

UConn HEALTH

POLICY NUMBER 2003-27

April 14, 2015

POLICY: USES AND DISCLOSURES OF PHI WHERE AUTHORIZATION OR OPPORTUNITY FOR PATIENT TO AGREE OR OBJECT IS NOT REQUIRED (Privacy & Security of Protected Health Information (PHI))

PURPOSE:

To provide staff with guidelines for circumstances where uses and disclosures of PHI do not require an authorization, or opportunity to agree or object.

SCOPE:

Applies to all UConn Health workforce:

- Employees (including faculty and staff)
- Volunteers
- Students and residents
- Temporary staff
- Agency and contracted staff
- Credentialed staff
- Members of the Board of Directors

POLICY STATEMENT:

UConn Health may use or disclose PHI without the written authorization of the individual or the opportunity for the individual to agree or object in situations covered by this policy.

I. Uses and Disclosures Required by Law

UConn Health may use or disclose PHI as required by law only when sections A, B or C below are met.

A. Disclosures about Victims of Abuse, Neglect or Domestic Violence

1. Except for reports of child abuse or neglect as covered in this policy under Section II (Uses and Disclosures for Public Health Activities), UConn Health may disclose PHI about an individual whom UConn Health reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
 - if the report is mandated by law, and the minimum necessary disclosure will be made to meet that law, UConn Health should make the report (e.g. abuse of elderly, person with mental retardation, and residents of long-term care facilities); or

- if the individual agrees to the disclosure (oral agreement is acceptable); or
- if the disclosure is authorized by law (but not mandated) and
 - UConn Health believes (in the exercise of professional judgment) that the disclosures must be made to prevent harm, or
 - The individual is incapacitated, and cannot agree, and the agency receiving the report indicates that the information is not intended to be used against the individual, and there is a need for the information immediately.

2. If the report is made, UConn Health must inform the individual, or his personal representative, that the report will be made unless the personal representative is suspected to be the person who caused the abuse or neglect, and disclosing to that personal representative would not be in the patient's best interest. If disclosure is necessary to prevent or lessen harm to the patient or others and state law permits the disclosure, the report may be made without disclosing the report to the patient.

B. Uses and Disclosures for Health Oversight Activities

1. UConn Health may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- a. the health care system;
- b. government benefit programs for which health information is relevant to beneficiary eligibility;
- c. entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; and
- d. entities subject to civil rights laws for which health information is necessary for determining compliance.

2. A health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- a. the receipt of health care;
- b. a claim for public benefits related to health; or
- c. qualifications for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

C. Disclosures for Law Enforcement Purposes

UConn Health may disclose PHI for a law enforcement purpose to a law enforcement official if the following conditions are met, as applicable:

1. Pursuant to Process and as Otherwise Required by Law

UConn Health may disclose PHI:

- a. as required by law including laws that require the reporting of certain types of wounds or other physical injuries, or
- b. in compliance with and as limited by the relevant requirements of:
 - a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - a grand jury subpoena; or
 - an administrative request, including an administrative subpoena or summons, a civil or authorized investigative demand, or similar process authorized under law, provided that:
 - the information sought is relevant and material to a legitimate law enforcement inquiry;
 - the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - de-identified information could not reasonably be used.

2. Disclosures of Limited Information for Identification and Location Purposes

Except for disclosures under Section I.C.1 (Pursuant to Process) of this policy, UConn Health may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

- a. UConn Health may disclose only the following information:
 - name and address;
 - date and place of birth;
 - social security number;
 - ABO blood type and rh factor;
 - type of injury;
 - date and time of treatment;
 - date and time of death, if applicable; and
 - a description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars and tattoos.
- b. UConn Health may not disclose for the purposes of identification or location any PHI related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

3. Victims of A Crime

Except for disclosures under Section I.C.1 (Pursuant to Process) of this policy, UConn Health may disclose PHI in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime other than disclosures for public health activities or victims of abuse, neglect or domestic violence, if:

- a. the individual agrees to the disclosure; or
- b. UConn Health is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
 - the law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
 - the law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - the disclosure is in the best interests of the individual as determined by the UConn Health staff, in the exercise of professional judgment.

4. Decedents

UConn Health will disclose PHI about an individual who has died, to a law enforcement official, for the purpose of alerting law enforcement of the death of the individual if UConn Health has a suspicion that such death may have resulted from criminal conduct.

5. Crime on Premises

UConn Health will disclose to a law enforcement official, PHI that UConn Health, in good faith, believes constitutes evidence of criminal conduct that occurred on the premises of UConn Health.

6. Reporting Crime in Emergencies

- a. UConn Health, in providing emergency health care in response to a medical emergency, other than an emergency on its own premises, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
 - the commission and nature of a crime;
 - the location of such crime or of the victim(s) of such crime; and
 - the identity, description, and location of the perpetrator of such crime.
- b. If UConn Health believes that the medical emergency is the result of abuse, neglect or domestic violence of the individual in need of emergency health care, this section does not apply and any disclosure to a law enforcement official for law enforcement purposes must be in accordance with Section I. A (Disclosures about Abuse, Neglect and Domestic Violence) of this policy.

