

# Notice of Information Practices (2001)

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*Editor's note: An updated version of this practice brief, incorporating the final changes to the Privacy Rule published in the Federal Register on 8/14/02, is available.*

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## Background

Timely, accurate, and complete health information must be collected, maintained, and made available to members of an individual's healthcare team so that members of the team can accurately diagnose and care for that individual. Most consumers understand and have no objections to this use of their information.

On the other hand, consumers may not be aware of the fact that their health information may also be used as:

- a legal document describing the care rendered
- verification of services for which the individual or a third-party payer is billed
- a tool in evaluating the adequacy and appropriateness of care
- a tool in educating health professionals
- a source of data for research
- a source of information for tracking disease so that public health officials can manage and improve the health of the nation
- a source of data for facility planning and marketing

Although consumers trust their caregivers to maintain the privacy of their health information, they are often skeptical about the security of their information when it is computerized or disclosed to others. Increasingly, consumers want to be informed about what information is collected and to have some control over how their information is used.

With this in mind, the federal government and some states passed legislation requiring that health plans, healthcare clearinghouses, and healthcare providers furnish individuals with a notice of information practices.

## Federal Requirements

### Standards for Privacy of Individually Identifiable Health Information

In general, the federal standards for privacy of individually identifiable health information (also known as the HIPAA privacy rule), require that except for certain variations or exceptions for health plans and correctional facilities, an individual has a right to a notice as to the uses and disclosures of protected health information that may be made by the covered entity, as well as the individual's rights, and the covered entity's legal duties with respect to protected health information.

In general, the content of the notice must contain:

- a header saying, "This notice describes how information about you may be used and disclosed and how you can get access to this information. Please review it carefully."
- a description, including at least one example, of the types of uses and disclosures that the covered entity is permitted to make for treatment, payment, and healthcare operations

- a description of each of the other purposes for which the covered entity is permitted or required to use or disclose protected health information without the individual's written consent or authorization
- a statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization
- when applicable, separate statements that the covered entity may contact the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the individual; raise funds for the covered entity, and that the group health plan or health insurance issuer or HMO may disclose protected health information to the sponsor of the plan
- a statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights including:
  - the right to request restrictions on certain uses and disclosures as provided by 45 CFR 164.522(a), including a statement that the covered entity is not required to agree to a requested restriction
  - the right to receive confidential communications of protected health information as provided by 164.522(b), as applicable
  - the right to inspect and obtain a copy of protected health information as provided by 164.524
  - the right to amend protected health information as provided in 164.526
  - the right to receive an accounting of disclosures as provided in 164.528
  - the right to obtain a paper copy of the notice upon request as provided in 164.520
- a statement that the covered entity is required by law to maintain the privacy of protected health information and to provide individuals with a notice of its legal duties and privacy practices with respect to protected health information
- a statement that the covered entity is required to abide by the terms of the notice currently in effect
- a statement that the covered entity reserves the right to change the terms of its notice and to make the new notice provisions effective for all protected health information that it maintains
- a statement describing how it will provide individuals with a revised notice
- a statement that individuals may complain to the covered entity and to the secretary of Health and Human Services if they believe their privacy rights have been violated, a brief description of how one files a complaint with the covered entity, and a statement that there will be no retaliation against the individual for filing a complaint
- the name or title and telephone number of a person or office to contact for further information
- an effective date, which may not be earlier than the date on which the notice is printed or otherwise published

A covered entity that is required to have a notice may not use or disclose protected health information in a manner inconsistent with such notice.

A covered healthcare provider with a direct treatment relationship with an individual must:

- provide the notice no later than the date of the first service delivery, including service delivered electronically

- have the notice available at the service delivery site for individuals to request and keep
- post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the covered healthcare provider to be able to read it

A covered entity that maintains a Web site providing information about the covered entity's customer services or benefits must prominently post its notice on and make it available through the Web site.

The covered entity may provide the notice by e-mail if the individual agrees and agreement has not been withdrawn.

The covered entity must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which such material change is reflected.

Except for research, a consent for uses or disclosures to carry out treatment, payment, or healthcare operations may not be combined in a single document with the notice.

A covered healthcare provider that provides care to its work force related to medical surveillance, work-related illness, or injury must provide a written notice to individuals seeking such care at the time healthcare is provided, or by posting a notice in a prominent place at the location where the healthcare is provided.

A covered entity must document compliance with the notice requirements by retaining copies of the notices issued.

