plan a Notice of Privacy Practices as required by law. The County is not required to provide a Notice of Privacy Practices if the group plan is fully insured or if an administrator agrees by contract to provide such Notice on the County's behalf.

### ***Citations:***

- §164.502(i) – Uses and disclosures must be consistent with individuals right to notice
- §164.520(a)(1) - Individuals right to notice
- §164.520(a)(2) - Exception for certain group health plans
- §164.520(b) - Contents of notice
- §164.520(c) - Deadlines for notice

## CLIENT ACCESS TO HEALTH INFORMATION

### POLICY:

An individual has the right to access, inspect and/or copy his/her protected health information (PHI) in the County agency's designated record set, for as long as the PHI is maintained in compliance with the agency's records retention policy. Exceptions to this general rule are provided herein.

PHI is individually identifiable health information that is transmitted by electronic media, maintained in electronic media or transmitted or maintained in any other form or medium. PHI excludes individually identifiable health information in education records covered by FERPA and employment records held by a covered entity in its role as employer.

Designated Record Set includes, at a minimum, the medical and billing records about individuals maintained by or for the County agency or any other records used in whole or in part to make decisions about individuals.

### PROCEDURES:

#### I. Access Requests

When feasible, requests should be made in writing using FORM A – "Request to Inspect and/or Copy Health Information". The form may be filled out by the individual or with assistance from a staff member.

Individuals have two distinct access rights regarding PHI, in a designated record set, which is maintained in an electronic format. These requests shall be referred to as "electronic format requests". All other requests for access may be referred to as "non-electronic format requests". All of Lancaster County's policies and procedures shall apply to electronic and non-electronic format requests unless otherwise noted. For electronic format requests, the individual may:

- a. Direct the agency to transmit the information in an electronic format directly to an entity or person designated by the individual, provided that the request is clear, conspicuous, and specific.
- b. If the electronic format request for access is granted, Lancaster County will provide the access in the electronic form and format requested by the individual as described in this Policy, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by the County and the individual. The County may discuss the scope, format and other aspects of the electronic format request for access with the requester as necessary to facilitate the timely provision of access.
- c. Lancaster County will ensure that reasonable safeguards are in place to protect PHI during the transmission of such information to the requesting individual or designated recipient. In the event the individual requests access via unsecure methods (e.g., unencrypted e-mail), Lancaster County will reasonably inform the

individual of the general dangers associated with such methods (e.g., interception and unauthorized viewing of unencrypted e-mail).

## **II. Response to Request for Access**

The agency must either grant or deny the request within thirty (30) days of the date of the request. One thirty (30) day extension is permitted if the agency provides the individual with a written statement of the reason(s) for the delay and the date by which the access request will be processed.

## **III. Access is Granted**

- A. The individual may choose to inspect the PHI, copy it, or both, in the form or format requested. If the PHI is not readily producible in the requested form or format, the agency must provide the individual with a readable hard copy form, or other form as agreed to by the agency and the individual.
- B. The individual and the agency will arrange a mutually convenient time and place for the individual to inspect and/or obtain a copy of the requested PHI. Inspection and/or copying will be carried out with agency staff assistance.
- C. If upon inspection of the PHI the individual feels it is inaccurate or incomplete, the individual has a right to request an amendment according to the procedures described in the Policy concerning amendments to PHI.
- D. The Agency may charge a reasonable fee for the production of copies.

## **IV. Denial of Access**

If access to PHI is denied, in whole or in part, the Privacy Officer or his/her designee will provide a timely, written denial to the individual in plain language that must contain:

- A. The basis for the denial
- B. If applicable, a statement of the individual's review rights; and
- C. A description of how the individual may complain to the Privacy Officer or to the Secretary of Health and Human services. The description must include the name, title, and telephone number of the Privacy Officer.
- D. If access is denied because the County agency does not maintain the PHI that is the subject of the individual's request for access, and the agency knows where the requested information is maintained, the agency must inform the individual where to direct the request for access.

- E. The agency must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which the agency has grounds to deny access.

**V. Denial Not Subject to Review**

An agency may deny an individual access to his/her PHI without providing the individual an opportunity for review in the following circumstances:

- A. Psychotherapy notes;
- B. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
- C. PHI that is prohibited from access by the Clinical Laboratory Improvements Amendments of 1988;
- D. Inmates may be denied a copy of their PHI if providing such copy would jeopardize health, safety or security (this applies only to copies, not access, and only with respect to the inmate, a personal representative of the inmate could have access to and the right to copy an inmate's PHI);
- E. The individual, when consenting to participate in research that includes treatment, agreed to temporary denial of access to PHI created or obtained by the health care provider in the course of research and the research has not yet been suspended.
- F. The records are subject to the Privacy Act of 1974, 5 U.S.C. §552a, and the denial of access meets the requirement of that Act; or
- G. The PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

**VI. Denial Subject to Review**

An agency may also deny an individual access based on the grounds stated below, provided that the individual is given a right to have such denial reviewed in the following circumstances:

- A. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;

- B. The PHI makes reference to another person who is not a health care provider, and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
- C. The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

#### **VII. Review of an Access Denial**

If access is denied on a reviewable ground, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the County to act as a reviewing official and who did not participate in the original decision to deny.

- A. The individual must request the review in writing.
- B. The agency will promptly provide the individual with a copy of the health care professional's written determination.
- C. The agency will provide or deny access in accordance with the determination of the reviewing official.

#### **VIII. Documentation**

The agency must document the identity of the designated record sets; the identity of the staff responsible for receiving and processing requests for access to PHI; and any communications requesting access, denial of access and results of any review by an outside professional. Such documentation shall be retained for at least six years from the date it was created or from the date it was last in effect, whichever is later.

#### ***Citation:***

- HIPAA 164.524 – Access of Individuals to PHI

## **USE AND DISCLOSURE OF CLIENT HEALTH INFORMATION**

### **POLICY:**

Except as otherwise described herein, a County agency must have proper, written authorization from the individual before it may use or disclose an individual's protected health information.

Upon verification that an individual has been authorized to act as the personal representative of an individual, the agency shall treat the personal representative as the individual with respect to the use and disclosure of his/her protected health information (PHI) as well as individual rights under the Privacy Rules.

### **PROCEDURES:**

#### **I. Valid Authorization Form**

- A. An authorization must be obtained on the correct form to ensure that it complies with the law. Therefore, the agency shall use the approved Authorization Form – Form B, at all times.
- B. An authorization form that is signed by the individual's personal representative must state the personal representative's name and the relationship that gives the personal representative authority to act on the individual's behalf.
- C. Upon request, the agency must give the individual (or the personal representative) a copy of the signed authorization form.
- D. A copy of the signed authorization form must be retained by the agency.

#### **II. Defective Authorizations**

An authorization is not valid if it has any of the following defects:

- A. It is not signed or dated;
- B. The expiration date or event has passed;
- C. It is not filled out completely;
- D. It has been revoked;
- E. It violates requirements regarding compound authorizations; or
- F. It contains any material known to be false.

#### **III. Psychotherapy Notes**

An authorization is required for use and disclosure of psychotherapy notes except the agency may use psychotherapy notes without obtaining an individual's authorization to carry out its own treatment, payment or operations as follows:

- A. Use by the originator of the psychotherapy notes for treatment;

- B. Use or disclosure by the agency's own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; and
- C. Use or disclosure by the agency to defend a legal action or other proceeding brought by the individual.

#### **IV. Authorization is Not Required<sup>1</sup>**

An authorization is NOT required for uses and disclosures for the following purposes:

- A. Treatment, payment and health care operations;
- B. To the individual who is the subject of the information;
- C. Required disclosures to the Secretary of Health and Human Services for enforcement of the Privacy Rules;
- D. Required by state or federal law;
- E. Public health activities (prevention or control of disease; vital statistics);
- F. Regarding victims of abuse, neglect or domestic violence;
- G. Health oversight activities (licensure, audit, inspections);
- H. Judicial and administrative proceedings (subpoena; discovery requests; legal process)
- I. Law enforcement purposes;
- J. Coroners, Medical Examiners and Funeral Directors regarding decedents;
- K. Organ, eye or tissue donation purposes;
- L. Research purposes;
- M. To avert a serious threat to health or safety;
- N. Specialized government functions (military; veterans activities; national security);
- O. Workers' compensation;
- P. Food and Drug administration;
- Q. Facility directories, provided the individual was notified in advance of the disclosure and given the opportunity to object to his/her information being used or disclosed in the directory;
- R. Notifying family or friends, and for involving family or friends in the individual's care, provided the individual was given the opportunity to object to such disclosure to family or friends.

#### **V. Prohibition on Conditioning of Authorizations**

The County agency may not condition treatment, payment, enrollment in a health plan, or benefits eligibility on an individual providing it with an authorization except:

- A. The County health plan may condition an individual's enrollment or eligibility for benefits on the individual providing an authorization prior to enrollment in the plan, in certain circumstances;
- B. The County agency may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;

- C. The County agency may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of PHI to such third party.

