

UConn HEALTH

Administrative Policy

2023-06 HIPAA Patient Rights

Title	HIPAA Patient Rights
Policy Owner and Contact Information	Office of Healthcare Compliance & Privacy (OHCP) ohcp@uchc.edu
Campus Applicability	All UConn Health campuses, including John Dempsey Hospital
Applies to	UConn Health Workforce
Effective Date	June 12, 2023

PURPOSE:

This document describes patients' rights under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and UConn Health's obligations regarding these rights.

POLICY STATEMENTS:

1. Right to Receive a Notice of Privacy Practices

UConn Health shall honor an individual's right to receive UConn Health's current Notice of Privacy Practices (the "Notice"), including a paper copy of the Notice, by providing the current Notice in accordance with UConn Health policy **2003-12 Notice of Privacy Practices**.

2. Right to Access PHI

2.1. General Right

- (a) UConn Health shall provide individuals, upon request, with access to the Protected Health Information (PHI) about them in one or more Designated Record Sets maintained by or for UConn Health as long as the information is maintained by UConn Health, or by a Business Associate on behalf of UConn Health, regardless of the date the information was created; whether the information is maintained in paper or electronic systems onsite, remotely, or is archived; or where the PHI originated. This access includes the right to inspect or obtain a copy, or both, of the PHI, as well as to direct UConn Health to transmit a copy to a designated person or entity of the individual's choice.
- (b) UConn Health shall provide an individual's personal representative (generally, a person with authority under State law to make health care decisions for the individual, (see policy **2012-05: Legal Representative for Health Care Decisions**) with PHI about the individual in a Designated Record Set (as well as to direct UConn Health to transmit a copy of the PHI to a designated person or entity of the individual's choice), upon request, consistent with the scope of such representation.

- (c) UConn Health Workforce Members who are patients of UConn Health shall have the same rights of access as patients who are not Workforce Members. UConn Health shall prohibit Workforce Members from accessing records using work-issued credentials or other work-issued access for non-work-related reasons in cases of otherwise permissible access, such as accessing their own records, records of minor children, or records of another patient for whom the Workforce Member is legally authorized to access PHI.

2.2. Information Excluded from Right to Access

UConn Health shall not provide the following types of information in response to a request for access, as the HIPAA Privacy Rule expressly excludes such information from an individual's right to access PHI:

- (a) PHI that is not part of a Designated Record Set because the information is not used to make decisions about individuals (i.e., certain quality assessment or improvement records, patient safety activity records, or business planning, development, and management records).
- (b) Psychotherapy Notes, which are the personal notes of a mental health care provider documenting or analyzing the contents of a counseling session, that are maintained separate from the rest of the patient's medical record. See 45 CFR 164.524(a)(1)(i) and 164.501.
- (c) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. See 45 CFR 164.524(a)(1)(ii).

2.3. Requests for Access

- (a) UConn Health shall require all requests be presented in writing for access to PHI in the "medical records" portion of the Designated Record Set.
- (b) UConn Health shall accept requests presented verbally or in writing for access to PHI in the "billing records" portion of the Designated Record Set.

UConn Health shall document all verbal requests to include date of request, what was requested, who took the request, and the name of the requestor.

- (c) UConn Health shall not require an individual to provide a reason for requesting access.
- (d) UConn Health shall take reasonable steps to verify the identity of an individual making a request for access in accordance with UConn Health policy **2023-03 Identification and Protection of Protected Health Information (PHI)**.

2.4. Providing Access

- (a) UConn Health shall provide the individual with access to the PHI in the form or format requested, including electronic, if readily producible in that form and format, or if not, in a readable hard copy form or other form and format, including electronic, as agreed to by UConn Health and the individual.
- (b) UConn Health shall provide the individual with the PHI in the manner requested by the individual, which includes arranging with the individual for a convenient time and place to pick up a copy of the PHI or to inspect the PHI, or to have a copy of the PHI physically mailed, e-mailed, or otherwise transferred or transmitted to the individual to the extent the copy would be readily producible in such a manner, i.e. mail or email.
- (c) UConn Health may provide the individual with a summary of the PHI requested in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided in addition to that PHI, so long as the individual chooses in advance to receive the summary or explanation and agrees to any fees that may be charged for the summary or explanation.
- (d) UConn Health shall not charge for patient requests of PHI, including those requests made by a patient's legally authorized representative.

