

Following HIPAA Privacy Rule in Patient COVID-19 Communications

April 15, 2020—University of Arizona HIPAA Privacy Program Guidance

The HIPAA Privacy Rule is designed to protect the privacy of a patient's protected health information (PHI) while still allowing for appropriate uses and disclosures of the information for the treatment of the patient, to protect public health, and for other purposes related to an emergency. The Privacy Rule applies only to covered entities and business associates who have created or received the information as part of their health care activities or services provided in support of another covered entity's health care activities.

This guidance describes circumstances where the University of Arizona, acting in the capacity of a covered entity or a business associate may be permitted to disclose otherwise protected PHI under specific exceptions to the Privacy Rule. If you have a question about the application of the Privacy Rule to a particular situation please consult with John Howard, Director of the UA HIPAA Privacy Program at JFHoward@arizona.edu or the Office of General Counsel.

The information below is provided to help clarify what uses and disclosures are appropriate when working with a patient that has contracted COVID-19.

Disclosures related to Treatment

- A disclosure of PHI, without a patient's authorization, may be made as necessary to treat the patient or to treat a different patient.
- Treatment includes the coordination or management of health care and related services by one or more health care provider and others, consultation between providers, and the referral of patients.

Disclosures to Protect Public Health

- A disclosure of PHI, without a patient's authorization, may be made to *public health authorities* who are authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability.
- A *public health authority* is defined as an agency or authority of the United States Government, a State, a territory, a political subdivision of a State or territory, or Indian tribe that is responsible for public health matters as part of its official mandate, as well as a person or entity acting under a grant of authority from, or under contract with, a public health agency. Examples include the CDC or state or local health departments.
- Disclosure of PHI to *persons at risk* of contracting or spreading disease or condition may be permitted if authorized by law for the purposes of preventing or controlling the spread of the disease or to otherwise carry out public health interventions or investigations.

Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification

- Disclosure of PHI to a patient's family members, relatives, friends, or other person identified by the patient as involved in the patient's care may be permitted. Verbal permission from the

patient should be obtained, or it should be reasonably inferred that the patient does not object to this type of disclosure.

- The use of professional judgment that such disclosure is in the patient's best interest if the patient is incapacitated or otherwise unavailable is appropriate.
- Sharing of PHI with disaster relief organizations that, like the American Red Cross, are authorized by law or by their charters to assist in disaster relief efforts, for the purpose of coordinating the notification of family members or other persons involved in the patient's care, of the patient's location, general condition, or death. A patient's permission is not required if obtaining it would interfere with the organization's ability to respond to the emergency.

Disclosures to Prevent a Serious or Imminent Threat

- Sharing PHI with anyone as necessary to prevent or lessen a *serious and imminent threat to the health and safety of a person or the public* if such disclosure is consistent with State law and applicable ethical standards of conduct is permissible.
- The Privacy Rule expressly defers to the professional judgement of health professionals in making determinations about the nature and severity of the threat to health and safety.
- Please consult with the University's HIPAA Privacy Office or Office of General Counsel prior to making such disclosure to ensure all applicable laws or requirements are met.

Disclosures to Media or Others Not Involved in the Care of the Patient

- In general, affirmative reporting to the media or the public about an identifiable patient, or the disclosure of specific information about the treatment of an identifiable patient, may not be done without the patient's written authorization. Remember – specific information regarding the circumstances or attributes of a specific patient when taken as a whole may make it possible to identify the individual and is not permissible.
- Disclosure to the media is not appropriate under the Health or Safety Exception. All media inquiries should be directed to Chris Sigurdson.

"Minimum Necessary" Standard

- For permissible disclosures, other than for treatment purposes, disclosures must be limited to the "minimum necessary" amount of information necessary to accomplish the purpose of the disclosure.
- For disclosures to public health authorities, the request for information by the public health authority can be relied on to be the minimum amount of information necessary.

Safeguarding Information

- Even in emergency situations, reasonable safeguards must be implemented to protect PHI from intentional or unintentional impermissible uses and disclosures. This includes the application of administrative, technical, and physical safeguards for electronic PHI.

The HIPAA Privacy Rule does not apply to health information contained in employment or educational records. For guidance on the disclosure of health information in employment or education records related to COVID-19 please see **FERPA Privacy Protections for Students in COVID-19 Communications**.