## **VI. Protected Health Information About Decedents**

The definition of PHI (§160.103) has been changed to reflect the new requirement that any individually identifiable health information of a person deceased more than 60 years is no longer considered PHI under the Privacy Rule. This does not override or interfere with state or other laws providing greater protection.

- A. This provision now permits entities to disclose a decedent's PHI to family members and others who were involved in the care or payment for care of a decedent prior to death, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity.
- B. These disclosures are permitted and not required. If the County's covered entity is uncomfortable or believes the disclosure to be inappropriate, or doubts the identity of the requestor, the final decision to disclose or not lies with the covered entity.

## **VII. Revocation of an Authorization**

An individual may revoke an Authorization at any time by providing written notice. The individual's Authorization is no longer valid once the County knows of the revocation except to the extent the County has already taken action in reliance of the Authorization or to the extent the Authorization was obtained as a condition of obtaining insurance and other law provides the insurer the right to contest the policy or claim under the policy.

## **VIII. Documentation**

The agency must retain any signed authorization and revocation. The documentation must be retained for at least six years from the date it was created or from the date it was last in effect, whichever is later.

1. The Drug & Alcohol Confidentiality Law, 42 C.F.R. Part 2, applicable to the Mental Health Crisis Center, is more restrictive in what can be released without an authorization.
  - §164.506(a) – Discusses the standards for consents and how consents differ from authorizations
  - §164.508(a) – Standard for requirements and exceptions for authorizations
  - §164.508(b) – Implementation specifications for authorizations
  - §164.508© - Core elements and requirements
  - §164.520 – Requirements for plain English language
  - §164.512 – Defines the uses and disclosures for which consent, an authorization, or opportunity to agree or object is *not* required

## **ACCOUNTING FOR DISCLOSURES**

### **POLICY:**

The County agency will keep an accounting of disclosures it makes of client protected health information (PHI) as required by the Privacy Rules. Some disclosures do not need to be tracked. Individuals have the right to an accounting of the disclosures made of their PHI within the six years prior to their request. Exceptions to this general policy are provided below.

### **DEFINITIONS:**

- A. "Electronic Health Record" or "EHR" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- B. "EHR TPO Accounting" as used in this policy and procedure, means a requested accounting for disclosures of PHI which were made to carry out treatment, payment, and health care operations, when such PHI is maintained in an electronic health record.

### **PROCEDURES:**

#### **I. Requests For An Accounting of Disclosures**

All requests for an Accounting of Disclosures must be submitted in writing using FORM C – "Accounting of Disclosures Request Form". The form should be forwarded to the Privacy Officer or his/her designee for response.

The request for an accounting of disclosures must state the time period for which the accounting is to be supplied, which may not be longer than:

- a. Three (3) years before the date of the request for an accounting when the request is for an EHR TPO Accounting; or
- b. Six (6) years before the date of the request for all other requests allowed under these policies and procedures.

#### **II. Response to Request for Accounting**

The agency shall respond to the request for an accounting of disclosures within 60 days of the request. If the agency cannot honor an accounting of disclosures within the 60-day period, it must provide information to the requestor as to the reason for the delay and

expected completion date. Only one extension of up to thirty (30) days is permitted per request.

The agency will notify individual of any charges associated with the accounting to ensure that the individual still wants the accounting, coordinate gathering and preparing the disclosure accounting, direct as needed other agencies and business associates to provide disclosure accounting information, and notify the individual when the accounting is ready, requesting payment if charges are due, but otherwise transmitting the disclosure accounting to the individual.

The accounting will also reflect disclosures made to or by business associates of the County. However, if the accounting is an EHR TPO Accounting, the County need not account for disclosures made by its business associates if the County lists all of its business associates, which act on its behalf, in the accounting given to the individual. If the County chooses to list its business associates we will also include a list with contact information of such business associates in the accounting.

### **III. Content of Disclosure Tracking Log**

The following information shall be tracked on FORM D, "Disclosure Tracking Log":

- A. Date the disclosure was made;
- B. Name of entity or individual the disclosure was made to and their address if known;
- C. A brief description of the information disclosed; and
- D. Purpose of the disclosure.

### **IV. Exclusions from Disclosure Accounting**

The County is not required to account and track disclosures made:

- A. Prior to April 14, 2003;
- B. To the individual patient (or the individual's personal representative);
- C. To carry out treatment, payment, or health care operations;
- D. Pursuant to a valid authorization;
- E. Limited disclosures to or from a patient directory;
- F. To persons involved in an individual's care or for notification purposes concerning the individual's location, general condition or death;
- G. For national security or intelligence purposes;
- H. To correctional institutions or law enforcement officials if the patient is in custody; and

I. As part of a limited data set in accordance with 164.154(e).

**V. Disclosures Subject to Accounting**

The County agency must track and account for all other disclosures, including but not limited to those disclosures made:

- A. As required by state or federal law;
- B. To public health authorities (required disease, birth and death reporting);
- C. About victims of abuse, neglect, or domestic violence;
- D. For health oversight activities for audits, civil or criminal investigations, inspections, licensure or disciplinary actions;
- E. For organ, eye or tissue donation purposes;
- F. For judicial or administrative proceedings such as in response to a court order, subpoena, or discovery request;
- G. For law enforcement in regard to crime on the premises, in emergencies where a crime is suspected, or to prevent a serious threat to health or safety;
- H. For research purposes;
- I. For workers' compensation purposes;
- J. To coroners, medical examiners or funeral directors;
- K. For specialized government and military functions; and
- L. To the Food & Drug Administration.

**VI. Exceptions for Law Enforcement or Health Oversight Investigations**

A temporary suspension of the client's right to accounting of disclosures is allowed for health oversight agencies or law enforcement officials contingent on the submission to the County agency of a statement that indicates that an accounting of disclosure will impede an investigation that involves the individual in question. The statement should include a time frame for the exclusion period. The statement may be oral but in that case the temporary suspension is limited to 30 days unless appropriate written documentation is submitted within 30 days. Although the accounting of disclosure is not being released during this period, the County agency should continue tracking and storing the information for future release.

**VII. Documentation**

The "Accounting of Disclosures Request Form", the "Disclosure Tracking Log" and any other documents generated in response to an accounting must be maintained by the agency for a period of at least six years from the date it was created or from the date it was last in effect, whichever is later.

Lancaster County will document and retain information which is required to be included in an EHR TPO accounting for a period of at least three years from the date of its creation or the date when it was last in effect, whichever is later.

***Citations:***

- *§164.508 – Uses and Disclosures for which Authorization is required*
- *§164.512 – Uses and Disclosures for which an Opportunity to Agree or Object is Not Required*
- *§164.528 – Accounting of Disclosures of PHI*
- *§164.530(j) – Documentation Requirements*

## REQUESTS TO AMEND HEALTH INFORMATION

### POLICY:

An individual has the right to request that his/her PHI be amended if he/she feels that the information is incomplete or inaccurate. This right lasts for as long as that information is maintained in the designated record set. Exceptions to this general policy are provided below:

### PROCEDURES:

#### I. Requests to Amend/Correct PHI

All requests to amend or correct PHI must be submitted in writing using FORM E – “Amendment/Correction of Health Record Request Form”. The request must clearly identify the information to be amended or corrected, as well as the reason(s) for the amendment/correction. The form may be filled out by the individual or with the assistance of a staff member.

#### II. Response to Request for Amendment

The Privacy Officer or his/her designee will act on the individual’s request for an amendment no later than sixty (60) days after receipt of such request. The agency may have a one-time extension of thirty (30) days for processing the amendment if the individual is given a written statement of the reason for the delay, and the date by which the amendment request will be processed.

#### III. Amendment Request Approvals

If the agency accepts the requested amendment, in whole or in part, it must comply with the following requirements:

- A. *Make the Amendment.* The agency must make the appropriate amendment to the PHI or record that is the subject of the request for amendment or provide a link to the location of the amendment.
- B. *Inform the Individual.* The agency must timely inform the individual that the amendment is accepted and obtain the individual’s identification of and agreement to have the agency notify the relevant persons with which the amendment needs to be shared as set forth below.
- C. *Inform Others.* The agency must make reasonable efforts to inform and provide the amendment within a reasonable time to:
  1. Persons identified by the individual as having received PHI about the individual and needing the amendment; and
  2. Persons, including business associates, that the agency knows have the PHI that is the subject of the amendment and that may have relied, or could foreseeable rely, on such information to the detriment of the individual.

#### **IV. Amendment Request Denials**

The County agency may deny an individual's request for amendment, if it determines that the PHI or record that is the subject of the request:

- A. Was not created by the County agency, unless the individual provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment;
- B. Is for information that is not part of the designated record set;
- C. Is not accessible to the individual because federal and state law do not permit it (if the County is permitted to deny the individual's request to inspect PHI, it would also be permitted to deny a request to amend the HI); or
- D. Is already accurate and complete.

