



ESSENT HEALTHCARE, INC.

Section:	HIPAA Privacy	Effective Date:	4/14/04
Subject:	Using/Disclosing PHI	Revision Date:	9/14/09
Policy #:	HIPAA-016	Review Date:	9/14/09
Responsible Party:	Chief Privacy Officer	Revision #:	2

SCOPE:

This policy is applicable to all workforce members of Essent Healthcare, Inc.

PURPOSE:

The purpose of this policy is to:

- Outline how protected health information (PHI) will be used and/or disclosed by Essent workforce members;
- Outline circumstances where disclosure of PHI may be made without authorization;
- Clarify that all requests for release of information must be approved by the record custodian (or his/her designee) before any PHI released (*also see policy HIPAA-017 - Release of Information*);
- Promulgate requirements to protect PHI from unauthorized use/disclosure;
- Require a patient's (or personal representative's) written authorization to release PHI when PHI is to be used for purposes other than *treatment, payment, or health care operations*;
- Provide guidance on processing and documenting a patient's or personal representative's authorization for release of information;
- Identify the required elements of a valid authorization (release of information) and determine when an authorization is invalid.
- Outline the HIPAA enforcement provisions for wrongful use/disclosure of PHI
- Provide guidance with regards to disclosing PHI to friends and family members of a patient in the form of frequently asked questions as published by the Office for Civil Rights.



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POLICY:

Essent hospitals and physician offices are recognized as a “covered entities” under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As such, we have an obligation to implement reasonable safeguards to protect the privacy of our patients’ medical records while providing appropriate access to those same records. *All Essent providers must obtain authorization from the patient (or their personal representative) before using or disclosing protected health information (PHI) for purposes other than treatment, payment or health care operations, except as outlined in this policy.*

DEFINITIONS

Protected Health Information (PHI) - any information, including demographic data, which relates to:

- The individual’s past, present or future physical or mental health or condition,
- The provision of health care to the individual, or
- The past, present, or future payment for the provision of health care to the individual.

Treatment - the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and/or the referral of a patient by one provider to another.

Payment - activities related to billing and reimbursement for the provision of health care items and/or services. Examples of payment activities include the following:

- a. Activities undertaken by a health plan to obtain premiums and/or determine its responsibility for coverage/payment;
- b. Activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care;
- c. Eligibility determinations;
- d. Billing, collections, and claims management activities; and/or
- e. Utilization review activities such as pre-certification and chart review.



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Healthcare Operations - include any of the following activities:

- a. Quality assessment and improvement activities, including case management and care coordination;
- b. Competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation;
- c. Conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance reviews;
- d. Specified insurance functions, such as underwriting, risk rating, and reinsuring risk;
- e. Business management and general administrative activities of the covered entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising activities for the benefit of the covered entity.

Minimum Necessary - The minimum necessary standard, a key provision of the HIPAA Privacy Rule, is derived from confidentiality codes and practices in common use today. It is based on sound current practice that *PHI should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a particular function*. The minimum necessary standard requires covered entities to evaluate their practices and enhance safeguards as needed to limit unnecessary or inappropriate access to and disclosure of protected health information.

Incidental Disclosure - The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of PHI that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards to protect the information, and the information being shared was limited to the minimum necessary. For example, a hospital visitor may overhear a provider's confidential conversation with another provider or a patient, or may glimpse a patient's information on a sign-in sheet or nursing station whiteboard. The HIPAA Privacy Rule is not intended to impede these customary and essential communications and practices and, thus, does not require that all risk of incidental use or disclosure be eliminated to satisfy its standards.

Psychotherapy Notes - Psychotherapy notes hold a special status in terms of the privacy considerations afforded them. Except for particular circumstances delineated herein, Essent providers



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must obtain the patient's (or their personal representative's) specific authorization for use or disclosure of psychotherapy notes for any reason, including treatment, payment or health care operations.

Psychotherapy Notes are notes that are recorded (in any medium) by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or group, joint, or family counseling session and separated from the rest of the record. Psychotherapy notes are not to be confused with progress notes which are the official medical record documentation of psychotherapy interventions. An example of a psychotherapy note would be the picture of a triangle drawn during a treatment session denoting the relationships among family members, so that the therapist can make treatment recommendations and document in the progress note.

PROCEDURE:

1. Except for treatment, payment, or healthcare operations; or as otherwise permitted or required by law, Essent workforce members may not use or disclose protected health information without a valid authorization. When the facility obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with the authorization. Authorizations must be retained in the medical record for a period of at least seven (7) years.
2. The Health Information Management Director (or Medical Record Director) is the official record custodian for each Essent facility. As such, all requests for release of information must be approved by the HIM Director or his/her designee.
3. HIPAA requires that all covered entities *must* disclose protected health information in the following situations:
 - ✓ To individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information;
 - ✓ To HHS when it is undertaking a compliance investigation or review or enforcement action.
 - ✓ As required by State or local regulations.



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4. A covered entity is permitted to use and disclose protected health information without authorization if the disclosure is being made to the individual who is the subject of the information. In addition, covered entities are allowed to use and disclose PHI without authorization for *Treatment, Payment, or Health Care Operations*.
5. Most uses and disclosures of **psychotherapy notes**, even for treatment, payment, and health care operations purposes, require specific written authorization.
6. Patients must be given the opportunity to agree or object to certain uses or disclosures of PHI as described below. In these cases, informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree or object to the disclosure. This is normally accomplished by issuing the patient a copy of the **Hospital Privacy Notice** which outlines our policy with respect to these types of disclosures. All Essent patients are given a copy of the privacy notice at the time of their registration.

Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual. Examples of situations where disclosures may be made if an opportunity to agree or object has been given include the following:

- ✓ **Facility Directories** - It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered entity may rely on an individual's informal permission to list the individual in its facility directory. The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation. Directory information must be limited to the patients' name, location in the hospital, and general condition (fair, stable...).
- ✓ **Notification and Other Purposes** - A covered entity also may rely on an individual's informal permission to disclose PHI to the individual's family, relatives, or friends, or



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to other persons who may be involved in the care of the individual. This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying family members of the individual's location, general condition, or death.

7. It is our policy to list patients in our hospital directories and to disclose PHI as necessary for notification or other purposes unless the individual specifically requests that we not do so.
8. The Privacy Rule permits use and disclosure of PHI, without an individual's authorization or permission, for the 12 national priority purposes listed below. These disclosures are permitted, although not required, in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.
 - ✓ **Required by Law** - Covered entities may use and disclose PHI without individual authorization as required by law.
 - ✓ **Public Health Activities** - Covered entities may disclose PHI to:
 1. Public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability;
 2. Public health or other government authorities authorized to receive reports of child abuse and neglect;
 3. Entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance;
 4. Individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and
 5. Employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), or similar state law.



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- ✓ ***Victims of Abuse, Neglect or Domestic Violence*** - Covered entities may disclose PHI to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.
- ✓ ***Health Oversight Activities*** - Covered entities may disclose PHI to health oversight agencies for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.
- ✓ ***Judicial and Administrative Proceedings*** - Covered entities may disclose PHI in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.
- ✓ ***Law Enforcement Purposes*** - Covered entities may disclose PHI to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions:
 1. As required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests;
 2. To identify or locate a suspect, fugitive, material witness, or missing person;
 3. In response to a law enforcement official's request for information about a victim or suspected victim of a crime;
 4. To alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death;
 5. When a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and
 6. By a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.
- ✓ ***Decedents*** - Covered entities may disclose PHI to funeral directors as needed, and to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.
- ✓ ***Cadaver Organ, Eye, or Tissue Donation*** - Covered entities may use or disclose PHI to facilitate the donation and transplantation of cadaver organs, eyes, and tissue.



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- ✓ **Research** - is defined as any systematic investigation designed to develop or contribute to generalized knowledge. The Privacy Rule permits a covered entity to use and disclose PHI for research purposes, without an individual's authorization, provided the covered entity obtains one of the following assurances:
 1. Documentation that an alteration or waiver of individuals' authorization for the use or disclosure of PHI about them for research purposes has been approved by an Institutional Review Board or Privacy Board;
 2. Representations from the researcher that the use or disclosure of the PHI is solely to prepare a research protocol or for similar purpose preparatory to research, that the researcher will not remove any PHI from the covered entity, and that PHI for which access is sought is necessary for the research; or
 3. Representations from the researcher that the use or disclosure sought is solely for research on the PHI of decedents, that the PHI sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individual about whom information is sought.
- ✓ **Serious Threat to Health or Safety** - Covered entities may disclose PHI that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.
- ✓ **Essential Government Functions** - An authorization is not required to use or disclose PHI for certain essential government functions. Such functions include: assuring proper execution of a military mission, conducting intelligence and national security activities that are authorized by law, providing protective services to the President, making medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates or employees in a correctional institution, and determining eligibility for or conducting enrollment in certain government benefit programs.
- ✓ **Workers' Compensation** - Covered entities may disclose PHI as authorized by, and to comply with, workers' compensation laws and other similar programs providing benefits for work-related injuries or illnesses.



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All workforce members must obtain the individual's written authorization for any use or disclosure of PHI that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule (as outlined above).

Valid Authorization Requirements

In most cases, providers may not condition treatment or payment on whether the individual signs an authorization. A valid authorization to release protected health information may not be combined with unrelated documents and must include the following required "core elements":

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful manner;
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s), or class of persons, to whom the facility may make the requested use or disclosure;
4. A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when the individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
5. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "at the end of the research study," "none" or similar language is sufficient if the authorization is for a use or disclosure for PHI for research, including the creation of a research database or research repository;
6. A statement of the individual's right to revoke the authorization in writing and either: the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization; or to the extent that the information is included in the Notice of Privacy Practices, a reference to the facility's Notice;
7. A statement that information disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer protected by the Health Insurance Portability and Accountability Act (HIPAA) regulations;
8. Be signed and dated by the individual; and
9. If a personal representative of the individual signs the authorization, a description of such representative's right to act for the individual must be included.



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In addition to the above core elements and required statements, the authorization must be written in plain language. If the facility seeks an authorization from an individual for a use or disclosure of PHI, the facility must provide the individual with a copy of the signed authorization. The valid authorization must be written and delivered to the facility in person, via the mail, courier, or facsimile. E-mail authorizations are not valid. The Medical Record Director, or designee, will review all authorizations and determine whether the authorization is valid, and determine if the identity of the requestor is valid.

An authorization is invalid or defective and will not be acted upon if any of the following are true:

- The expiration date has passed, or the expiration event is known by the facility to have occurred;
- The authorization has not been filled out completely;
- The facility knows the authorization has been revoked by the individual;
- The facility knows any material information in the authorization is false; or
- The authorization is combined with any other document such as a Notice of Privacy Practices or written voluntary consent.

If an invalid authorization is received, identify why it is invalid and return it to the requestor for completion. If the authorization is valid, comply with the terms of the authorization.

An authorization for use or disclosure of PHI other than for psychotherapy notes may be combined with any other authorization to create a compound authorization except when a covered entity has conditioned the provision of treatment or payment on the provision of one of the authorizations.

An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study. ***An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.***



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Use or Disclosure of Psychotherapy Notes without Authorization

The facility may use and disclose psychotherapy notes for treatment, payment and healthcare operations in the following situations **without** authorization:

1. Use by the originator of the notes for treatment;
2. Use or disclosure by the facility for its own training programs in which students, trainees, practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
3. Use or disclosure by the facility to defend itself in a legal action or other proceeding brought by the individual;
4. Use or disclosure required by the Secretary of DHHS to investigate or determine the facility's compliance with the HIPAA regulations;
5. Use or disclosure required by law and is limited to the relevant requirements of such law;
6. Disclosure to a health oversight agency for activities with respect to the oversight of the originator of the psychotherapy notes;
7. Disclosure to coroners and medical examiners for the purpose of identifying a deceased individual, determining a cause of death, or other duties as authorized by law; or
8. In a belief (in good faith by the facility) that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

All other uses and/or disclosures require specific authorization from the patient. A general authorization to release PHI is not sufficient. The patient must specifically authorize the release of psychotherapy notes.

Use or Disclosure of Psychotherapy with Authorization

1. An Authorization for Use and Disclosure of Psychotherapy Notes will be used to obtain written authorization from individuals for use or disclosure of psychotherapy notes to carry out treatment, payment or health care operations in situations not listed above.



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2. Authorization is *in addition to* any other authorization given by the individual for the disclosure of other protected health information to carry out treatment, payment or health care operations.
3. The facility may not condition treatment or payment on whether the Authorization for Use and Disclosure of Psychotherapy Notes is signed by the individual.
4. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use and disclosure of psychotherapy notes, and *may not be combined* with authorizations for the use or disclosure of other protected health information.
5. Authorization will be obtained for disclosure of psychotherapy notes to family, close personal friends and others involved in the individual's care. This requirement is in addition to the practices outlined in the hospital's privacy notice.

Prohibition on Conditioning of Authorizations

The facility may not condition the provision to an individual of treatment or payment on the provision of an authorization except:

- The facility may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;
- The facility 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. For example, to obtain a lab test the results of which are for use in making a pre-employment decision.

