

## **ACCOUNTING OF DISCLOSURES OF HEALTH INFORMATION POLICY**

**RESPONSIBILITY:** Privacy Official or Designee(s), Directors of Health Information Management and Information Systems, Office and Department Managers

### **BACKGROUND:**

Patients have a right to receive an accounting of disclosures of their protected health information. However, this is a limited right. Many routine disclosures are not reportable in this accounting. For instance, disclosures to other health care providers for purposes of treatment, or to insurance companies for purposes of payment, or to business associates for purposes of health care operations are not reportable.

This policy identifies which disclosures are reportable, and how requests for an accounting for disclosures will be processed.

### **POLICY:**

1. Behavioral Health and Health Facilities (BHFF) patients have a limited right to receive an accounting of disclosures of their protected health information (PHI) made by BHFF. The accounting must contain all disclosures not listed under Exceptions, below.
2. Disclosures made under each of the following policies must be included in the accounting:
  - DISCLOSURES OF PROTECTED HEALTH INFORMATION THAT ARE REQUIRED BY LAW - GENERAL POLICY
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PUBLIC HEALTH PURPOSES
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION TO REPORT CHILD ABUSE, OR OTHER ABUSE, NEGLECT, OR DOMESTIC VIOLENCE
  - REPORTING PROTECTED HEALTH INFORMATION TO EMPLOYERS UNDER OSHA AND SIMILAR LAWS
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION TO REGULATORS
  - SUBPOENAS, COURT ORDERS, DISCOVERY REQUESTS, OR OTHER LEGAL PROCESSES AND THE DISCLOSURES OF PROTECTED HEALTH INFORMATION
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR LAW ENFORCEMENT PURPOSES
  - USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF RESEARCH

- USE AND DISCLOSURES OF PSYCHOTHERAPY NOTES
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION WITHOUT AUTHORIZATION, TO AVERT A SERIOUS THREAT TO HEALTH OR SAFETY
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR CERTAIN GOVERNMENT FUNCTIONS (includes PHI of members of the military, or and disclosures related to protected services of the president and others, but excludes national security or intelligent purposes, as noted under "exceptions," below.)
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION TO WORKERS' COMPENSATION PROGRAMS
  - EXTENSION OF PRIVACY PROTECTION TO DECEASED INDIVIDUALS
  - DISCLOSURE OF PROTECTED HEALTH INFORMATION BY "WHISTLEBLOWERS"
  - DISCLOSURES OF PROTECTED HEALTH INFORMATION BY WORKFORCE MEMBERS WHO ARE THE VICTIMS OF A CRIME
3. The accounting must include any other disclosure that is made without the patient's written authorization, unless the disclosure falls within one of the exceptions listed below. This includes any disclosure made in violation of BHHF policy, or federal or state law, regarding the privacy, security or confidentiality of PHI.
  4. The accounting must include disclosures made by business associates for any of the reasons listed above.

### **Exceptions**

This right to an accounting of disclosures does not apply to:

1. Disclosures of PHI for treatment, payment, or health care operations. See DEFINITIONS in the Reference Section.
2. Disclosure to a patient of his or her own PHI.
3. Disclosure made under the authority of an authorization.
4. Disclosure of protected health information to personal representatives.
5. Disclosures that result from inclusion of a patient's information in a directory, in accordance with the FACILITY DIRECTORIES policy.
6. Disclosures to relatives, friends, and others involved in the patient's care or payment for care, in accordance with the PROVIDING A PATIENT'S MEDICAL INFORMATION TO FAMILY, FRIENDS, OR OTHERS DIRECTLY

INVOLVED IN THE PATIENT'S CARE policy.

7. Disclosures of PHI to disaster relief agencies in accordance with the DISCLOSURE OF PROTECTED HEALTH INFORMATION IN A DISASTER policy.
8. Disclosures to authorized federal officials for purposes of national security or intelligence, in accordance with the DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR CERTAIN GOVERNMENT FUNCTIONS policy.
9. Disclosures of prisoners' PHI to correctional institutions or law enforcement officials in accordance with the DISCLOSURE OF PROTECTED HEALTH INFORMATION OF INMATES policy.
10. Disclosures that are incidental to any use or disclosure permitted under BHHF policies or applicable federal or state law. (An incidental disclosure is a secondary disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure. Example: a conversation that is overheard despite attempts by the speakers to avoid being heard.)
11. Disclosure of information in a limited data set. See LIMITED DATA SET policy.
12. Any disclosure that occurred prior to April 14, 2003.
13. Any disclosure that occurred more than six years prior to the date of the request for the accounting, or outside the time period to which the request applies, if the patient has requested an accounting for disclosures over a shorter period of time (less than 6 years).

BHHF must also temporarily omit from such an accounting of disclosures certain disclosures made to regulators and law enforcement officials.

1. The regulatory or law enforcement agency must provide BHHF with a written statement that notifying the patient about a disclosure of PHI to the agency would be reasonably likely to impede the agency's activities. The statement must specify the time period during which the patient is not to be informed of the disclosure.
2. If the agency is not able to produce a written statement immediately, BHHF may act upon an oral statement for a period of no more than 30 days. The oral statement, including the identity of the agency and/official making the request, must be documented.
3. The suspension of the patient's right to an accounting of the disclosure of PHI to the agency is only temporary, lasting only for the period of time requested in the

written statement (or for no more than 30 days if no written statement is produced by the agency.)

### **Request for Accounting**

A request for an accounting of disclosures of protected health information must be in writing. It must be dated, and must specify the time period to which the accounting applies, which may not be for a period of more than six years.

#### Content of Accounting

1. The accounting that is provided to the patient must be in writing.
2. The accounting must include all disclosures except those listed under "Exceptions," above. This includes disclosures made by BHHF, and disclosures by any business associate if BHHF provided the business associate with the PHI that was disclosed. See the DISCLOSURE OF PROTECTED HEALTH INFORMATION TO BUSINESS ASSOCIATES AND OTHER CONTRACTORS policy regarding the duty of business associates to inform BHHF of any disclosures they make which may be subject to inclusion in an accounting of disclosures.
3. The accounting must include the following information:
  - 3.1 The date of disclosure.
  - 3.2 The name, and the address if known, of the entity or person who received the PHI.
  - 3.3 A brief description of the PHI disclosed.
  - 3.4 A brief statement of the purpose of the disclosure.
4. **Summary information.** When BHHF has made multiple disclosures to a single person or organization for the same purpose, the accounting may include summary information rather than the detail of each such disclosure. However, the disclosures must have been for one of the following reasons, in order for summary information to be acceptable:
  - 4.1 Disclosure to the Secretary of the U.S. Department of Health and Human Services, to determine whether BHHF is complying with federal regulations regarding the privacy of PHI (i.e. 45 CFR Parts 160 and 164), or to investigate a complaint relative to these regulations.

- 4.2 Disclosures in accordance with policies listed under section 2 of this document:
- 4.3 Summary information, to account for multiple disclosures to the same person or organization for the same reason must contain the following information:
  - 4.3.1. For the first disclosure made during the period of the accounting, all of the information required in #3, above.
  - 4.3.2. The frequency, periodicity, or number of disclosures made during the accounting period.
  - 4.3.3. The date of the last disclosure during the accounting period.
- 5. **Research.** The following applies if, during the period covered by the accounting, BHHF has made disclosures of protected health information for a particular research purpose in accordance with the USE AND DISCLOSURE OF PROTECTED HEATH INFORMATION FOR PURPOSES OF RESEARCH policy, for 50 or more individuals.
  - 5.1 An accounting for any of the individuals whose PHI may have been disclosed for the research purpose, may provide the following limited information.
    - 5.1.1 The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period.
    - 5.1.2 The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
    - 5.1.3 A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity.
  - 5.2 If an individual receives an accounting that uses this research option, and if it is reasonably likely that the PHI of the individual was disclosed for the research protocol or activity, BHHF will assist the individual in contacting the entity that sponsored the research and the researcher, if so requested.

## **Time Frames**

BHHF must provide the written accounting, or request an extension of time within 60 days of the date the request for the accounting was received.

1. BHHF must provide the written accounting, or request an extension of time within 60 days of the date the request for the accounting was received.
2. One extension of 30 days is allowed. A request for extension must state the reasons for the delay and the date on which the accounting will be provided to the patient.

#### **Fees**

1. The first accounting in any 12-month period will be provided without charge.
2. A reasonable, cost-based fee will be charged for any additional accounting requested during any 12-month period.
3. A patient who will be subject to the fee for additional accountings will be informed of the fee, and will be given the chance to withdraw the request to avoid the fee, or to modify the request to reduce the fee.

#### **Designation of Person Responsible for Receiving and Processing Requests for an Accounting of Disclosures**

The Privacy Official or Designee(s) is responsible for receiving and processing individual requests for accounting for disclosures.

Effective Date: 4/14/03

Revised Dates:



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Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities