

Understanding the Minimum Necessary Standard (2002)

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Health information management professionals have long made it a practice to limit information disclosed to that information required to fulfill the stated purpose. For example, an HIM professional would not disclose information about a woman's breast removal on a worker's compensation claim for a lacerated finger. Instead, the HIM professional would limit information disclosed to that related only to the injured finger. In other words, the HIM professional would disclose only that information the recipient needs to know.

The Standards for the Privacy of Individually Identifiable Health Information, more commonly called the Health Insurance Portability and Accountability Act (HIPAA) final privacy rule, formalize and expand the need-to-know principle. The revised principle is known as the Minimum Necessary Standard. It is important that HIM professionals understand the Minimum Necessary Standard, as most covered entities must comply no later than April 14, 2003.¹

HIPAA Final Privacy Rule

Minimum Necessary Standard Applicability

The December 28, 2000 version of the HIPAA final privacy rule says that the Minimum Necessary Standard applies when using or disclosing protected health information (PHI), or when requesting PHI from another covered entity.² It goes on to say that covered entities must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

Exceptions to the Minimum Necessary Standard

The rule, however, provides some exceptions. It says that the Minimum Necessary Standard does not apply to:

- disclosures to or requests by healthcare providers for treatment purposes
- disclosures to the individual who is the subject of the information
- uses or disclosures made pursuant to an authorization requested by the individual
- uses or disclosures required for compliance with the standardized HIPAA transactions
- disclosures to the Department of Health and Human Services when disclosure of information is required under the rule for enforcement purposes
- uses or disclosures required by law

Applying the Standard when Disclosing Information

The implementation specifications for the Minimum Necessary Standard require that:³

- covered entities identify the persons or classes of persons in their work force who need access to PHI the category or categories of PHI to which access is needed, and any conditions appropriate to such access
- covered entities make reasonable efforts to limit the work force's access to PHI to that which is needed to carry out their duties
- for any type of disclosure that occurs on a routine and recurring basis, covered entities implement policies and procedures that limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure
- for all other disclosures, covered entities develop criteria designed to limit the PHI disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought, and review requests for disclosure on an individual basis in accordance with such criteria

The rule states that covered entities may rely on the judgment of the party requesting the disclosure as to the minimum amount of information needed when the request is made by:

- a public official or agency for a disclosure permitted under CFR 164.512 (uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required)
- another covered entity
- a professional who is a work force member or business associate of the covered entity holding the information
- a researcher with appropriate documentation from an institutional review board or privacy board

The rule does not require that the covered entity rely on the judgment of the requester, however, and the covered entity retains the right to make its own minimum necessary determination for disclosures to which the Minimum Necessary Standard applies.

Requesting Protected Information

Furthermore, the implementation specifications for the Minimum Necessary Standard state that:

- when requesting PHI from other covered entities, a covered entity must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made
- for a request that is made on a routine and recurring basis, a covered entity must implement policies and procedures that limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made
- for all other requests, a covered entity must review the request on an individual basis to determine that the PHI sought is limited to the information reasonably necessary to accomplish the purpose for which the request is made

A covered entity may not use, disclose, or request an entire medical record, except when the entire medical record is specifically justified as the amount of information that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

Recommendations

- Study the Minimum Necessary Standard.
- Evaluate where, when, and how protected health information is requested.
- Develop policies and procedures to ensure that the information requested is the minimum necessary to fulfill the stated purpose. For example, develop a procedure for determining which requests for information must be scrutinized for compliance with the minimum necessary requirements.
- Evaluate where, when, and how PHI is disclosed.
- Develop policies and procedures that ensure that the Minimum Necessary Standard is applied when appropriate to the request. For example, develop a system for periodically auditing disclosures made to ensure that the minimum necessary requirements were met where appropriate.
- Educate and train staff about appropriate application of the standards when requesting, using, or disclosing health information.
- Evaluate the needs of the work force relative to PHI. Identify the information the individuals or categories of individuals need to know to do their jobs. Maintain documentation of such determinations.
- Develop policies and procedures that limit access by the work force to only the PHI they need to know to do their jobs.
- Monitor compliance and take corrective action when indicated.

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Notes

1. Health plans, healthcare clearinghouses, and healthcare providers who submit certain transactions electronically.
2. 42 CFR, Section 164.502 (b).
3. 42 CFR, Section 164.514 (d).

References

“First Guidance on the Final Privacy Rule, July 10, 2000.” Office for Civil Rights. Available at www.hhs.gov/ocr/hipaa/finalmaster.html.

“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>.

Acknowledgments

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