Who May Request Release of PHI

The patient may request release or disclosure of PHI for purposes other than treatment, payment or health care operations. The patient's personal representative may request release or disclosure of PHI for purposes other than treatment, payment or health care operations. Proof of the personal



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representative's right to the PHI must be validated at the time the authorization is provided. The identity of the requestor will be validated either with a picture ID, such as a driver's license or passport, or comparison of signatures documented in the PHI records.

Revocation of Authorizations

An individual may revoke an authorization at any time. The revocation must be in writing, submitted to the Privacy Officer or their designee, and specify which authorization is revoked. The Record Custodian receiving the request to revoke an authorization must discontinue any further release of the individual's PHI as permitted by the initial authorization; but the revocation does not apply to actions taken by the facility in reliance on the initial authorization.

- For insurance purposes: the revocation does not apply if the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.
- As appropriate, the Record Custodian will notify other areas of the facility that may have relied upon the authorization of the revocation.

Who May Receive an Authorization and Release PHI

Medical Record Directors, or their designee, may receive and validate a patient's or personal representative's authorization to release PHI and may release PHI after receipt of a valid authorization.

Timeframe for Release and Fees for Copies

The facility may charge reasonable fees to cover the costs of copying and postage.

Retention of Authorizations

Authorizations and revocations of authorization, if applicable, will be maintained for seven (7) years from their last effective date. The authorizations and revocations of authorization, if applicable, will be filed in the individual's medical record.



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Enforcement - Penalties for Non-Compliance

Violations of this policy can lead to immediate termination of your employment and both civil and/or criminal prosecution. Penalties for non-compliance are as follows:

1. ***Inadvertent Work Related Disclosure*** – Any individual who inadvertently makes an unauthorized disclosure of PHI is subject to a written reprimand as outlined in the HIPAA sanctions policy.
2. ***Intentional Work Related Disclosure*** – Any individual who knowingly or intentionally discloses PHI that is obtained as a result of their employment is subject to disciplinary measures (including termination) as outlined in the HIPAA sanctions policy.
3. ***Civil Money Penalties*** - HHS may impose civil money penalties on a covered entity or the employee of a covered entity as summarized below:

<u>Circumstances of Violation</u>	<u>Minimum Civil Penalty</u>	<u>Maximum Civil Penalty</u>
Violation in which it is established that the person did not know and would not have known even when exercising reasonable diligence	\$100 per violation, not to exceed \$25,000 for violations of identical requirement per year	\$50,000 per violation, not to exceed \$1,500,000 for all such violations of identical requirement per year
Violation resulting from reasonable cause and not because of willful neglect	\$1,000 per violation, not to exceed \$100,000 for violations of identical requirements per year	\$50,000 per violation, not to exceed \$1,500,000 for all such violations of identical requirement per year
Violations resulting from willful neglect that is corrected within 30 days of discovery	\$10,000 per violation, not to exceed \$250,000 for violations of identical requirements per year	\$50,000 per violation, not to exceed \$1,500,000 for all such violations of identical requirement per year
Violation resulting from willful neglect that is not corrected within 30 days of discovery	\$50,000 per violation, not to exceed \$1,500,000 for all such violations of identical requirement per year	Unspecified



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4. ***Criminal Penalties*** - A “person” who knowingly obtains or discloses PHI in violation of HIPAA faces a fine of \$50,000 and up to one-year imprisonment. The criminal penalties increase to \$100,000 and up to five years imprisonment if the wrongful conduct involves false pretenses, and to \$250,000 and up to ten years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm. For purposes of this policy, the term “*person*” includes the covered entity and/or the covered entity’s employee or another individual if he or she obtains or discloses information maintained by a covered entity without authorization. Criminal sanctions will be enforced by the Department of Justice.
5. ***State Enforcement*** – The HITECH Act of 2009, for the first time, authorizes state attorneys general (AGs) to enforce HIPAA’s privacy and security requirements. Specifically, if an AG has reason to believe that any of the state’s residents have been threatened or adversely affected by a HIPAA violation, the AG may sue the suspected violator in federal district court to enjoin the violation or obtain damages on the residents’ behalf.

Related Policies:

HIPAA Sanctions Policy (ISP-010)

Release of Information (HIPAA-017)

Electronic Communications (ISP-011)

Privacy Notice (HIPAA-014)

See Attached Guidance Document from U.S Department of Health and Human Services

References:

HIPAA Section 164.508

Office for Civil Rights (OCR)

HIPAA Enforcement Rule

American Recovery and Reinvestment Act of 2009; (HITECH Act)