### **Confidentiality of Drug and Alcohol Patient Records**

The confidentiality of alcohol and drug abuse patient records rules establish the following notice provisions for patients of federally assisted drug or alcohol abuse programs: "At the time of admission or as soon thereafter as the patient is capable of rational communication, each substance abuse program shall communicate to the patient that federal law and regulations protect the confidentiality of alcohol and drug abuse patient records. The program must also provide the patient with a written summary of the federal law and regulations."

The written summary of the federal law and regulations must include:

- general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser
- a statement that violation of the federal law and regulations by a program is a crime and that suspected violations may be reported to appropriate authorities in accordance with these regulations
- a statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected
- a statement that reports of suspected child abuse and neglect made under state law to appropriate state or local authorities are not protected
- a citation to the federal law and regulations

The program may devise its own notice or use the sample provided by the federal government illustrated in the [Sample Notice for Alcohol/Drug Patient Records](#). In addition, the program may include in the written summary information concerning state law and any program policy not inconsistent with state and federal law on the subject of confidentiality of alcohol and drug abuse patient records.

### **State Requirements**

Some states have laws or regulations and provide specific requirements for a notice of health information practices.

## Recommendations

1. **Study federal and state requirements** for the notice of information practices.
2. **Draft a notice** that complies with federal and state law and regulations and accurately describes your organization's health information practices. The [sample notice](#) below, while not all-inclusive, may serve as a guide.
3. Although not a required element in the notice of information practices, consider including **use of the individual's information for directory purposes** in the notice  
(because individuals must be provided this information and given the opportunity to opt out).
4. Assign an individual or department to serve as an **initial point of contact** for individuals requesting additional information or filing a complaint relative to information privacy practices.
5. Ask **legal counsel** to help develop or review the notice.
6. **Generate a policy and procedure** relative to the notice.
7. Either **place a copy of the current notice** in the individual's record or record the notice's form number or effective date on the consent for health information disclosure for treatment, payment, and healthcare operations and maintain a copy of each version of the notice in a separate file.
8. **Educate and train staff.**
9. **Post the notice** and make copies available for distribution where consents for disclosure of health information for treatment, payment and healthcare operations are obtained.
10. **Implement and monitor compliance.**
11. Prior to making material changes in information practices, **generate a new notice** and provide that new notice to individuals about whom protected health information is maintained.

## *Sample Notice for Alcohol/Drug Patient Records*

### Confidentiality of Alcohol and Drug Abuse Patient Records

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless one of the following conditions is met:

1. the patient consents in writing
2. the disclosure is allowed by a court order
3. the disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation

Violation of the federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

## ***Sample Notice of Health Information Practices***

*This notice describes how information about you may be used and disclosed and how you can get access to this information. Please review it carefully.*

### **Understanding Your Health Record/Information**

Each time you visit a hospital, physician, or other healthcare provider, a record of your visit is made. Typically, this record contains your symptoms, examination and test results, diagnoses, treatment, and a plan for future care or treatment. This information, often referred to as your health or medical record, serves as a:

- basis for planning your care and treatment
- means of communication among the many health professionals who contribute to your care
- legal document describing the care you received
- means by which you or a third-party payer can verify that services billed were actually provided
- a tool in educating health professionals
- a source of data for medical research
- a source of information for public health officials charged with improving the health of the nation
- a source of data for facility planning and marketing
- a tool with which we can assess and continually work to improve the care we render and the outcomes we achieve
- Understanding what is in your record and how your health information is used helps you to:
- ensure its accuracy
- better understand who, what, when, where, and why others may access your health information
- make more informed decisions when authorizing disclosure to others

### **Your Health Information Rights**

Although your health record is the physical property of the healthcare practitioner or facility that compiled it, the information belongs to you. You have the right to:

- request a restriction on certain uses and disclosures of your information as provided by 45 CFR 164.522
- obtain a paper copy of the notice of information practices upon request
- inspect and obtain a copy of your health record as provided for in 45 CFR 164.524
- amend your health record as provided in 45 CFR 164.528
- obtain an accounting of disclosures of your health information as provided in 45 CFR 164.528
- request communications of your health information by alternative means or at alternative locations
- revoke your authorization to use or disclose health information except to the extent that action has already been taken

### **Our Responsibilities**

This organization is required to:

- maintain the privacy of your health information
- provide you with a notice as to our legal duties and privacy practices with respect to information we collect and maintain about you
- abide by the terms of this notice
- notify you if we are unable to agree to a requested restriction
- accommodate reasonable requests you may have to communicate health information by alternative means or at alternative locations.