2.5. Denial of Access

- (a) Under certain limited circumstances, UConn Health may deny an individual's request for access to all or a portion of the PHI requested. For the following *unreviewable* grounds, UConn Health shall deny an individual's request for access to PHI when:
 - The request is for Psychotherapy Notes, or information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - An inmate requests a copy of the inmate's PHI held by a health care provider acting under the direction of a correctional institution, and providing a copy would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or other inmates, or the safety of correctional officer, employees, or other person at the institution or responsible for the transportation of the inmate. However, in these cases, an inmate retains the right to inspect the inmate's own PHI.
 - The requested PHI is in a Designated Record Set that is part of a research study that includes treatment (e.g., clinical trial) and is still in progress, provided the individual agreed to the temporary suspension of access when consenting to participate in the research. The individual's right to access is reinstated upon completion of the research.
 - The requested PHI is in Privacy Act protected records (i.e., certain records under the control of a federal agency, which may be maintained by a federal agency or a contractor to a federal agency), if the denial of access is consistent with the requirements of the Privacy Act.

- The requested PHI was obtained by someone other than a health care provider (e.g., a family member of the individual) under a promise of confidentiality and providing access to the information would be reasonably likely to reveal the source of the information.
- (b) For the following *reviewable* grounds, UConn Health shall deny an individual’s request for access to PHI if:
- (1) The access requested is reasonably likely to:
 - endanger the life or physical safety of the individual or another person. This ground for denial does not extend to concerns about psychological or emotional harm (e.g., concerns that the individual will not be able to understand the information or may be upset by it), or
 - cause substantial harm to a person (other than a health care provider) referenced in the PHI, or
 - cause substantial harm to the individual or another person if access is provided to a personal representative of the individual; **and**
 - (2) The denied access is no broader than necessary to substantially reduce the risk of harm; **and**
 - (3) The risk of harm is:
 - determined on an individualized basis in the exercise of professional judgement by a licensed health care professional who has a current or prior clinician-patient relationship with the patient whose information is affected by the determination, or
 - Arises from data that is known or reasonably suspected to be misidentified or mismatched, corrupt due to technical failure, or erroneous for another reason; **and**
 - (4) The denial practice must be:
 - consistent with a written UConn Health policy based on relevant clinical, technical, and other appropriate expertise that is implemented in a consistent and non-discriminatory manner, or
 - based on a determination specific to the facts and circumstances known or reasonably believed by UConn Health (i) at the time the determination was made and while the practice remains in use; and (ii) based on expertise relevant to implementing the practice in accordance with the conditions of this Policy.

For these *reviewable* grounds for denial, UConn Health shall have available a designated licensed health care professional who did not participate in the original decision to deny (“Reviewing Official”). UConn Health shall promptly refer requests for denial review to the Reviewing Official to have the determination reviewed and potentially reversed, and UConn Health shall promptly provide written notice to the

individual of the determination of the Reviewing Official, as well as take other action necessary to carry out the determination of the Reviewing Official.

- (c) UConn Health shall provide a written denial to the individual, written in plain language, describing the basis for denial; if applicable, the individual's right to have the decision reviewed and how to request such a review; and how the individual may submit a complaint to UConn Health or the US Department of Health and Human Services Office for Civil Rights. If UConn Health does not maintain the PHI requested but knows where the information is maintained, UConn Health shall inform the individual where to direct the request for access.
- (d) UConn Health, to the extent possible and within allowable timeframes, shall provide the individual with access to any other requested PHI, after excluding the PHI to which UConn Health has denied access pursuant to this Policy.

2.6. Responding to Requests for Access

UConn Health shall respond to all written requests for records within thirty (30) days, either by providing the records requested or providing a written denial.

3. Right to Request Amendment of PHI

UConn Health shall honor an individual's right to request an amendment or correction to the individual's own PHI maintained in the Designated Record Set if the individual feels that the information is incomplete or inaccurate.

