

RELEASE OF INFORMATION GUIDE

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HIPAA Basics to Remember

- Releases for treatment, payment, and healthcare operations do not require a signed patient authorization
 - Examples of “treatment” are records being sent to a patient’s new doctor when they transfer care or sending patient records to a referring physician
 - Example of “payment” is submitting patient information to a health insurance company for the purpose of reimbursement for services
 - Examples of “healthcare operations” are sharing information with UAMS’s compliance department or using patient information when teaching our medical students
 - Research is *not* part of treatment, payment, or healthcare operations
- The “Minimum Necessary Rule” applies to all disclosure except those for treatment purposes
 - Only provide the minimum amount of information necessary for the purpose (for example, only provide the insurance company with those records that the insurance company will need to make payment decisions)
- The general rule – other than for treatment, payment, or healthcare operations – is that a disclosure of patient information outside of UAMS requires a signed patient authorization
 - Section II of this guide will cover the requirements for an authorization
 - Sections III will cover exceptions to the authorization requirement
- Verify the identity and the authority of anyone who makes a request for patient information.
- Anytime you are responding to a legal document, such as a subpoena, court order, power of attorney, etc., read the document to see what it actually says
 - make sure you understand what is required of you (for example, time to respond on a subpoena)
 - make sure you understand the scope of the document (what powers are actually granted to the power of attorney, or exactly what specific documents are requested)
- Patients have a right to access their own medical records and to obtain copies of their own records (without an authorization)
- Patients also have a right to request that access to their medical record be limited, and to request that amendments to their records be made – these are covered in Section V of this Guide.
- Patients have a right to request an accounting of disclosures, which tells them about all the times that we have shared their PHI other than for treatment, payment, or healthcare operations. It is important, therefore, to have a method in place for keeping track of these disclosures, such as placing an Accounting of Disclosure form in the patient’s record and/or keeping a spreadsheet. See the Accounting for Disclosures Checklist.

SECTION I

Definitions

Designated Record Set means (i) medical records and billing records; (ii) records used, in whole or in part, to make decisions about patients; and (iii) the enrollment, payment, claims adjudication, and case or medical management record systems.

Disclosure means the release, transfer, provision of access to, or divulging of information in any manner (verbally or in writing) by UAMS to persons who are not UAMS employees or students, or to any other person or entity OUTSIDE of UAMS.

Health Care Operations is defined by the HIPAA regulations under 45 C.F.R. § 164.501 and is incorporated herein by reference, and includes the following:

1. Quality assessment and improvement, including outcomes evaluation and development of clinical guidelines; population-based activities relating to improving health or reducing health care costs, protocol development, case management and case coordination, contacting providers and patients with information about treatment alternatives; and related functions that do not include treatment.

2. Accreditation, certification, licensing or credentialing activities, reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals.

3. Conducting or arranging for medical review, legal services and auditing.

4. Business planning and development related to managing and operating the entity.

5. Business management and general administrative activities, such as fundraising and marketing of services to the extent permitted without Authorization, disclosure of PHI in a due diligence review or to resolve internal grievances, and customer service.

Legal Representative means the person authorized by law to act on behalf of the patient, such as the parent of a minor, a court-appointed guardian or a person appointed by the patient in a Power of Attorney document.

Patient Authorization For purposes of UAMS policies, a patient “authorization” refers to a valid UAMS HIPAA authorization or the use of an approved UAMS Authorization form attached to this guide. Otherwise, when a policy requires a “request in writing” from the patient, this does not mean the use of any particular authorization form, but rather, only that a request in writing from the patient is sufficient, without the use of the form.

Payment includes billing, reimbursement, and collection activities relating to the provision of health care to an individual, including but not limited to, release to an insurance company, insurance plan or other third-party payer in connection with payment activities, eligibility or coverage determinations, disclosures to consumer reporting agencies, health care data processing, claims management and other activities as defined by 45 C.F.R. § 164.501 under “payment.”

Protected Health Information (PHI) means information that is part of an individual's health information that identifies the individual or there is a reasonable basis to believe the information could be used to identify the individual, including demographic information, and that (i) relates to the past, present or future physical or mental health or condition of the individual; (ii) relates to the provision of health care services to the individual; or (iii) relates to the past, present, or future payment for the provision of health care services to an individual. This includes PHI which is recorded or transmitted in any form or medium (verbally, or in writing, or electronically). PHI excludes health information maintained in educational records covered by the federal Family Educational Rights Privacy Act and health information about UAMS employees maintained by UAMS in its role as an employer.

Psychotherapy Notes are notes recorded in any medium by a mental health professional which document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session. Psychotherapy notes are separated from the rest of the patient's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Treatment is providing, coordinating or managing health care and related services by one or more providers, including such coordination or management by a provider with a third party; consultation between providers relating to a patient or the referral of a patient for health care from one provider to another.

Use means the sharing, employment, application, utilization, examination, or analysis within UAMS.

