

## HIPAA POLICY

**POLICY: USING, DISCLOSING, AND REQUESTING THE MINIMUM NECESSARY AMOUNT OF PROTECTED HEALTH INFORMATION**

**POLICY NUMBER: 2023**

**APPLICABLE FACILITIES: MCH, MCS, PCC**

**DATE EFFECTIVE: APRIL 14, 2003**

**DATE REVIEWED AND/OR REVISED:**

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### **PURPOSE**

To identify the basic requirements for establishing the minimum amount of Protected Health Information (PHI) for internal uses and routine disclosures. The policy also establishes a process for responding to non-routine requests for PHI.

### **DEFINITIONS**

Archived Medical Record: The Archived Medical Record is the documentation of health care services provided to an individual. The Archived Medical Record is composed of a pre-defined set of documents that are used to respond to requests for the release of information. (See Medical Record Services Policy #2010 - The Electronic Medical Record and the Archived Medical Record) The Archived Medical Record does not include billing records, quality assurance or other peer review information or documents.

Business Associate: A Business Associate is an individual or entity that performs an activity or function on behalf of Mayo that involves access to PHI or the creation of PHI for Mayo. If the arrangement does not involve access to or creation of PHI, it is not a business associate arrangement. See HIPAA Policy #4000 - Business Associate Agreements for more details.

Patient Representative: An individual who is authorized, either by the patient or by Arizona law, to make health care treatment decisions for the patient when the patient is unable to do so (e.g., parent, legal guardian, conservator, health care power of attorney, surrogate).

Protected Health Information (PHI): Any health information or demographic information that identifies a patient. See HIPAA Policy #2024 - Identifying Protected Health Information for more details.

## **POLICY**

### 1. Designating Staff with Access to PHI

As Mayo maintains electronic records, determination for the appropriate level of access to PHI by staff is documented in the user's security authorization to the electronic records. Each job class has an individualized security template defining the exact level of access to the electronic records. These security designations apply to any existing paper records. (See Administrative Policies #1165 - Confidentiality and Computer Usage, and #1180 – Confidentiality: Patient and Employee Information)

### 2. Determining the Minimum Amount of PHI for Routine Disclosures

#### a. Disclosures to Other Providers for Treatment of a Patient

Whenever another health care provider requests a patient's PHI for treatment purposes, staff will provide the PHI requested, including the entire medical record. (See HIPAA Policy #2001 – Use and Disclosure of Protected Health Information for Treatment, Payment and Health Care Operations)

#### b. Disclosures to Health Plans and/or Payers

In response to a request by a health plan and/or payer for PHI to support a claim for payment, staff will disclose the specific PHI requested by the health plan and/or payer, including the entire medical record. (See HIPAA Policy #2001 – Use and Disclosure of Protected Health Information for Treatment, Payment and Health Care Operations)

#### c. Disclosures Required by Law

Where a disclosure of PHI is required by law, staff will disclose only that PHI required by the statute, regulation or court opinion requiring the disclosure, including the entire medical record. (See HIPAA Policy #2006 - Disclosures of Protected Health Information Required by Law)

#### d. Disclosures in Response to Court Order, Search Warrant or Grand Jury Subpoena

In response to a valid court order, search warrant or grand jury subpoena, staff will provide the PHI demanded by the order, warrant or subpoena, including the entire medical record. (See HIPAA Policy #2006 - Disclosures of Protected Health Information Required by Law; and HIPAA Policy #2011 - Disclosures of Protected Health Information in Judicial and Administrative Proceedings)

#### e. Disclosures in Response to Civil or Criminal Subpoena

In response to a civil or criminal subpoena accompanied by patient release or authorization, staff will provide the PHI requested by the subpoena and encompassed by the patient release or authorization, including the entire medical record. In response to a

civil subpoena not accompanied by a patient release or authorization, staff will provide the PHI requested and to which Mayo has not objected. (See HIPAA Policy #2011 - Disclosures of Protected Health Information in Judicial and Administrative Proceedings)

f. Disclosures in Response to Discovery Requests

In response to a discovery request accompanied by patient authorization, staff will provide the PHI requested by the discovery request and encompassed by the patient authorization, including the entire medical record. (See HIPAA Policy #2011 - Disclosures of Protected Health Information in Judicial and Administrative Proceedings)

g. Medical Transport Companies

In response to a request by a medical transport company for PHI for billing purposes, staff will disclose the face sheet. (See HIPAA Policy #2001 – Use and Disclosure of Protected Health Information for Treatment, Payment and Health Care Operations)

h. Researchers

When a researcher requests access to PHI, staff will provide the PHI the researcher represents is required for the research purposes, or that PHI approved by the Institutional Review Board, including the entire medical record. (See Mayo Research Manual)

i. Organ Procurement Agencies

In response to a request by an organ procurement agency, staff will provide the PHI requested by the agency for organ, eye or tissue donation purposes, including the entire medical record. (See Patient Care Policy #2016 – End of Life: Anatomical Donations)

j. Funeral Directors

In response to a request by a funeral director, staff will provide the PHI requested by the funeral director to carry out his or her duties, including the entire medical record. (See HIPAA Policy #2012 – Use and Disclosure of Protected Health Information Concerning Decedents)

k. Accreditation Agencies

In response to a request by an accreditation agency, staff will provide the PHI requested, including the entire medical record. (See HIPAA Policy #4000 – Business Associate Agreements)

l. Business Associates

Business associates will be provided with access to PHI to provide their contracted services, including the entire medical record. (See HIPAA Policy #4000 – Business Associate Agreements)

m. Medical Transcription Vendors

Medical transcription vendors will be provided with the audio files from the dictation system required to transcribe the provider’s reports and will receive the following data fields in order to accurately transcribe the dictation: event type, patient Mayo Clinic number, patient name, patient date of birth, and patient gender. (See HIPAA Policy #4000 – Business Associate Agreements)

n. Industrial Commission of Arizona

The Industrial Commission of Arizona will be provided with only the PHI requested and relevant to the particular workers’ compensation claim. (See HIPAA Policy #2016 – Disclosures Authorized by Workers’ Compensation or Similar Programs)

3. Determining the Minimum Amount of PHI for Non-Routine Disclosures of PHI

a. Criteria for Evaluation

When staff receive a request for PHI that is not reflected in paragraph 2 above, staff will make an individual determination of what amount of PHI (or de-identified PHI) meets the minimum necessary standard. Staff will consider such factors as:

- (1) the requestor’s purpose in seeking PHI;
- (2) the specificity of the request in designating particular parts of the medical record;
- (3) whether less PHI (or de-identified PHI [see HIPAA Policy #2024 - Identifying Protected Health Information]) would satisfy the purpose of the requestor;
- (4) whether the requestor is an entity upon which Mayo may rely, as set forth in Section 4 of this policy; and
- (5) whether the entire medical record is justified.

b. Medical Records Department to Make Determination

Staff will refer requests for non-routine disclosures of PHI to the Medical Records Department for handling.

4. Reliance on Requestor

Staff may rely on the following representations that only the minimum necessary amount of PHI has been requested, unless staff have independent knowledge that the request would not meet the minimum necessary standard:

- a. The requestor is a public official who represents that the PHI requested is the minimum necessary for the official's purpose. If the public official makes this representation orally, staff will document this representation in the patient's Archived Medical Record.
- b. The requestor is another covered entity required to comply with HIPAA, such as a health plan, a health care clearinghouse, or a health care provider.
- c. The requestor is a Business Associate who provides professional services to Mayo and who represents the PHI requested is the minimum necessary. (See HIPAA Policy #4000 - Business Associate Agreements)
- d. The requestor seeks the PHI for research purposes, and the disclosure meets Mayo's requirements for research. (See Mayo Research Manual)

#### 5. Staff Requests for PHI

When staff request PHI from another source, staff will not request more PHI than is necessary for their purpose. If the request for PHI is for the purpose of treating a patient, staff may request the entire medical record from another provider.

#### 6. Exceptions

The following disclosures are not subject to the minimum necessary standard or the procedures set forth in Sections 1-5 above:

- a. To health care providers for treatment of patients;
- b. To the patient or Patient Representative who requests access to their own PHI (see HIPAA Policy #1000 - Patient Requests for Records);
- c. Pursuant to patient or Patient Representative authorization (see HIPAA Policy #2000 - Use and Disclosure of Protected Health Information Requiring Patient Authorization);
- d. As required by law (see HIPAA Policy #2006 – Disclosures of Protected Health Information Required by Law);
- e. As required for compliance with the HIPAA Privacy Standards, including to the Secretary of DHHS for investigation; and
- f. Patient Census/Facility Directory information (see HIPAA Policy #2019 - Patient Census/Facility Directory Disclosures).