3.1. Requests for Amendment

UConn Health shall require that an individual's amendment request be made in writing, clearly identify the information to be amended, and provide a reason to support the requested amendment.

3.2. Responding to Requests for Amendment

- (a) UConn Health shall respond to all requests for amendment within sixty (60) calendar days from the date of receipt.
- (b) If UConn Health is unable to provide a final requested amendment response within sixty (60) calendar days from the date of receipt, UConn Health shall notify the requestor in writing that an extension of no more than an additional thirty (30) calendar days is needed, and this notice shall include a description of why more time is needed and the date by which the original request shall be processed.

3.3. Approving a Request for Amendment

- (a) UConn Health shall approve a request for amendment if the authoring or reviewing Workforce Member agrees to correct or addend the original documentation in accordance with the individual's request for amendment.

- (b) UConn Health shall provide a written approval to the individual, written in plain language, which includes a description of how the individual may request that UConn Health notify others of the correction or addendum made.

3.4. Denying a Request for Amendment

- (a) UConn Health may deny an individual's request for amendment upon determination that the PHI or record that is the subject of the request:
- Was not created by UConn Health, unless the individual provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the request;
 - Is not part of the Designated Record Set;
 - Would not be available for inspection per section 2.5(a) of this Policy; or
 - Is accurate and complete, as concluded by the authoring or reviewing Workforce Member(s).
- (b) If UConn Health denies an individual's request for amendment, UConn Health shall provide a written denial to the individual, written in plain language, describing the basis for denial; the individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement; a statement that, if the individual does not submit a statement of disagreement, the individual may request that UConn Health provide the individual's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment; and a description of how the individual may complain to UConn Health or the U.S. Department of Health and Human Services.
- (c) UConn Health shall permit the individual to submit a written statement disagreeing with the denial and the basis of such disagreement; however, UConn Health may limit the length of the statement to one 8½ x 11 inch page of single-spaced typed text.
- (d) UConn Health may prepare a written rebuttal to the individual's statement of disagreement, and, whenever such a rebuttal is prepared, UConn Health shall provide a copy to the individual who submitted the statement of disagreement.

3.5. Inclusion in Future Disclosures

If the individual submits a statement of disagreement, UConn Health shall include the individual's original amendment request, UConn Health's denial, the individual's statement of disagreement, and the UConn Health rebuttal (as applicable) in any future disclosures of the PHI that is the subject of the amendment request.

3.6. Amendment by Others

UConn Health, upon being informed by another entity of an amendment to an individual's PHI, shall append the amendment to the individual's UConn Health Designated Record Set.

3.7. Recordkeeping

- (a) UConn Health shall identify the record or PHI in the Designated Record Set that is the subject of an amendment request, and shall append or otherwise link the individual's amendment request, UConn Health's approval or denial of the request, the individual's statement of disagreement, and UConn Health's rebuttal, to the Designated Record Set, each as applicable.
- (b) UConn Health shall maintain documentation of the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals for no less than six (6) years.

4. Right to Request Restriction of Use and Disclosure of PHI

UConn Health shall honor an individual's right to request restriction of use and disclosure of the individual's PHI.

4.1. Requests for Restriction

UConn Health shall require that an individual's request for restriction be made in writing.

4.2. Approving or Denying a Request for Restriction

- (a) UConn Health shall approve a request for restriction of PHI to a health plan where the PHI relates solely to a health care service for which the patient has paid in full except for restrictions from Medicaid beneficiaries for covered services; UConn Health shall not approve such requests.
- (b) UConn Health may deny, approve, or approve in part, any other requests for restriction in consideration of the following:
 - The ability of UConn Health to comply with the request;
 - The resources and time needed to comply with the request; and
 - Any reasons given by the individual for the request, with particular weight given to reasons of patient safety.

4.3. Responding to Requests for Restriction

- (a) UConn Health shall respond to all requests for restriction as soon as practicable, and, as a guideline, attempts to do so within thirty (30) calendar days of the request.
 - For an approved request for restriction, UConn Health shall provide a written agreement to the individual that contains a statement specifying the restriction to which UConn Health agrees and a statement that the agreement shall not be effective in an emergency.
 - For a denied request for restriction, UConn Health shall provide a written statement of denial to the individual.