#### **V. Denial Requirements**

If the County agency denies the requested amendment, in whole or in part, the agency must provide the individual with a timely, written denial in plain language that contains the following:

- A. The basis for the denial;
- B. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
- C. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the County agency provide the individual's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment;
- D. A description of how the individual may complain to the Privacy Officer pursuant to the complaint procedures or to the Secretary of Health and Human Services; and
- E. The name, or title, and telephone number of the contact person for the County who is designated to receive complaints.

#### **VI. Statement of Disagreement and Response**

The agency must permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.

The agency may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the agency must provide a copy to the individual who submitted the statement of disagreement.

If a statement of disagreement has been submitted by the individual, the County agency must include the material appended, or an accurate summary of such information, with any subsequent disclosure of the PHI to which the disagreement relates.

If the individual has not submitted a written statement of disagreement, the agency must include the individual's request for amendment and its denial, or an accurate

summary of such information, with any subsequent disclosure of the PHI only if the individual has requested such action.

The agency must, as appropriate, identify the record or PHI in the designated record set that is the subject of any disputed amendment and append or otherwise link the individual's request for an amendment, the agency's denial of the request, the individual's statement of disagreement, if any, and the agency's rebuttal, if any, to the designated record set.

When a subsequent disclosure described above is made using a standard transaction that does not permit the additional material to be included, the agency must separately transmit the material required to the recipient of the standard transaction.

#### **VII. Amendments and Business Associates**

The agency shall determine each business associate that has the PHI subject to the amendment and who may have relied or may foreseeably rely on the unamended information to the individual's detriment. The agency shall obtain all authorizations from the individual needed to notify these persons or entities, as well as each person and entity that the individual identifies as needing notification.

#### **VIII. Receipt of Amendment Notice**

The County agency must amend PHI or records in its designated record sets on receipt of notice from another covered entity that the information has been amended. The agency will coordinate amendment of PHI or records in its designated record sets upon receipt of such notice.

#### **IX. Documentation**

The agency must document the identity of the staff responsible for receiving and processing requests for amendments and any communications requesting, granting or denying the amendment. Such documentation shall be retained by the agency for at least six years from the date it was created or from the date it was last in effect, whichever is later.

#### ***Citations:***

- §164.526 – Amendment of PHI
- Preamble, pg. 82558 – Amendment of PHI

## **REQUESTS TO RESTRICT USE AND DISCLOSURES OF CLIENT HEALTH INFORMATION**

### **POLICY:**

An individual has the right to request a County agency to restrict uses and disclosures of PHI when carrying out treatment, payment or health care operations.

1. The County agency is required to restrict the disclosure of PHI as requested by an individual if, and to the extent that:
  - a. The disclosure is not required by law
  - b. The disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and
  - c. The PHI pertains solely to a health care item or service for which Lancaster County has been paid out of pocket in full by the individual or another person on behalf of the individual other than the health plan.
2. With this one exception, all other requests for restrictions are non-mandatory, and Lancaster County is not required to agree to them.
3. An individual may request a mandatory restriction for individual health care items or services (e.g. a particular prescription medication) and does not need to pay out of pocket in full for all health care items or services provided by Lancaster County in order to invoke the mandatory restriction.

### **PROCEDURES:**

#### **I. Restriction Request**

Where possible, all requests for restrictions shall be submitted in writing on FORM F – “Restriction of Use and Disclosure Form”

#### **II. Restriction Response**

All requests should be forwarded to the Privacy Officer or his/her designee for determination and response. The agency will notify the individual in writing whether or not the request will be granted.

#### **III. Granting a Restriction**

If a restriction is granted, the agency will notify the management of each affected department and those business associates who are affected by the agreement. Affected management and business associates must ensure that their workforce members are informed of the restrictions and implement procedures to prevent any use or disclosure contrary to an agreement to these restrictions.

#### **IV. Medical Emergencies**

The County agency may use restricted PHI or disclose it to a health care provider, notwithstanding a restriction agreement, when the information is needed for treatment of an individual in a medical emergency. In the event an agency employee uses or discloses the restricted PHI in a medical emergency situation:

- A. Staff must document justification for the determination, whether it resulted in withholding, using or disclosing the restricted PHI.
- B. Staff must request the other parties involved not to further use or disclose the restricted information, and document this request.

#### **V. Termination of Restriction Agreements**

The County agency may terminate an agreement restricting use or disclosure of PHI by the concurrence of the individual or unilaterally by written notice of termination to the individual. Unilateral termination is only effective with respect to protected health information created or received after the individual has been informed of the unilateral termination of the restriction.

The termination of restrictions applies to non-mandatory disclosures or the mandatory restriction no longer applies (e.g., the individual no longer pays out of pocket in full).

#### **VI. Documentation**

The agency must document any agreed upon restriction, any notice to business associates or others and any written or oral agreement to terminate a restriction for at least six years from the earlier of (1) the date it was created or (2) the date when it was last in effect.

#### ***Citations:***

- §164.522(a) – Rights to request privacy protection for protected health information – Standard: right of an individual to request restriction of uses and disclosures.

## **REQUESTS FOR CONFIDENTIAL COMMUNICATIONS**

### **POLICY:**

An individual may request to receive confidential communications from the County agency either at an alternative location or by alternative means. For example, an individual may request to receive all written communications from the County at a work address rather than a home address.

The agency will accommodate reasonable requests.

### **PROCEDURES:**

#### **I. Requests for Confidential Communication**

All requests shall be made in writing using Form G – “Request for Confidential Communication Form”. The request shall clearly state the alternative means of disclosure requested.

#### **II. Response to Request**

A request will be granted provided it is reasonable. Reasonableness will be based upon the administrative difficulty with complying with the request. The agency shall respond to the request in writing. If the request is granted, the agency shall notify all affected departments and business associates in writing of any decision to accommodate.

#### **III. Accommodation**

Each department within an agency will establish a procedure so all employees who are engaging in communications with the individual can accommodate a request that has been granted.

#### **IV. Documentation**

The agency shall retain all documentation concerning a request defined herein for at least six years from the earlier of (1) the date it was created or (2) the date when it was last in effect.

#### ***Citations:***

- §164.522(b) Right to request alternative communications
- §164.502(h) Uses and disclosures of PHI

## **BREACH NOTIFICATION**

### **POLICY:**

Lancaster County intends to follow the requirements of all applicable state and federal laws and regulations in assessing and responding to potential breaches of PHI. The requirements of applicable laws and Lancaster County HIPAA Policies are to be followed by staff for any potential breach of PHI of any Lancaster County covered agency client. The covered agency Privacy Officer and the Lancaster County HIPAA Privacy and Security Officer are responsible for ensuring that the requirements of this policy are carried out.

In every instance of a potential breach of PHI, Lancaster County intends to do the following:

- 1) Determine whether and to what extent an impermissible access, use or disclosure has occurred.
- 2) Determine if the impermissible access, use or disclosure meets one of the express exclusions from the federal breach notification regulations.
- 3) If no express exclusions are available, perform a risk assessment in order to determine whether a breach has occurred.
- 4) If a breach has occurred, determine proper documentation and notification activities and proper steps to mitigate harm relating to the breach.
- 5) Review the situation to determine whether further steps are appropriate to strengthen the privacy and security of PHI at Lancaster County's covered agencies.

### **PROCEDURES:**

#### **I. Discovery and Initial Investigation**

In the event an impermissible access, use or disclosure of PHI is determined to be a breach, the breach shall be treated as discovered as of the first day on which the potential breach is known to Lancaster County, or, by exercising reasonable diligence would have been known to Lancaster County. This includes Breaches by business associates. Lancaster County shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or agent, such as a business associate of Lancaster County.

To timely evaluate a potential impermissible access, use or disclosure, all workforce members of Lancaster County shall immediately notify the Privacy Officer upon discovering any access, use or disclosure which they reasonably believe could have been impermissible.

Lancaster County shall, through its Privacy Officer, investigate the potential breach in order to determine whether an impermissible access, use or disclosure occurred, and the extent and nature of such access, use or disclosure.

## II. Non-Breach Impermissible Access, Use or Disclosure

If Lancaster County determines that an impermissible access, use or disclosure occurred, Lancaster County may conclude that no breach occurred in the following situations:

- A. The access, use or disclosure did not involve unsecured PHI;
- B. The access, use or disclosure of PHI did not include any of the following:
  - a. Identifiers listed at 45 C.F.R. §164.514(e)(2):
    - i. Names;
    - ii. Postal address information, other than town or city and state;
    - iii. Telephone numbers;
    - iv. Fax numbers;
    - v. Electronic mail addresses;
    - vi. Social security numbers;
    - vii. Medical record numbers;
    - viii. Health plan beneficiary numbers;
    - ix. Account numbers
    - x. Certificate/license numbers;
    - xi. Vehicle identifiers and serial numbers, including license plate numbers;
    - xii. Device identifiers;
    - xiii. Web Universal Resource Locators (URLs)
    - xiv. Internet Protocol (IP) access numbers;
    - xv. Biometric identifiers, including finger and voice prints; and
    - xvi. Full face photographic images and any comparable images.
  - b. An individual's date of birth; and
  - c. An individual's zip code.
- C. Any unintentional acquisition, access or use of PHI by a Lancaster County workforce member or person acting under the authority of Lancaster County or a Lancaster County business associate if such acquisition, access, or use was made in good faith and within the scope of their authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- D. Any inadvertent disclosure by a person who is authorized to access PHI at Lancaster County or a Lancaster County business associate to another person authorized to access PHI at Lancaster County or a Lancaster County business associate, or an organized health care arrangement in which Lancaster County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- E. A disclosure of PHI where Lancaster County or a Lancaster County business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

### **III. Risk Assessment**

- A. To determine if an impermissible access, use or disclosure of PHI constitutes a breach and requires further notification to individuals, media, or the HHS Secretary under federal breach notification requirements, Lancaster County's Privacy Officer will perform a risk assessment to determine if there is significant risk of financial, reputational, or other harm to the individual as a result of the impermissible access, use or disclosure.
- B. The risk assessment must be documented, fact-specific, and should address:
  - a. Consideration of who impermissibly used or to whom the information was impermissibly disclosed. For example, if the user or recipient is subject to HIPAA or similar privacy protections, this factor may weigh in favor of a non-breach conclusion.
  - b. The type and amount of PHI involved. For instance, sensitive information or information which is more likely to readily identify an individual will be more likely to weigh in favor of a breach conclusion.
  - c. The steps taken to mitigate potential harm. For example, if the user or recipient has entered into a confidentiality agreement with Lancaster County, or if the PHI was returned before being accessed, this factor would weigh in favor of a non-breach conclusion.
  - d. Any other facts which could impact whether or not significant harm could result from the impermissible access, use or disclosure of the PHI.

### **IV. Notification**

If Lancaster County determines, after completing the risk assessment, that a breach has occurred, Lancaster County intends to take the following steps:

- A. Timing: Upon determination that a breach notification is required, notice shall be made by the Privacy Officer without unreasonable delay and in no case later than 60 calendar days after the discovery of the breach by Lancaster County or its business associate, as applicable. Lancaster County shall properly document the reasons and underlying support for any delays during this 60 day time-frame.
- B. Delay or Notification Authorized for Law Enforcement Purposes: If a law enforcement official states to Lancaster County that a notification, notice, or posting would impede a criminal investigation or cause damage to national security, Lancaster County shall:
  - a. If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting of the time period specified by the official; or
  - b. If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting

temporarily and not longer than 30 days from the date of the oral statement, unless a written statement as described above is submitted during that time.

- C. Content of the Notice: The notice shall be written in plain language and must contain, to the extent possible, the following information:
- a. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
  - b. A description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved).
  - c. Any steps the individual should take to protect themselves from potential harm resulting from the breach.
  - d. A brief description of what Lancaster County is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches.
  - e. Contact procedures for individuals to ask questions of the Privacy Officer or learn additional information, which includes a toll-free telephone number, an e-mail address, web site, or postal address.
- D. Methods of Notification: The method of notification used by Lancaster County will depend on the individuals/entities to be notified. The following methods must be utilized accordingly:
- a. Notice to Individual(s): Notice shall be provided promptly and in the following form:
    - i. *Written notification* by first-class mail to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail. The notification shall be provided in one or more mailings from the Privacy Officer as information is available. If Lancaster County knows that the individual is deceased and has the address of the next of kin or personal representative of the individual, written notification by first-class mail to the next of kin or personal representative shall be carried out.
    - ii. *Substitute Notice to Individuals*: In the case where there is insufficient or out-of-date contact information (including a phone number, email address, etc.) which precludes direct written or electronic notification, a substitute form of notice reasonably calculated to reach the individual shall be provided. A substitute notice need not be provided in the case in which there is insufficient or out-of-date contact information that precludes written notification to the next of kin or personal representative.
      1. In a case in which there is insufficient or out-of-date contact information for fewer than 10 individuals, then the substitute

notice may be provided by an alternative form of written notice, telephone, or other means.

2. In the case in which there is insufficient or out-of-date contact information for 10 or more individuals, then the substitute notice shall be in the form of either a conspicuous posting for a period of 90 days on the home page of Lancaster County's website, or a conspicuous notice in a major print or broadcast media in Lancaster County's geographic areas where the individuals affected by the breach likely reside. The notice shall include a toll-free number that remains active for at least 90 days where an individual can learn whether his or her PHI may be included in the breach.
- iii. *Urgent Notification to Individuals:* If Lancaster County determines that notification requires urgency because of possible imminent misuse of unsecured PHI, notification may be provided by telephone or other means, as appropriate, in addition to the methods noted above.
- iv. *Notice to Media:* Notice shall be provided by the Privacy Officer to prominent media outlets serving the state and regional area when the breach of unsecured PHI affects more than 500 individuals. The notice shall be provided in the form of a press release.
- v. *Notice to Secretary of HHS:* Notice shall be provided by the Privacy Officer to the Secretary of HHS as follows below. The Secretary shall make available to the public on the HHS internet website a list identifying covered entities involved in all breaches in which the unsecured PHI of more than 500 individuals is accessed, acquired, used, or disclosed.
  1. For breaches involving 500 or more individuals, Lancaster County shall notify the Secretary of HHS as instructed at [www.hhs.gov](http://www.hhs.gov) at the same time notice is made to individuals.
  2. For breaches involving less than 500 individuals, Lancaster County will maintain a log of the breaches and annually submit the log to the Secretary of HHS during the year involved. Such log shall be submitted no later than 60 days after the end of the calendar year. Instructions for submitting the log are provided at [www.hhs.gov](http://www.hhs.gov).
- vi. *Maintenance of Breach Information /Log:* As described above and in addition to the reports created for each incident, Lancaster County shall maintain a process to record or log all breaches of unsecured PHI regardless of the number of patients affected. The following information should be collected/logged for each breach:

1. A description of what happened, including the date of the breach, the date of the discovery of the breach, and the number of individuals affected, if known.
2. A description of the types of unsecured protected health information that were involved in the breach, such as full name, social security number, date of birth, home address, account number, etc..
3. A description of the action taken with regard to notification of individuals regarding the breach.
4. Resolution steps taken to mitigate the breach and prevent future occurrences.

## **V. Mitigation of Harm**

Lancaster County may institute and pursue reasonable steps to mitigate the potential harm of any impermissible access, use or disclosure of any breach. Such mitigation may include:

- A. Seeking confidentiality agreements with unauthorized users or recipients of PHI;
- B. Ensuring that the PHI at issue is returned or destroyed;
- C. Ensuring that all evidence (e.g., disks, files, etc.) is secured from tampering or unauthorized access;
- D. Notifying law enforcement; and
- E. Taking reasonable steps to ensure that further PHI is not impermissibly accessed, used or disclosed, including:
  - a. Changing passwords;
  - b. Seeking appropriate employee sanctions; and
  - c. Engaging information technicians in an investigation, audit, or review of systems at issue.

## **VI. Document Retention**

All documentation related to any investigation discussed herein, including the risk assessment, shall be retained for a minimum of six (6) years.

## **BUSINESS ASSOCIATES**

### **POLICY:**

A business associate is an individual or entity who provides a service, performs a function or performs an activity on behalf of the County that involves the creation, use or disclosure of protected health information. Business Associates do not include members of the county's workforce. A County agency may disclose protected health information (PHI) to a business associate provided a business associate contract (BAC) exists.

### **PROCEDURES:**

#### **I. Business Associate Contract**

The business associate must provide in writing satisfactory assurances that it will appropriately safeguard the information it receives, uses or discloses in carrying out the specified functions or activities. The satisfactory assurances obtained from the business associate shall be in the form of a written BAC that contains the elements specified in the Privacy Rule.

#### **II. Business Associate**

##### *A. The County's Responsibility Regarding Business Associates*

If the County knows of a material breach or violation by the business associate of the contract or agreement, the County is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, the county is required to report the problem to the Secretary of Health and Human Services. Employees shall immediately notify the Privacy Officer if they learn that one of the County's business associates may have breached or violated its BAC.

##### *B. Minimum Necessary Standard*

The Privacy Rules require covered entities to obligate their business associates to comply with the minimum necessary standard.

### **Citations:**

- §160.103 Definition of "business associate"
- §164.504(e)(1)(ii)(A) Requirements for disclosures to associates
- §164.504(e)(1)(ii)(B) Exception for disclosures to group plan sponsor
- §164.504(e)(2) Contents of associate contracts
- §164.504(e)(1)(ii) Responsibility for associate's activities

## **MINIMUM NECESSARY**

### **POLICY:**

County agencies must take reasonable efforts to use, disclose, or request of another covered entity only the minimum necessary PHI to accomplish the intended purpose. Exceptions to this general rule are provided herein.

### **PROCEDURES:**

#### **I. Minimum Necessary Workforce Use**

The agency shall identify and document those workforce members (or classes of workforce members) who need access to PHI to perform their duties; the categories of PHI needed by each of these workforce members (or classes of these workforce members) to perform those duties; and the conditions appropriate to each workforce member's access to those categories.

Each Agency Head will implement procedures to ensure that each workforce member (or class of workforce members) within the agency has access to and use of only that PHI consistent with these identified and documented needs.

#### **II. Routine and Non-Routine Disclosures**

The agency shall implement policies and procedures or standard protocols for the routine or recurring requests for or disclosures of PHI (other than those for which there is no minimum necessary requirement) so that the agency limits the PHI it requests or discloses to the minimum reasonably necessary for the purpose of the request or disclosure.

For any request for or disclosure of PHI that has not been identified and documented as routine or recurring (and that is not excepted from the minimum necessary requirement), the agency must have and apply criteria designed to limit the PHI it requests or discloses to that reasonably necessary for the purpose of the request or disclosure. The agency should review each non-routine or non-recurring request or disclosure on an individual basis according to these criteria to ensure that it requests or discloses only the minimum necessary PHI.

#### **III. Medical Records**

The agency may not use, disclose, or request an entire medical record, unless it is specifically justified as reasonably necessary for the purpose. The Privacy Officer and agency may identify and document those situations in which use, disclosure or request for an entire medical record may be justifiable and will develop and document procedures for obtaining approval to use, disclose or request an entire medical record. Each agency will implement these procedures within the unit to ensure that an entire medical record is not used, disclosed or requested without approved justification.

#### **IV. Exceptions to Minimum Necessary Requirement**

- A. Disclosures to or request by a health care provider for treatment purposes.
- B. Disclosures made to the individual (or the individual's personal representative) who is the subject of the PHI.
- C. Uses or disclosures made pursuant to a valid authorization.
- D. Disclosures to HHS for compliance reviews or complaint investigations under HIPAA.
- E. Uses or disclosures required for compliance with HIPAA.
- F. Uses or disclosures required by law.

#### **V. Reliance on Minimum Necessary Assurances**

The County agency may rely, if reasonable for the situation, on a request to disclose PHI being for the minimum necessary: if the requester is another covered entity; a professional (including an attorney or accountant) who provides professional services to the County either as a member of our workforce or as our business associated and who states that the requested information is the minimum necessary; a public official who represents that the information requested is the minimum necessary; or a researcher with appropriate documentation from an Institutional Review Board (IRB) or Privacy Board.

#### ***Citations:***

- §164.502(b) Uses and disclosures of protected health information: General rules – Standard: minimum necessary
- §164.514(d) Other requirements relating to uses and disclosures of protected health information: Standard – minimum necessary requirements
- Preamble, Pg. 82499 and 82712 – 82716 Discussion of comments on Minimum Necessary
- Preamble, pg. 82543-45 Discussion of Minimum Necessary

## **VERIFICATION OF INDIVIDUAL'S IDENTITY**

### **POLICY:**

Before making any permitted disclosures of PHI, the County agency shall verify the identity and authority of the person requesting the PHI. If the agency knows the person making the request, additional verification of his/her identity is not required.

### **PROCEDURES:**

#### **I. Verifying an Individual's Identity**

The County agency must take reasonable steps to verify the identity of an individual requesting access, use or disclosure of his/her PHI when the person is not known to them. No particular identification requirements are mandated. Examples of appropriate identification include photographic identification cards, drivers license, photo ID, government identification card or badge, and appropriate documentation on government letterhead. Current practices of sending the information to a recognizable organizational address, or if faxing or phoning information, by calling the requester back through the main organization switchboard rather than through a direct phone number, are sufficient to meet these requirements.

#### **II. Verifying the Identity and Authority of a Person Who Requests PHI on Behalf of an Individual**

The County agency must take reasonable steps to verify the identity and authority of any person requesting PHI on behalf of another individual. Examples of appropriate authority include, if reasonable for the situation: identification as parent, guardian or executor; power of attorney or other evidence of appropriate relationship with the individual; a warrant; subpoena order; or other legal process issued by a grand jury or a court or administrative tribunal.

#### **III. Documentation**

The agency staff shall document verification of the identity and authority of a person or entity before granting access to or disclosing PHI.

#### ***Citations:***

- §164.514(h) Other Procedural Requirements Relating to Uses and Disclosures of Protected Health Information – Standard: Verification requirements
- Preamble, pg. 82546-7 and pg. 82718-20 Discussion of verification of identity and authority of persons requesting PHI

## **PRIVACY COMPLAINTS AND INQUIRIES**

### **POLICY:**

Individuals (both internal and external to Lancaster County) have the right to file a complaint regarding the County's Privacy Policies and Procedures or the Privacy Rules. Individuals have the right to file the complaint either directly to the Privacy Officer or to the Secretary of Health and Human Services.

The County must cooperate with investigations by the Secretary of Health and Human Services permitting access to information requested by the investigator. The County must receive and document complaints and their disposition, if any, and retain these records for six years.

### **PROCEDURES:**

#### **I. External Privacy Complaints & Inquiries**

Each complaint received by an outside agency or individual (not an employee of the County) must be documented and referred immediately to the Privacy Officer for investigation.

**A. Complaints:** All complaints shall be submitted in writing to the Privacy Officer.

**B. Investigation and Response:** The Privacy Officer will facilitate an investigation into each complaint. Any response to the complaint shall be in writing and within thirty (30) days of receiving the complaint. The Privacy Officer shall institute action to correct the matters complained of if corrective action is appropriate.

#### **II. Internal Privacy Complaints & Inquiries**

A member of the County workforce who suspects that these Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law has been violated by another workforce member or by a business associate must report the suspicion to the Privacy Officer in sufficient detail to permit the matter to be investigated and to prevent or mitigate any deleterious effects. Reports may be made anonymously.

#### **III. Sanctions**

County employees who violate our Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law will be subject to disciplinary action, up to and including termination.

#### **IV. Mitigation**

The County will mitigate, to the extent possible, any harmful effect of improper use or disclosure of protected health information (PHI) by our workforce or by our business associates in violation of these Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law.

#### **V. Policy Refraining from Waivers and Retaliatory Acts**

The County will not require an individual to waive any right under the Privacy Rules, including the right to complain to HHS, as a condition to providing claims payment,

enrollment, or benefits eligibility for the individual. Any County employee who attempts to intimidate, threaten, coerce, discriminate, or retaliate against an individual who exercises any right, including filing complaints, under the Privacy Rules, will be disciplined as appropriate.

## **VI. Documentation**

The County Privacy Officer shall retain copies of all complaints, investigations, responses and documentation of any action taken for at least six years from the date it was created or from the date it was last in effect, whichever is later.

### ***Citations:***

- §160.306 Complaints to the Secretary
- §160.310(b) Responsibilities of covered entities to cooperate with complaint investigations and compliance review
- §160.312 Secretarial action regarding complaints and compliance reviews
- §164.530(d) Administrative requirements – Standard: Complaints to the covered entity
- §164.530(a)(1)(ii) Administrative requirements – Standard: Personnel designations
- §164.530(g) Administrative requirements – Standard: Refraining from intimidating or retaliatory action
- §164.520(b)(vi) Notice of privacy practices – Complaints
- §164.524(d)(2)(iii) Access of individuals to protected health information – Implementation specifications: Denial of access
- §164.526(d)(iv) Amendment of protected health information – Implementation specifications: Denial of amendment
- Preamble, pg. 82487 Process of filing a complaint
- Preamble, pg. 82505 Complaints against a business associate
- Preamble, pg. 82550 Complaints about privacy practices
- Preamble, pg. 82556-7 Review of a Denial of Access
- Preamble, pg. 82562 Complaints to the Covered Entity
- Preamble, pg. 82600-1 Process for filing complaints
- Preamble, pg. 82746-7 Complaints to the Covered Entity and retention of complaint records, staffing requirements
- Preamble, pg. 82783 Internal Complaints – Receiving, Documenting and Responding to Complaint

## **HIPAA DOCUMENTATION AND RECORD RETENTION**

### **POLICY:**

Lancaster County must document and maintain all HIPAA policies and procedures and any other communication, action, activity, or designation that must be documented under the Privacy Rule. Documentation may be maintained in an electronic form or on paper.

### **PROCEDURES:**

#### **I. Documentation**

The Privacy Officer will maintain the following in written or electronic form:

- County Privacy Policies and Procedures and each revision of them;
- County Notices of Privacy Practices and each revision to them;
- Documentation evidencing distribution of the Notices and each revision to them;
- Documentation evidencing designation of the Privacy Officer and any delegation of duties and responsibilities to the Privacy Officer's designees;
- Each authorization;
- Each request from individuals for access, amendment, disclosure accounting, restriction or confidential communications and all documentation relating to them;
- Each complaint and any material generated as a result of investigation and resolving the complaint; and
- Other documentation requested or required under these Privacy Policies and Procedures.

#### **II. Document Retention**

Each document shall be retained until six (6) years after the later of its creation or last effective date.

Each agency will implement document retention practices within the agency consistent with these Privacy Policies and Procedures to ensure that the Privacy Officer receives the original of each document required by these Privacy Policies and Procedures.

Each agency shall retain a copy of each such document as may meet the department's needs or convenience in performing its functions for the County.

#### **III. Changes in the Law**

The County must promptly amend these Privacy Policies and Procedures as necessary and appropriate to comply with each change in the Privacy Rules or applicable federal or state privacy law.

The County must promptly make appropriate revisions to its Notice of Privacy Practices whenever the change in law materially affects the accuracy of the Notice's content, and distribute our revised Notice to our then subscribers and enrollees within 60 days after the effective date of the change in law.

**Citations:**

- §164.508 Uses and disclosures for which an authorization is required
- §164.512(i) Uses and Disclosures for Research Purposes: Documentation Requirements of IRB
- §164.520(e) Notice of Privacy Practices for protected health information – Implementation specifications: documentation
- §164.522 Rights to request privacy protection for protected health information
- §164.524(e) Access of individuals to protected health information – Implementation specification: documentation
- §164.526(f) Amendment of protected information – Implementation specification: documentation
- §164.528(d) Accounting of disclosures of protected health information – Implementation specification: documentation
- §164.530(j) Administrative requirements – Standard: documentation
- Preamble, pg. 82498 Each entity must assess its own needs
- Preamble, pg. 82517 Items required in Authorization Requests
- Preamble, pg. 82535-6 Documentation Requirements of Internal Review Board

## PERSONAL REPRESENTATIVES

### POLICY:

Except as otherwise provided herein, upon verification that an individual has been authorized to act as the personal representative of an individual, the county agency shall treat the personal representative as the individual with respect to the use and disclosure of his/her protected health information (PHI) as well as individual rights under the Privacy Rules.

### PROCEDURES:

#### I. Personal Representatives Access to PHI

##### A. *Mandatory Disclosure*

When a personal representative asks the County agency for access to information or an accounting of disclosures, the County agency must disclose this information unless an exception to disclosure exists.

##### B. *Adults and Emancipated Minors*

If a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, the agency must treat such person as a personal representative with respect to PHI relevant to such personal representation.

##### C. *Unemancipated Minors*

If a parent, guardian, or other person acting in the place of a parent has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, the agency must treat such person as a personal representative with respect to PHI relevant to such personal representation subject to the following exceptions:

1. When State or other law does not require the consent of the parent before a minor can obtain a particular health care service and the minor consents to the health care service;
2. When a court determines or other law authorizes someone other than the parent to make the treatment decision for the minor; or
3. A parent, guardian, or other person acting in the place of a parent agrees to an agreement of confidentiality between a health care provider and the minor.

#### II. Deceased Individuals

If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, the County agency must treat such person as a personal representative with respect to PHI relevant to such personal representation.

### **III. Abuse, Neglect, Endangerment Situations**

The County agency may decide not to treat a person as the personal representative of an individual if it has a reasonable belief that:

- A. The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
- B. Treating such person as the personal representative could endanger the individual, and the County agency, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

#### ***Citations:***

- §164.503(g) – Uses and disclosures of protected health information: general rules – Standard: personal representatives
- §164.524 – Access of individuals to protected health information
- §164.528 – Accounting of disclosures of protected health information
- §164.510(b) – Uses and disclosures requiring an opportunity for the individual to agree or to object – Standard: uses and disclosures for involvement in the individual's care and notification purposes
- Preamble, pg. 82500 and 82633 – 82634 – Discussion of §164.502(g)
- Preamble, pg. 82544 and 82731 – Discussion of §164.524
- Preamble, pg. 82599 and 82739 – Discussion of §164.528
- Preamble, pg. 82522 and 82633 – Discussion of §64.510(b)

## **SUBPOENAS**

### **POLICY:**

A County agency may disclose PHI pursuant to subpoenas, discovery requests, or other civil process only after obtaining "satisfactory assurances" that the requesting party has made a reasonable effort to provide written notice of the request to the individual or to obtain a "qualified protection order".

Disclosures pursuant to subpoenas, discovery requests, or other civil process are subject to the "minimum necessary" standard.

### **PROCEDURES:**

#### **I. Response to Subpoenas and Discovery Requests**

The County Attorney's Office shall be contacted immediately upon being served with a subpoena, discovery request or other civil process. The County Attorney's Office will coordinate a response to the subpoena.

#### **II. Satisfactory Assurances**

Satisfactory Assurances means a written declaration and documentation of the following:

- A. A good faith effort to provide the individual with written notice sufficient to permit the individual to raise objections to the disclosure of his/her PHI;
- B. The individual's failure to raise a timely objection following notice; or
- C. The resolution of the individual's objection by the court or other tribunal.

The written assurances will be deemed satisfactory under the regulations if, together with accompanying documentation they demonstrate that the parties agreed to or are seeking a qualified protection order from a court.

#### **III. QUALIFIED PROTECTION ORDER**

A "qualified protection order" is an order or stipulation by the parties to the action prohibiting the parties from using or disclosing the health information for any purpose other than the case or proceeding for which it was requested.

## **DISCLOSURES TO LAW ENFORCEMENT OFFICIALS**

### **POLICY:**

A County agency may disclose an individual's PHI to law enforcement officials without the individual's authorization only in specific circumstances. "Law enforcement" includes any governmental agency or official authorized to investigate, prosecute or conduct an inquiry into a potential violation of law.

### **PROCEDURES:**

#### **I. Requests for PHI by Law Enforcement Agencies Outside the County**

When possible, all requests for PHI by law enforcement shall be in writing and shall include appropriate documentation. All disclosures of PHI made to law enforcement shall be documented. The County agency shall use reasonable means to confirm the identity and authority of the law enforcement official requesting the disclosure of information.

#### **II. Circumstances Permitting Disclosure to Law Enforcement**

- A. *Legal Process.* The County agency may disclose PHI to law enforcement officials pursuant to legal process. Legal process is a formal written demand or request from a judicial or enforcement agency. It includes documents such as a court order, a court-ordered warrant, a subpoena or summons issued by a court officer, a grand jury subpoena or an administrative subpoena.
- B. *Required by Law.* The County agency may disclose PHI to law enforcement where the disclosure is required by state or federal laws. For example, the agency may be required to report child or elder abuse or neglect.
- C. *For Identification or Location.* The County agency may provide limited identifying information in response to a request from law enforcement for assistance in identifying or locating fugitives, suspects, witnesses, or missing persons.
- D. *Crime Victims.* The County agency may disclose PHI concerning an actual or suspected victim of a crime in response to law enforcement request in two circumstances:
  1. The individual agrees to the disclosure; or
  2. The individual's agreement cannot be obtained due to incapacity or emergency circumstances, and a law enforcement official represents that:
    - a. The information is needed to determine if someone other than the individual has committed a crime and such information will not be used against the individual;
    - b. The need for the information is acute and without it law enforcement efforts will be adversely affected; and
    - c. The County agency determines in the exercise of professional judgment that disclosure is in the best interests of the individual.

- E. *Decedents.* The county agency may contact law enforcement officials about the death of an individual and provide PHI concerning such individual if it suspects the death may have resulted from criminal conduct.
- F. *Crime on the Premises.* The County agency may disclose to law enforcement PHI that it believes in good faith to be evidence of a crime committed on its premises.
- G. *Off-site Emergencies.* If the County agency is rendering emergency services off its premises, it may disclose PHI to the extent necessary to alert law enforcement to the commission, nature, or location of a crime or crime victim, and the identity, description and location of the perpetrator.

## **Definition of Terms**

### **Agency:**

A Lancaster County agency that has been designated as a covered health care component of the County subject to HIPAA and these policies, rules and procedures.

### **Administrative Requirements:**

Covered entities must fulfill these requirements under the Privacy rule. They include designating a Privacy Official, designating a contact person responsible for receiving complaints, instituting and documenting policies and procedures to comply with the Privacy rule, training employees on the entity's PHI policies and procedures, implementing appropriate administrative, technical and physical safeguards to protect privacy of PHI, providing a process for individuals to make complaints concerning the policies/practices, applying sanctions against workers who violate privacy policies, and mitigating any known harmful effect resulting from a violation of policies/practices.

### **Breach:**

The acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI and poses a significant risk of financial, reputational, or other harm to the individual.

### **Business Associate:**

- 1) Except as provided in paragraph (2) of this definition, business associate means, with respect to a covered entity, a person who:
  - a. On behalf of such covered entity or of an organized health care arrangement (as defined in 45 C.F.R. §164.501 of this subchapter) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of;
    - i. A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
    - ii. Any other function or activity regulated by this subchapter; or
  - b. Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in 45 C.F.R. §164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

- 2) A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(a) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(b) of this definition to or for such organized health care arrangement, does not, simply through the performance of such function or activity or the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.
- 3) A covered entity may be a business associate of another covered entity.

**Compliance Date:**

The date by which a covered entity must comply with a standard, implementation specification, requirement, or modification.

**Covered Entity:**

- 1) A health plan
- 2) A health care clearinghouse
- 3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA

**Data Aggregation:**

With respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**Designated Record Set:**

- 1) A group of records maintained by or for a covered entity that is:
  - a. The medical records and billing records about individuals maintained by or for a covered health care provider;
  - b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - c. Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- 2) For purposes of this definition, the term *record* means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

**Disclosure:**

The release, transfer, provision of access to, or divulging in any other manner, of information outside the entity holding the information.