UAMS Workforce means for purposes of UAMS policies, physicians, employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

SECTION II

Patient Authorizations

When patient records are sent outside of UAMS for reasons other than treatment, payment, or healthcare operations, a signed patient authorization form must be obtained for that disclosure and kept in the record.

UAMS has its own Authorization form, and it is safest to use this form, or a form developed by your clinic that contains all of the required elements.

HIPAA requires that an Authorization form must contain certain elements in order to be valid. It is okay to accept an Authorization form that is not one of our own forms, however, it **must** contain **all** of these elements.

Anytime a request for records is made that requires an authorization, and the authorization form is not one of our own forms, use the **Elements of a Valid Authorization Checklist** to verify that all of the required elements are present and filled out.

Anytime a UAMS Authorization form is used, check the form to make sure all of the required elements have been filled out – no blanks.

Anytime someone other than the patient signs the Authorization form, use the **Legal Representatives Checklist** to verify that the person signing the form is authorized to do so.

Elements of a Valid Authorization Checklist

- ✓ A specific description of the information to be used or disclosed.
- ✓ The persons, or class of persons, authorized to make the requested use or disclosure.
- ✓ The name (or other specific identification) of the persons, or class of persons, to whom UAMS may disclose the records.
- ✓ A description of each purpose of the requested use or disclosure.
- ✓ An expiration date or expiration event.
- ✓ A statement that the person can revoke the authorization in writing, the process for revoking the authorization, and a statement that the person cannot revoke authorization for records already released in reliance upon the authorization.
- ✓ A statement that UAMS will not condition treatment or payment on the whether the individual signs the authorization, unless the authorization is for research purposes, and then UAMS may condition research-related treatment upon the signing of the authorization.
- ✓ A statement that records or information in the records released might be redisclosed by the person receiving them and will not be covered under the federal privacy laws.
- ✓ Signature of the patient or Legal Representative and date; and
- ✓ If the authorization is signed by a Legal Representative of the patient, a description of the Representative's authority to act for the patient, (e.g., "parent of a minor," "Court-appointed guardian," "health care proxy," "pursuant to appointment under Power of Attorney.")

Personal Representatives Checklist

The following individuals may act as the Personal Representative of a patient, which means that they have all of the rights that a patient does under HIPAA:

- ✓ Parent of their minor child. Note that it does not matter whether the parent has custody of the child; unless their parental rights have been terminated by a court (different than custody), they are still the child's Personal Representative for HIPAA purposes;
- ✓ Court-appointed Guardian of a minor;
- ✓ Court-appointed Guardian of an elderly or incapacitated person;
- ✓ Appointed by the patient to act as their attorney-in-fact in a Durable Power of Attorney with health care rights;
- ✓ Appointed by the patient in a Health Care Proxy;
- ✓ A person authorized by Ark. Code Ann. § 20-9-602 to verbally or otherwise consent to treatment/procedures suggested/directed by physician for the following persons of "unsound mind": adult sibling of the patient of unsound mind; or spouse of the patient of unsound mind; or adult child for parent of unsound mind.
- ✓ Court-appointed Administrator or Executor or Personal Representative of the Estate of a deceased patient. A guardianship or a power of attorney (or any other grant of authority by the patient) are no longer effective upon death. No will is effective until probated.
- ✓ For persons who are terminally ill or permanently unconscious – see Ark. Code Ann. 20-17-202;
 - Appointment of a healthcare proxy in a declaration
 - Declaration must be signed by the patient and witnessed by two people
- ✓ For Incapacitated persons for whom there is no health care proxy or other authority, see to Ark. Code Ann. 20-17-214.
 - Patient who, *in the opinion of the attending physician*, is no longer able to make health care decisions (must get statement from physician)
 - Then in these individuals may act as Legal Representatives in the following order (the first applicable person down the list):
 - (1) A legal guardian of the patient, if one has been appointed;
 - (2) In the case of an unmarried patient under the age of eighteen (18), the parents of the patient;
 - (3) The patient's spouse;
 - (4) The patient's adult child or, if there is more than one, then a majority of the patient's adult children participating in the decision;
 - (5) The parents of a patient over the age of eighteen (18);
 - (6) The patient's adult sibling or, if there is more than one, then a majority of the patient's adult siblings participating in the decision;
 - (7) Persons standing in loco parentis to the patient; or
 - (8) A majority of the patient's adult heirs at law who participate in the decision.

SECTION III

Exceptions to the Authorization Requirement

There are limited circumstances under which no patient authorization is required.

There are certain laws that require UAMS to share health information about our patients with certain authorities. The checklists in this section cover these circumstances.

Always remember the minimum necessary rule.

Call the HIPAA Office if you are unsure about a disclosure.

Remember that these disclosures must be accounted for, so an Accounting of Disclosure form must be filled out and placed in the patient's record, or the disclosure must be tracked by some other means, such as in a database or spreadsheet.