- (b) To avoid inadvertent transmission of PHI to an individual's health plan, UConn Health shall notify the individual as soon as possible if the request is to restrict a disclosure to a health plan where the PHI relates solely to the health care services for which the individual has paid in full.

4.4. Termination of Restriction Agreement

UConn Health shall terminate an agreement to restrict an individual's PHI under the following circumstances:

- (a) UConn Health receives a written request from the individual to terminate the previously agreed upon restriction.
- (b) UConn Health wishes to terminate the restriction and the individual agrees to the termination in writing.
- (c) UConn Health provides written notice to the individual that UConn Health has terminated the restriction without agreement from the individual, except that UConn Health shall not unilaterally terminate any required restriction pursuant to 4.2(a) of this Policy.

4.5. Recordkeeping

UConn Health shall maintain documentation of any restriction agreements and terminations for no less than six (6) years.

5. Right to Accounting of Disclosures

UConn Health shall honor an individual's right to receive an accounting of certain disclosures of PHI by UConn Health and its Business Associates.

5.1. Maintaining an Accounting of Disclosures

- (a) UConn Health shall maintain a record of all disclosures of PHI made by UConn Health or its Business Associates for no less than six (6) years, with the exception of disclosures made:
 - For treatment, payment, or health care operations;
 - To the patient or the patient's representative;
 - Under a patient's or representative's authorization;
 - Incident to a use or disclosure that is otherwise permitted or required under HIPAA;
 - To a public or private entity authorized to assist in disaster relief efforts;
 - In the John Dempsey Hospital facility directory;
 - To persons involved in the patient's care;
 - To assist in the notification of (including identifying or locating) a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general

- condition, or death;
- For national security or intelligence purposes;
- To correctional institutions or law enforcement officials with custody over an inmate; and
- As part of a limited data set.

(b) For each disclosure, UConn Health shall maintain the following data:

- Date of disclosures;
- Name of entity or person to whom the disclosure was made, and, if known, the address of the entity or person;
- Brief description of PHI disclosed; and
- Brief statement of the purpose of the disclosure or a copy a written request for disclosure, if any.

(c) For multiple disclosures of PHI to the same person or entity for a single purpose under the “public purpose” disclosures section of the HIPAA Privacy Rule or to the Secretary of the U.S. Department of Health and Human Services (HHS), UConn Health additionally shall maintain the following data:

- The frequency, periodicity, and number of disclosures; and
- The date of the last such disclosure.

5.2. Requesting an Accounting of Disclosures

(a) UConn Health shall only accept written requests for an accounting of disclosures.

5.3. Responding to a Request for an Accounting of Disclosures

(a) UConn Health shall respond to all requests for an accounting of disclosures within sixty (60) calendar days from the date of the request.

(b) If UConn Health is unable to provide the requested accounting of disclosures within sixty (60) calendar days from the date of the request, UConn Health shall notify the requestor in writing that an extension of no more than an additional thirty (30) calendar days is needed, and this notice shall include a description of why more time is needed and the date by which the accounting will be provided.

(c) In the event the accounting of disclosures includes an impermissible disclosure made to another patient of UConn Health, the name and address of that patient to whom the impermissible disclosure was made shall not be included in the accounting provided to the requestor.

(d) UConn Health shall account for certain research-related disclosures in accordance with applicable rules and in consultation with the Office of Healthcare Compliance & Privacy.

5.4 Suspension of Accounting

- (a) UConn Health shall abide by a health oversight agency's or law enforcement official's request to suspend an individual's right to receive an accounting of disclosures made to that agency or official, as determined in consultation with the Office of Healthcare Compliance & Privacy and/or the Office of the General Counsel.

5.5 Charging for an Accounting of Disclosures

- (a) UConn Health shall provide one (1) accounting within a twelve-month period free of charge to an individual or the individual's representative.
- (b) UConn Health may charge a fee for any additional accounting of disclosure requests from an individual or an individual's representative within a twelve-month period. UConn Health shall inform the requestor of any fees before processing the request and shall allow the requestor to withdraw the request.