**Group Health Plan** (also see definition of health plan in this section):

An employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)) including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg-91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

- 1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or
- 2) Is administered by an entity other than the employer that established and maintains the plan.

**Health Care:**

Care, services, or supplies related to the health of an individual. *Health care* includes, but is not limited to, the following:

- 1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- 2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

**Health Care Clearinghouse:**

A public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that does either of the following functions:

- 1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
- 2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

**Health Care Operations:**

Any of the following activities of the covered entity to the extent that the activities are related to covered functions, and any of the following activities of an organized health care arrangement in which the covered entity participates:

- 1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care

providers and patients with information about treatment alternatives; and related functions that do not include treatment;

- 2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
- 3) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of §164.514(g) are met, if applicable;
- 4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
- 5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
- 6) Business management and general administrative activities of the entity, including, but not limited to:
  - a. Management activities relating to implementation of and compliance with the requirements of this subchapter;
  - b. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer.
  - c. Resolution of internal grievances;
  - d. Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity; and
  - e. Consistent with the applicable requirements of §164.514(3) (2).

### **Health Information:**

Any information, whether oral or recorded in any form or medium, that:

- 1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearing house; and
- 2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

### **Health Plan:**

An individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a) (2) of the PHS Act, 42 U.S.C. 300gg-91(a) (2)).

1) *Health plan* includes the following, singly or in combination:

- a. A group health plan, as defined in this section.
- b. A health insurance issuer, as defined in this section.
- c. An HMO, as defined in this section.
- d. Part A or Part B of the Medicare program under title XVIII of the Act.
- e. The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et. Seq.
- f. An issuer of a Medicare supplemental policy (as defined in section 1882(g) (1) of the Act, 42 U.S.C. 1395ss(g)(1)).
- g. An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.
- h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.
- i. The health care program for active military personnel under Title 10 of the United States Code.
- j. The veterans' health care program under 38 U.S.C. chapter 17.
- k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in 10. U.S.C. 1072(4)).
- l. The Indian Health Service program under the Indian Health Care Improvement Act, 25 U.S.C. 1601, et. seq.
- m. The Federal Employees Health Benefits Program under 5 U.S.C. 8902, et. seq.
- n. An approved State child health plan under Title XXI of the Act, providing benefits for child health assistance that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397, et. seq.
- o. The Medicare + Choice program under Part C of Title XVIII of the Act, 42 U.S.C. 1395w-21 through 1395w-28.
- p. A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.
- q. Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).

2) Health Plan excludes:

- a. Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(xc)(1); and
- b. A government-funded program (other than one listed in paragraph (1)(a) –(q) of this definition);
  - i. Whose principal purpose is other than providing, or paying the cost of, health care; or

- ii. Whose principal activity is:
  - 1. The direct provision of health care to persons; or
  - 2. The making of grants to fund the direct provision of health care to persons.

**Health Care Provider:**

A provider of services (as defined in section 1861(u) of the Act, U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

**HHS:**

The Department of Health and Human Services.

**Impermissible Access, Use or Disclosure:**

The acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule.

**Individual:**

The person who is the subject of protected health information.

**Individually Identifiable Health Information:**

Information that is a subset of health information, including demographic information collected from an individual, and;

- 1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- 2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - a. That identifies the individual; or
  - b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**Law Enforcement Official:**

An officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

- a) Investigate or conduct an official inquiry into a potential violation of law; or
- b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

**Limited Data Set:**

Refers to PHI that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

- 1) Names;
- 2) Postal address information, other than town or city, state, and zip code;
- 3) Telephone numbers;
- 4) Fax numbers;
- 5) Social security numbers;
- 6) Medical record numbers;
- 7) Health plan beneficiary numbers;
- 8) Account numbers;
- 9) Certificate/license numbers;
- 10) Vehicle identifiers and serial numbers, including license plate numbers;
- 11) Device identifiers and serial numbers;
- 12) Web Universal Resource Locators (URLs);
- 13) Internet Protocol (IP) address numbers;
- 14) Biometric identifiers, including finger and voice prints; and
- 15) Full face photographic images and any comparable images.

**Marketing:**

- 1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
  - a. To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.
  - b. For treatment of the individual; or
  - c. For case management or care coordination for the individual, or to direct or recommend alternative treatments, health care providers, or settings of care to the individual.
- 2) An arrangement between a covered entity and any other entity whereby the covered entity discloses PHI to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

**Minimum Necessary:**

*Minimum necessary* is based on sound practice that protected health information should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a function.

*Minimum necessary* shall mean, to the extent practicable, a limited data set for that particular type of disclosure or request, but does not apply to the following:

- 1) Disclosures to or requests by a health care provider for treatment purposes.
- 2) Disclosures to the individual who is the subject of the information.
- 3) Uses or disclosures made pursuant to an individual's authorization.
- 4) Uses or disclosures required for compliance with HIPAA Administrative Simplification Rules.
- 5) Disclosures to the Department of Health and Human Services when disclosure of information is required under the Privacy Rule for enforcement purposes.
- 6) Uses or disclosures that are required by other law.

**More Stringent:**

In the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart # of part 164 of this subchapter, a State law that meets one or more of the following criteria:

- 1) With respect to a user or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is:
  - a. Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or
  - b. To the individual who is the subject of the individually identifiable health information.
- 2) With respect to the rights of an individual who is the subject of the individually identifiable health information of access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable; provided that, nothing in this subchapter may be construed to preempt any state law to the extent that it authorizes or prohibits disclosure of protected health information about a minor to a parent, guardian, or person acting *in loco parentis* of such minor.
- 3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights and remedies, provides the greater amount of information.
- 4) With respect to the form or substance of an authorization or consent for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expending the criteria for), or reduce the coercive effect of the circumstances surrounding the authorization or consent, as applicable.
- 5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.
- 6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

**Organized Health Care Arrangement:**

- 1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;
- 2) An organized system of health care in which more than one covered entity participates, and in which the participating covered entities:
  - a. Hold themselves out to the public as participating in a joint arrangement; and
  - b. Participate in joint activities that include at least one of the following:
    - i. Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;
    - ii. Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or
    - iii. Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.
  - c. A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;
  - d. A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or
  - e. The group health plans described in these definitions and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

**Payment:**

- 1) The activities undertaken by:
  - a. A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or
  - b. A covered health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
- 2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:
  - a. Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;

- b. Risk adjusting amounts due based on enrollee health status and demographic characteristics;
- c. Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess or loss insurance), and related health care data processing;
- d. Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
- e. Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and
- f. Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:
  - i. Name and address;
  - ii. Date of birth;
  - iii. Social security number;
  - iv. Payment history;
  - v. Account number; and
  - vi. Name and address of the health care provider and/or health plan.

**Plan Administration Functions:**

Administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan, excluding functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

**Plan Sponsor:**

Defined as defined at section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

**Protected Health Information:**

Protected health information means individually identifiable health information:

- 1) Except as provided in paragraph (2) of this definition, that is:
  - a. Transmitted by electronic media;
  - b. Maintained in electronic media; or
  - c. Transmitted or maintained in any other form or medium.
- 2) Protected health information excludes individually identifiable health information in:
  - a. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
  - b. Records described at 20 U.S.C. 1232g(a)(4)(B)(iv).
  - c. Employment records held by a covered entity in its role as employer.
  - d. Regarding a person who has been deceased for more than 50 years.
- 3) Entities are permitted to disclose a decedent's PHI to family members and others who were involved in the care or payment for care of a decedent prior to death, unless doing so is

inconsistent with any prior expressed preference of the individual that is known to the covered entity.

**Psychotherapy Notes:**

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**Public Health Authority:**

An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

**Required by Law:**

A mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

**Research:**

A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

**Secretary:**

The Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.

**Standard:**

A rule, condition, or requirement:

- 1) Describing the following information for products, systems, services or practices:

- a. Classification of components.
  - b. Specification of materials, performance, or operations; or
  - c. Delineation of procedures; or
- 2) With respect to the privacy of individually identifiable health information.

### **Summary Health Information:**

Information, that may be individually identifiable health information, and:

- 1) That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and
- 2) From which the information described at 45 C.F.R. §164.514(b)(2)(i) has been deleted, except that the geographic information described in 45 C.F.R. §164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code.

### **Treatment:**

The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

### **Unsecured Protected Health Information:**

*Unsecured protected health information* or *unsecured PHI* means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance issued under section 13402(h)(s) of the American Recovery and Reinvestment Act of 2009. The following are the methods by which PHI becomes "secured":

- 1) Electronic PHI has been encrypted as specified in the HIPAA Security rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without the use of a confidential process or key and such confidential process or key that might enable decryption has not been breached. The following encryption processes meet this standard:
  - a. Valid encryption processes for data at rest (data that resides in databases, file systems and other structured storage systems) are consistent with NIST Special Publication 800-111, *Guide to Storage Encryption Technologies for End User Devices*.
  - b. Valid encryption processes for data in motion (data that is moving through a network, including wireless transmission) are those that comply, as appropriate, with NIST Special Publications 800-52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*; 800-77, *Guide to IPsec VPNs*; or 800-113, *Guide to SSL VPNs*, and may include others which are Federal Information Processing Standards FIPS 140-2 validated.