We reserve the right to change our practices and to make the new provisions effective for all protected health information we maintain. Should our information practices change, we will mail a revised notice to the address you've supplied us.

We will not use or disclose your health information without your authorization, except as described in this notice.

### **For More Information or to Report a Problem**

If have questions and would like additional information, you may contact the director of health information management at [phone number].

If you believe your privacy rights have been violated, you can file a complaint with the director of health information management or with the secretary of Health and Human Services. There will be no retaliation for filing a complaint.

### **Examples of Disclosures for Treatment, Payment and Health Operations**

*We will use your health information for treatment.*

For example: Information obtained by a nurse, physician, or other member of your healthcare team will be recorded in your record and used to determine the course of treatment that should work best for you. Your physician will document in your record his or her expectations of the members of your healthcare team. Members of your healthcare team will then record the actions they took and their observations. In that way, the physician will know how you are responding to treatment.

We will also provide your physician or a subsequent healthcare provider with copies of various reports that should assist him or her in treating you once you're discharged from this hospital.

*We will use your health information for payment.*

**For example:** A bill may be sent to you or a third-party payer. The information on or accompanying the bill may include information that identifies you, as well as your diagnosis, procedures, and supplies used.

*We will use your health information for regular health operations.*

**For example:** Members of the medical staff, the risk or quality improvement manager, or members of the quality improvement team may use information in your health record to assess the care and outcomes in your case and others like it. This information will then be used in an effort to continually improve the quality and effectiveness of the healthcare and service we provide.

*Business associates:* There are some services provided in our organization through contacts with business associates. Examples include physician services in the emergency department and radiology, certain laboratory tests, and a copy service we use when making copies of your health record. When these services are contracted, we may disclose your health information to our business associate so that they can perform the job we've asked them to do and bill you or your third-party payer for services rendered. To protect your health information, however, we require the business associate to appropriately safeguard your information.

*Directory:* Unless you notify us that you object, we will use your name, location in the facility, general condition, and religious affiliation for directory purposes. This information may be provided to members of the clergy and, except for religious affiliation, to other people who ask for you by name.

*Notification:* We may use or disclose information to notify or assist in notifying a family member, personal representative, or another person responsible for your care, your location, and general condition.

*Communication with family:* Health professionals, using their best judgement, may disclose to a family member, other relative, close personal friend or any other person you identify, health information relevant to that person's involvement in your care or payment related to your care.

*Research:* We may disclose information to researchers when their research has been approved by an institutional review board that has reviewed the research proposal and established protocols to ensure the privacy of your health information.

*Funeral directors:* We may disclose health information to funeral directors consistent with applicable law to carry out their duties.

*Organ procurement organizations:* Consistent with applicable law, we may disclose health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of organs for the purpose of tissue donation and transplant.

*Marketing:* We may contact you to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to you.

*Fund raising:* We may contact you as part of a fund-raising effort.

*Food and Drug Administration (FDA):* We may disclose to the FDA health information relative to adverse events with respect to food, supplements, product and product defects, or post marketing surveillance information to enable product recalls, repairs, or replacement.

*Workers compensation:* We may disclose health information to the extent authorized by and to the extent necessary to comply with laws relating to workers compensation or other similar programs established by law.

*Public health:* As required by law, we may disclose your health information to public health or legal authorities charged with preventing or controlling disease, injury, or disability.

*Correctional institution:* Should you be an inmate of a correctional institution, we may disclose to the institution or agents thereof health information necessary for your health and the health and safety of other individuals.

*Law enforcement:* We may disclose health information for law enforcement purposes as required by law or in response to a valid subpoena.

Federal law makes provision for your health information to be released to an appropriate health oversight agency, public health authority or attorney, provided that a work force member or business associate believes in good faith that we have engaged in unlawful conduct or have otherwise violated professional or clinical standards and are potentially endangering one or more patients, workers or the public.

Effective Date: [DATE]

*Note: The above form is not meant to encompass all the various ways in which any particular facility may use health information. It is intended to get readers started insofar as developing*

*their own notice. As with any form of this nature, the document should be reviewed and approved by legal counsel prior to implementation.*

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## Acknowledgments

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"Standards for the Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 through 164. *Federal Register* 65, no. 250 (December 28, 2000). Available at <http://aspe.hhs.gov/admnsimp/>.

This article is based on the privacy rule issued on December 28, 2000. At press time the rule was under review by the new administration and could be subject to change.

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