II. Uses and Disclosures for Public Health Activities

UConn Health may disclose PHI for public health activities and purposes to:

- A. a public health authority that is authorized by law to receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health

interventions; or the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

- B. a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
- C. a person subject to the jurisdiction of the Food and Drug Administration for the purposes of activities related to the quality, safety or effectiveness of an FDA regulated product or activity. These purpose include:
 - 1. collecting or reporting:
 - adverse events (or similar activities with respect to food or dietary supplements)
 - product defects or problems (including problems with the use or labeling of a product; or
 - biological product deviations;
 - 2. tracking FDA regulated products
 - 3. enabling product recalls, repairs, replacement or lookback including locating or notifying persons who have received products that are subject to same; or conducting post market surveillance;
- D. a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if UConn Health or a public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
- E. an employer, about an individual who is a member of the workforce of the employer, if:
 - 1. UConn Health provides healthcare to the individual at the request of the employer:
 - to conduct an evaluation relating to medical surveillance of the workplace; or
 - to evaluate whether the individual has a work-related illness or injury;
 - 2. the PHI that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - 3. the employer needs such findings in order to comply with its federal or state law obligations to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
 - 4. UConn Health provides written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
 - by giving a copy of the notice to the individual at the time the health care is provided; or
 - if the health care is provided on the worksite of the employer, by posting the notice in a prominent place at the location where the health care is provided.

III. Disclosures for Judicial and Administrative Proceedings

- A. UConn Health may disclose PHI in the course of any judicial or administrative proceeding:
1. in response to an order of a court or administrative tribunal, provided that UConn Health discloses only the PHI expressly authorized by such order; or
 2. in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - a. UConn Health receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to:
 - ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or
 - to secure a qualified protective order.
- B. For purposes of notice, UConn Health requires a written statement and accompanying documentation demonstrating that:
1. the party requesting PHI, of an individual, has made a good faith attempt to provide written notice to the individual (or if the individual's location is unknown, to mail a notice to the individual's last known address);
 2. the notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 3. the time for the individual to raise objections to the court or administration has elapsed, and;
 - a. no objections were filed; or
 - b. all objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- C. For purposes of a qualified protective order, UConn Health requires a written statement and accompanying documentation demonstrating that:
1. the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 2. the party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.
- D. Notwithstanding the above, UConn Health may disclose PHI in response to a subpoena, discovery request or other lawful process without receiving satisfactory assurance from the party seeking the information, if UConn Health makes reasonable efforts to provide notice to the individual as stated above or to seek a qualified protective order sufficient to meet the requirements of this subsection.

IV. Uses and Disclosures about Decedents

- A. Coroners and Medical Examiners: UConn Health will disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
- B. Funeral Directors: UConn Health may disclose PHI to funeral directors as necessary to carry out their duties with respect to the decedent. If necessary, UConn Health may disclose the PHI prior to, and in reasonable anticipation of, the individual's death.
- C. Family Members and Others Involved in the Care or Payment of Care: UConn Health may disclose PHI to these persons if they were involved in the care or payment of the care prior to the patient's death, unless doing so is inconsistent with any prior expressed patient preference to UConn Health staff.

V. Uses and Disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes

UConn Health may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating donation and transplantation.

VI. Uses and Disclosures to Avert a Threat to Health and Safety

- A. UConn Health is permitted to use and disclose PHI if we, in good faith, believe the use or disclosure:
 - 1. a. is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public;
and
 - b. is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat;
or
 - 2. is necessary for law enforcement authorities to identify or apprehend an individual:
 - a. because of a statement by an individual admitting participation in a violent crime that UConn Health reasonably believes may have caused serious physical harm to the victim; or
 - b. where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- B. UConn Health is not permitted to use or disclose the PHI, if the information is learned by UConn Health:
 - 1. In the course of treatment, counseling, or therapy, to affect the propensity to commit the criminal conduct that is the basis for the disclosure; or
 - 2. Through a request by the individual to initiate or to be referred for the above treatment, counseling, or therapy.

- C. UConn Health, when disclosing information to avert a threat to health and safety, may only disclose the individual's statement as described above and the PHI noted in Section I.C.2 (Disclosures of Limited Information for Identification and Location Purposes) of this policy.
- D. If UConn Health uses or discloses PHI in an attempt to avert a threat, it is presumed that we have acted in good faith, if we base our belief upon either actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

VII. Uses and Disclosure for Specialized Government Functions

A. Military and veteran activities:

- 1. Armed Forces personnel: UConn Health may use and disclose the PHI of Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published, by notice in the Federal Register, the following information:
 - a. appropriate military command authorities; and
 - b. the purposes for which the PHI may be used or disclosed.
- 2. Foreign military personnel: UConn Health may use and disclose the PHI of foreign military personnel to their appropriate foreign military authority for the same purposes as noted above.

B. National security and intelligence activities: UConn Health may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act and implementing authority.

C. Protective services for the President and others: UConn Health may disclose PHI to authorized federal officials for the provision of protective services to the President or other authorized persons or to foreign heads of state.

D. Correctional institutions and other law enforcement custodial situations

- 1. UConn Health may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual, PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that PHI is necessary for:
 - a. the provision of health care to such individuals;
 - b. the health and safety of such individuals or other inmates;
 - c. the health and safety of the officers or employees of, or others at, the correctional institution;
 - d. the health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility or setting to another;

- e. law enforcement on the premises of the correctional institutions; and
 - f. the administration and maintenance of the safety, security, and good order of the correctional institution.
2. An individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

VIII. Disclosures for Workers Compensation

UConn Health may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers compensation and/or other similar programs, established by law, that provide benefits for work-related injuries or illnesses, without regard to fault.

- IX. Connecticut mental health, HIV/AIDS, and alcohol/substance abuse confidentiality laws must still be met even if a HIPAA exception applies. Follow the rules for mental health by provider. If either HIPAA or Connecticut law does not permit disclosure, disclosure should not be made.

References: §164.512 Health Insurance Portability and Accountability Act of 1996

Iris Mauriello (Signed)

4/23/15

Iris Mauriello
Compliance Integrity/Privacy Officer

Date

Andrew Agwunobi (Signed)

4/29/15

Andrew Agwunobi, M.D., M.B.A.
Interim Executive Vice President for Health Affairs

Date

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