- 2) The media on which the PHI is stored or recorded has been destroyed in the following ways:
  - a. Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed. Redaction is not a permitted means of data destruction.
  - b. Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publications 800-88, *Guidelines for Media Sanitization*, such that the PHI cannot be retrieved.

**Use:**

*Use* means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

**Workforce:**

*Workforce* means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

**Client Access to Records Request Form**

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

I am asking for access to my information for the following time period:

From: \_\_\_\_\_ to: \_\_\_\_\_

I would like to access my information in the following format (electronic, paper, other):

\_\_\_\_\_

I understand that the County has thirty (30) days after receipt of this request to respond. In addition, the County will notify me in writing if an extension of up to thirty (30) days is needed, and the reason for requesting the extension. I understand I will be responsible for the cost associated with copying or summarizing my health information. Fees will be reasonable and cost-based, agreed to in advance, and include only the cost of copying and postage.

I understand that I may be denied access to certain health information, including information that is not held in the designated record set; psychotherapy notes; information compiled in reasonable anticipation of litigation; and other information not subject to the right to access information under state or federal law.

If I am denied this request I understand the County will provide me with a written denial in plain language.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Delayed: \_\_\_\_\_

If delayed, we will act on your request by: \_\_\_\_\_

Comments: \_\_\_\_\_

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Staff signature: \_\_\_\_\_

Date: \_\_\_\_\_

## AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:

I am either the patient named above or the patient's legally authorized representative. By signing this form, I authorize:

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to use or disclose to:

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the following protected health information (*identify the information in a specific and meaningful fashion*):

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The purpose of the use or disclosure is (*describe each purpose of the requested use or disclosure*):

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**Redisclosure of Information** - I understand that once information is disclosed pursuant to this authorization that the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Parts 160 and 164, protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing it. Other laws, however, may prohibit redisclosure. Alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the recipient must be informed that redisclosure is prohibited except as permitted or required by law. The Notice of Privacy Practices describes the circumstances where disclosure is permitted or required by these laws.

**Right to Refuse to Sign this Authorization** - I understand that generally the person(s) and/or organization(s) listed above who I am authorizing to use and/or disclose my information may not condition my treatment, payment or eligibility for health care benefits on my decision to sign this authorization.

**Right to Revoke** - I understand that I may revoke this authorization in writing at any time except to the extent that action has been taken in reliance on it.

**Right to Inspect** - I understand that I have the right to inspect or copy the health information I have authorized to be used or disclosed by this authorization form. The procedure for how I may inspect or copy my health information is explained in Lancaster County's Notice of Privacy Practices, a copy of which has been previously provided to me.

**Right to Receive a Copy of Authorization** - I understand that if I agree to sign this authorization, I must be provided with a signed copy of this form.

**Expiration Date** - I understand that unless revoked, this Authorization will expires automatically upon \_\_\_\_\_ . *(Date or event related to the purpose of authorization)*

I have had an opportunity to review and understand the content of this authorization form. By signing this authorization, I am confirming that it accurately reflects my wishes.

Signature of Patient/Client:
Please print name:
Date:

- OR -

Signature of Authorized Representative:
Please print name:
Please explain Representative's authority to act on behalf of the Patient/Client:
Date:

### Accounting of Disclosures Request

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

I hereby request an accounting of disclosures made of my health information by the County for the following time frame:

From: \_\_\_\_\_ To: \_\_\_\_\_

(Please note the following time frames for a request:

- Three (3) years before the date of the request for an accounting when the request is for an EHR (electronic health record) treatment, payment or health care Accounting;
- Six (6) years before the date of the request for all other requests allowed.)

I understand this accounting will not reflect any of the following:

- Disclosures made to carry out treatment, payment or health care operations
- Disclosures authorized in writing by me or my legal representative
- Disclosures made to me or to my legal guardian
- Disclosures made for facility directory
- Disclosures made to assist in notifying a family member, personal representative, or another person responsible for my care, of my location, general condition or death
- Disclosures made for national security or intelligence purposes
- Disclosures made to assist in disaster relief
- Disclosures made to correctional institutions or law enforcement regarding inmates

I understand there is no fee for the first accounting request in a 12-month period. For subsequent requests in the same 12-month period I will be charged a reasonable fee which I agree to pay.

I understand this accounting will be provided to me within sixty (60) days of this request unless I am notified in writing that one extension of up to thirty (30) days is needed.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

Date Received: \_\_\_\_\_ Date Accounting Sent: \_\_\_\_\_

Extension Requested: \_\_\_ Yes \_\_\_ No

Comments:

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County Staff Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## DISCLOSURE TRACKING LOG

Client Name:						
Date Received	Name of Requestor	Address of Requestor (if known)	Purpose of Disclosure*	PHI/Information Disclosed	Date Disclosed	Disclose by:

Use the above chart to record those disclosures that were made without an authorization and for the purposes stated below:

*\* Purposes for disclosures to be documented in the above chart:*

1. As required by law
2. For public health activities
3. About victims of abuse, neglect, or domestic abuse
4. For health oversight activities
5. For organ and tissue donation
6. For judicial or administrative proceedings
7. For law enforcement purposes
8. For research purposes
9. For workers' compensation
10. To prevent a serious threat to health and safety
11. To coroners, medical examiners or funeral directors
12. To business associates
13. For specialized government functions
14. To the Food and Drug Administration

### Amendment/Correction of Health Record Request Form

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

**Please state what needs to be amended/corrected and why:**

Entry to be amended/corrected: \_\_\_\_\_

Date and author of entry: \_\_\_\_\_

Please explain how the information is incorrect or incomplete. What should the information state to be more accurate or complete?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Would you like this amendment/correction sent to anyone to whom we may have disclosed this information in the past? If so, please specify the name and address of the individual(s) and/or organization(s):

\_\_\_\_\_  
\_\_\_\_\_

I understand that the County has sixty (60) days after receipt of this request to respond. In addition, the County may notify me in writing that an extension of up to thirty (30) days is needed.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date Received: \_\_\_\_\_ Accepted: \_\_\_\_\_ Denied: \_\_\_\_\_ Delayed: \_\_\_\_\_

If denied, check reason for denial:

PHI was not created by this organization

\_\_\_ Phi is not part of the designated record set

\_\_\_ PHI is not available to the patient for inspection as permitted by federal law

\_\_\_ PHI is accurate and complete

\_\_\_ Individual was informed in writing of the decision to accept or deny the request. (Attach correspondence).

Comments: \_\_\_\_\_

Staff signature: \_\_\_\_\_

Date: \_\_\_\_\_

## DISCLOSURE TRACKING LOG

Client Name:						
Date Received	Name of Requestor	Address of Requestor (if known)	Purpose of Disclosure*	PHI/Information Disclosed	Date Disclosed	Disclose by:

Use the above chart to record those disclosures that were made without an authorization and for the purposes stated below:

\* *Purposes for disclosures to be documented in the above chart:*

1. As required by law
2. For public health activities
3. About victims of abuse, neglect, or domestic abuse
4. For health oversight activities
5. For organ and tissue donation
6. For judicial or administrative proceedings
7. For law enforcement purposes
8. For research purposes
9. For workers' compensation
10. To prevent a serious threat to health and safety
11. To coroners, medical examiners or funeral directors
12. To business associates
13. For specialized government functions
14. To the Food and Drug Administration

**Amendment/Correction of Health Record Request**

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

I am asking to limit the following information from being used or disclosed (be specific):

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I understand that the County will consider my request but is not required to agree to my request for restricting use or disclosure of my health information.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date Received:

\_\_\_\_\_  
Approved:

Denied: (if denied, indicate reason for denial: PHI not created by this organization; PHI is not a part of the designated record set; PHI is accurate and complete; PHI is not available to the patient for inspection as permitted by federal law)

\_\_\_\_\_

Comments:

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Individual was informed in writing of the decision to accept or deny the request: (attach correspondence)

Yes: \_\_\_\_\_ No: \_\_\_\_\_

Staff signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Restriction of Use and Disclosures Request

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

I am asking to limit the following information from being used or disclosed (be specific):

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I understand that the County will consider my request but is not required to agree to my request for restricting use or disclosure of my health information.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Comments:

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Staff signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Request for Confidential Communications**

Name:	Date of Birth/ID Number:
Mailing Address:	Phone Number:
Record Holder:	Date of Request:

I am asking to receive confidential communications from the County either at an alternative location or by an alternative as follows (be specific):

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I understand that the County will consider my request and try to accommodate all reasonable requests.

\_\_\_\_\_  
Signature of the Patient/Client or Legal Representative

\_\_\_\_\_  
Date

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Comments:

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Staff Signature: \_\_\_\_\_

Date: \_\_\_\_\_