6. Right to Receive Confidential Communications by Alternative Means

UConn Health shall accommodate individuals' reasonable requests to receive communications of their PHI by alternative means or at alternative locations to the extent required by law. Individuals making such requests must provide an alternative address or method of contact and, if applicable, information as to how payment will be handled. UConn Health shall not require an explanation from the individual regarding the request.

6.1. Requests for Use of Specific Communication Methods

- (a) UConn Health shall only accept written requests for receiving confidential communications by alternative means.
- (b) UConn Health shall require separate requests for each provider/service area (e.g., UConn John Dempsey Hospital, University of Connecticut Medical Group outpatient clinics, University Dentists locations, etc.).

6.2. Recordkeeping

- (a) UConn Health shall store written requests for receiving confidential communications by alternative means outside of the individual's Designated Record Set.
- (b) UConn Health shall maintain written requests for receiving confidential communications by alternative means for no less than six (6) years.

DEFINITIONS:

Business Associate: A person or entity who acts on behalf of UConn Health to perform, or assist in performing, a function or activity that involves the use or disclosure of PHI and who is not an employee or a member of the UConn Health Workforce.

Designated Record Set: A group of records maintained by or for a covered entity that may include patient medical and billing records; the enrollment, payment, claims, adjudication, and cases or medical

management record systems maintained by or for a health plan; or information used in whole or in part to make care-related decisions.

Protected Health Information (PHI): Any information, including payment information, whether oral or recorded, transmitted, or retained in any form or medium, including demographic information collected from an individual, that:

- Is created or received by UConn Health;
- 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
- Identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information excludes information in education records covered by the Family Educational Right and Privacy Act (FERPA), records described in 20 USC 1232g(a)(4)(B)(iv), employment records held by UConn Health in its role as an employer, or healthcare records related to individuals who have been deceased for more than 50 years.

Psychotherapy Notes: Psychotherapy Notes are 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 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.

Workforce Member: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UConn Health, is under the direct control of UConn Health, whether or not they are paid by UConn Health.

PROCEDURES/FORMS:

HCH901: Consent for Treatment, Use and Disclosure of PHI, Acknowledgments and Financial Agreement Form

HCH 2710 Patient Request to Access Medical Records

HCH 1352 Request for Amendment of Health Information Form

Accounting Log for Disclosures of PHI for 50 or more Research Subjects HCH 1354

Protected Health Information Disclosure Tracking Log HCH 1355

Requests for Accounting of Disclosures of PHI Form HCH 1353

HCH1397: Permission to Communicate Health Information and Use Alternative Communication Methods

REFERENCES:

45 CFR §160, 164 – HIPAA Privacy Rule

45 CFR §170, 171 – Information Blocking

Conn. Gen. Stat. § 20-7c Access to medical records. Notification to patient of certain test results.

Authority of provider to withhold information (Rev. 2022).

42 C.F.R. § 482.13(d)(2) (Medicare Condition of Participation: Patient's Rights)

RELATED POLICIES:

2003-12: Notice of Privacy Practices

2012-05: Legal Representative for Health Care Decisions

2023-03: Identification and Protection of Protected Health Information (PHI)

ENFORCEMENT:

Violations of this policy or associated procedures may result in appropriate disciplinary measures in accordance with University By-Laws, General Rules of Conduct for All University Employees, applicable collective bargaining agreements, the University of Connecticut Student Code, other applicable University Policies, or as outlined in any procedures document related to this policy.

APPROVAL:

Bruce Liang (Signed)
Bruce Liang
Interim Chief Executive Officer, UConn Health
Executive Vice President for Health Affairs

6/10/2023
Date

Elle Box (Signed)
Elle Box
Chief Healthcare Compliance & Privacy Officer
Administrative Policy Committee Co-Chair

6/7/2023
Date

Janel Simpson (Signed)
Janel Simpson
Chief Administrative Officer
Administrative Policy Committee Co-Chair

6/7/2023
Date

POLICY HISTORY:

New Policy Approved: 06/23

Reviewed Without Changes:

Revised: