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HIPAA Using & Disclosing Patient PHI

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Common Document Terms

Below are some common terms used throughout this document.

HIPAA means the Health Insurance Portability and Accountability Act (HIPAA) means the 1996 Federal law that restricts access to an individual's personal medical information through the implementation of a set of information privacy and security rules.

Incidental Use & Disclosure means any secondary use or disclosure that cannot reasonably be prevented is limited in nature and occurs as a by-product of another permissible or required use or disclosure.

Minimum Necessary means that only the minimum amount of protected health information should be used or disclosed that is needed to accomplish the function for which the information is requested.

PHI means patient information that includes any individually identifiable information about the patient's health status, provision of patient health care, or payment for health care that is created or collected by a "Covered Entity" (or a Business Associate of a Covered Entity), and that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in form or medium including paper, audio, or electronic means.

Treatment, Payment, & Operations (TPO) means healthcare-related activities for which PHI may be shared without a patient's written authorization.

Treating Provider means a healthcare professional involved in the provision, coordination, or management of health care and related services to a current or future patient.

Workforce Member means NKC employees, volunteers, interns, medical staff, trainees and other persons whose conduct, in the performance of their work for is under the direct control of NKC, whether they are paid by NKC.

General HIPAA Information

HIPAA Requirements

The HIPAA Privacy Rule requires a healthcare provider to:

- Notify patients about their privacy rights and how their information may be used and disclosed.
- Implement privacy policies and procedures for its workforce members.
- Train workforce members so that they understand the privacy policies and procedures.
- Designate an individual to be responsible for seeing that the privacy policies and procedures are implemented and followed, commonly referred to as a Privacy Officer.
- Secure paper and electronic patient records so that they are not readily available to those who do not need access.

Sharing Patient PHI

Sharing Patient PHI with Family & Friends

Healthcare providers can disclose patient PHI to the patient's family members, friends, or other individuals involved in the patient's treatment or payment for their treatment. Written patient authorization is not required to share the patient's PHI with family members, friends or other individuals involved in the patient's treatment or payment for treatment unless the patient specifically requests that their PHI not be shared.

Patient Request Not to Share Their PHI

A patient may request that NKC not share their PHI with family members, friends, or other individuals involved in the patient's treatment or payment for their treatment. If a patient requests a restriction on sharing their PHI, document that request prominently in the medical records. The patient should be reminded to inform family members, friends, or others involved in their treatment or payment for their treatment, that they have asked NKC not to share their PHI without the patient's authorization.

Sharing PHI of Unconscious or Incapacitated Patients

If a patient is not available or cannot give permission to share their PHI, NKC may disclose their information to family members, friends, or other individuals involved in the patient's treatment or payment for their treatment, if a workforce member believes, in his or her professional judgment, that it is in the patient's best interest.

When someone other than a friend or family member is asking about you, your health care provider must be reasonably sure that you asked the person to be involved in your care or payment for your care. Your health care provider may share your information face to face, over the phone, or in writing, but may only share the information that the family member, friend, or other individuals involved in the patient's treatment or payment for their treatment.

Here are some examples:

- A surgeon who did emergency surgery on you may tell your spouse about your condition, either in person or by phone, while you are unconscious.
- A pharmacist may give your prescription to a friend you send to pick it up.
- A doctor may discuss your drugs with your caregiver who calls your doctor with a question about the right dosage.

However, a doctor may not tell your family, friend, or other individuals involved in the patient's treatment or payment for their treatment about a past medical problem that is unrelated to your current condition.

Sharing Patient PHI Over the Phone

NKC does not allow routine disclosure of patient PHI via the telephone. If a provider office, hospital or other health care facility asks NKC to disclose patient PHI the request must be made using a facsimile, email or other written request that identifies the requestor's professional affiliation. If a person calls claiming to be a friend or relative of the patient, you must ask for specific information to identify the

patient. For example, you can ask for the patient's date of birth, address, or telephone number.

Using Interpreters

HIPAA allows NKC to share a patient's PHI with an interpreter to help communicate with the patient, the patient's family members, friends, or other individuals involved in the patient's treatment or payment for their treatment.

Picking Up Prescriptions

A pharmacist may use professional judgment and experience to make reasonable inferences of the patient's best interest in allowing a relative or friend, other than the patient, to pick up a prescription. The fact that a relative or friend arrives at a pharmacy and asks to pick up a specific prescription for a patient effectively verifies this person is involved in the individual's care, and the HIPAA Privacy Rule allows the pharmacist to give the filled prescription to the relative or friend. The patient does not need to provide the pharmacist with the names of such persons in advance.

Consulting with Other Providers

Health care providers are not restricted from consulting with other providers about a patient's condition without the patient's written authorization. Consulting with another health care provider about a patient is allowed under the HIPAA Privacy Rule because it's considered "treatment" and, therefore, is permissible.

Confidential Conversations That May be Overheard

The HIPAA Privacy Rule is not intended to prohibit health care providers from talking to each other and to their patients. The HIPAA Privacy Rule recognizes that oral communications often must occur freely and quickly in treatment settings.

Health care providers and related workforce members are free to engage in communications as required for quick, effective, and high-quality healthcare. The HIPAA Privacy Rule recognizes that overheard communications in these settings may be unavoidable and allows for these incidental disclosures. For example, the following practices are permissible under the HIPAA Privacy Rule, if reasonable precautions are taken to minimize the chance of incidental disclosures to others who may be nearby:

- Workforce members may orally coordinate services at nursing stations and on the treatment floor.
- Workforce members may discuss a patient's condition over the phone with the patient, a provider, a family member, a friend, or other individuals involved in the patient's treatment or payment for their treatment.
- A workforce member may discuss lab test results with a patient or other provider in a joint treatment area.
- A workforce member may discuss a patient's condition or treatment regimen in the patient's semi-private room.
- Workforce members may discuss a patient's condition during clinical training or in an academic institution.

- A pharmacist may discuss a prescription with a patient at the pharmacy counter, or with a physician or the patient over the phone.

In these circumstances, reasonable precautions could include using lowered voices or talking apart from others when sharing protected health information. However, in an emergency or where a patient is hearing impaired, such precautions may not be practicable.

Transitioning Care to Another Provider

A dialysis clinic can disclose patient PHI to another dialysis clinic or healthcare provider, such as a nursing home, to which a patient will be transferred for continued care, without the patient's authorization. The HIPAA Privacy Rule permits a health care provider to disclose a patient's PHI with another healthcare provider for treatment purposes prior to the patient's initial appointment.

Disclosing patient PHI to Social Service Entities

NKC requires a patient authorization to release the patient's PHI to a social services entity. In limited, urgent situations, for example, housing or transportation assistance, patient PHI may be released without the patient's authorization. Document the request in the patient's medical record and only disclose the minimum necessary PHI needed to satisfy the requestor's needs. For example, NKC may disclose PHI about a patient needing health care supportive housing to a social service entity that arranges such services.

A covered entity may also disclose a patient's PHI to such entities with a signed authorization. HIPAA allows a patient to authorize the release of their PHI to a class of persons or entities. For example, an authorization could indicate that the patient's PHI may be disclosed to all "social services entities" for purposes of "housing, public benefits, counseling, and job readiness."

Sharing Patient PHI with Law Enforcement

NKC workforce members may disclose a patient's PHI to law enforcement if the law enforcement officer has lawful custody of the patient and the official represents that the patient's PHI is needed to provide healthcare to the individual or for the health and safety of the patient.

Incidental Use & Disclosure of Patient PHI

Communication between care providers, and patients and care providers are essential to ensure that patients receive prompt and effective health care. Due to the nature of these communications and practices, as well as the various environments in which patient care occurs, the potential exists for an individual's health information to be disclosed incidentally.

An incidental disclosure is a secondary disclosure that:

- Cannot reasonably be prevented;
- Is limited in nature; and
- This occurs because of another use or disclosure that HIPAA does allow.

For example, a hospital visitor may overhear a provider's confidential conversation with another provider or a patient, or one patient may momentarily view another

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.

Uses & Disclosures of Patient PHI to Federal or State Agencies

Are providers required to make a minimum necessary determination to disclose to Federal or state agencies, such as the Social Security Administration or its affiliated agencies, for individuals' applications for federal or state benefits?

Answer:

No. These disclosures must be authorized by an individual and, therefore, are exempt from the HIPAA Privacy Rule's minimum necessary requirements. The use of the provider's own authorization form is not required. Providers can use an authorization form if it meets HIPAA requirements.

Minimum Necessary Amount of Patient PHI

The HIPAA Privacy Rule requires NKC to make reasonable efforts to limit use, disclosure of, and requests for patient PHI to the minimum necessary to accomplish the intended purpose. The minimum necessary standard does not apply to disclosures, including oral disclosures, among health care providers for treatment purposes. For example, a physician is not required to apply the minimum necessary standard when discussing a patient's medical information with the patient's primary care provider.

However, the HIPAA Privacy Rule allows providers substantial discretion with respect to what is considered the minimum necessary amount of information to be shared.

The Minimum Necessary Rule & Patient Authorizations

NKC requires that the minimum necessary rule be used even when a patient has authorized the disclosure of their PHI. For example, if a patient authorizes the release of their PHI to a life insurer for underwriting purposes, only the minimum amount of PHI necessary for the life insurer to accomplish their task is permitted to be disclosed. NKC workforce members may rely on the requestor of patient PHI to define the minimum amount of information needed to accomplish the task.

Using or Disclosing a Patient's Entire Medical Record

NKC workforce members may disclose a patient's if requested by another treating provider. The entire patient medical record should not be released without having reasonable justification that the information is needed for treatment or payment purposes.

Patient PHI Created by an Outside Treating Provider

NKC may have a patient's treatment information that was created by another previous provider outside NKC. Unless specifically asked by the requestor, workforce members should only release NKC related treatment information. If a treating provider or other entity involved in the payment for treatment requests information created by a provider outside of NKC, the portions that were created by another provider may be released.

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