Disclosures Required by Law Checklist

The following disclosures do not require a patient authorization, but are limited by the law that governs them and the minimum necessary rule:

- ✓ Births and Deaths: Department of Health, Division of Vital Records, must receive reports of births and deaths occurring at UAMS.
- ✓ Deaths from Suspicious Circumstances: UAMS must notify the coroner and the chief law enforcement official of the county and city in which a death occurred if UAMS suspects that a death occurred as a result of violence, criminal conduct or of any of the other circumstances listed in Ark. Code Ann. § 12-12-315.
- ✓ Disease and Disease Prevention: AR Department of Health must receive reports of a positive test at UAMS for the presence of conditions or diseases identified by statute such as the reporting of sickle cell anemia, and any case or suspected case of Reye's Syndrome. Immunizations given to persons under 22 years old must be reported to the Department of Health. Ark. Code Ann. §§ 20-15-302, 20-15-401, 20-15-1203.
- ✓ Sudden Infant Death Syndrome: The County Coroner must receive reports of the sudden death of a child between the ages of one week and one year who appeared in apparent good health, as required by Ark. Code Ann. § 20-15-502. If the County Coroner is unavailable, the report is made to the County Sheriff.
- ✓ Child Maltreatment/Abuse/Neglect: The DHS Arkansas Child Abuse Hotline must receive reports if any health care professional at UAMS has reasonable cause to suspect that a child under 18 years of age has been subjected to maltreatment, abuse, neglect, sexual exploitation or abandonment; and the Arkansas Department of Human Services and Law Enforcement Officials shall have access to medical records, photographs or videotapes relating to the existence or extent of the maltreatment, abuse or neglect. Ark. Code Ann § 12-12-506 through § 12-12-508.
- ✓ Abuse of Elderly, Endangered or Impaired Adult: The AR Department of Human Services, the Office of Attorney General, the Prosecutor, the Coroner, and the Adult Abuse Hotline are entitled to receive information if any employee of UAMS has reasonable cause to suspect the abuse or neglect of an endangered or impaired adult or an adult residing in a long-term care facility and shall have access to the medical records or other information requested in connection with the investigation of suspected abuse or neglect. Ark. Code Ann. § 5-28-203, § 5-28-204, and § 5-28-209.
- ✓ Intentional Infliction of Knife or Gunshot Wounds: The Sheriff and the City Police are entitled to receive information in connection with all cases of intentional knife or gunshot wounds treated by UAMS or while in UAMS. Ark. Code Ann. § 12-12-602.
- ✓ Venereal Disease: The Division of Health Maintenance of the Arkansas Department of Health must be notified when a lab examination determines that a specimen yields evidence suggestive of a venereal disease. Ark. Code Ann. § 20-16-501.
- ✓ HIV: AR Department of Health must receive reports of any person determined to have AIDS or to have tested positive for HIV. Ark. Code Ann. § 20-15-905 and 20-15-906.
- ✓ UAMS must disclose PHI to the U.S. Department of Health and Human Services for purposes of investigating or determining UAMS' compliance with HIPAA regulations.
- ✓ State Cancer Registry: UAMS must disclose certain PHI concerning incidents of cancer to the Arkansas Department of Health's State Cancer Registry. Ark. Code Ann. § 20-15-201.

Reporting to Other Agencies and Officials Checklist

The following disclosures do not require a patient authorization, but are limited by the law that governs them and the minimum necessary rule:

- ✓ Disclosures to law enforcement for identification or locations of a suspect, fugitive, material witness, or missing person may be made without an authorization, but are limited to only the following: name and address; date and place of birth; Social Security Number; ABO blood type and rh factor; type of injury; date and time of treatment; date and time of death, if applicable; and description of distinguishing physical characteristics, such as weight, height, gender, race, hair/eye color, presence or absence of facial hair, scars, tattoos.
- ✓ Disclosures to law enforcement or others to lessen or prevent imminent threat to health or safety may be made without a patient authorization as necessary and limited to the information required, and only to those individuals who are in a position to lessen or prevent the harm.
- ✓ Disclosures may be made as necessary to report a crime that occurred on UAMS property.
- ✓ UAMS may disclose PHI to public health authorities authorized by law to receive such information when the disclosure is made in connection with a public health concern, such as for the purpose of preventing or controlling disease, injury, or disability, for the purpose of reporting to the FDA, or to notify persons who may have been exposed to a communicable disease if authorized under state law to do so.
- ✓ UAMS may disclose PHI to health oversight agencies for health oversight purposes authorized by law, including audits, investigations, inspections, licensure or disciplinary actions, and other activities necessary for appropriate oversight of the health care system. Health oversight agencies are agencies of the state or federal government, or entities acting under a grant of authority or contract with the public agency, which are authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance. For example, Medicare and Medicaid, State licensure boards, DHHS Office of Inspector General, and DHHS Office for Human Research Protections or other agencies authorized by law to oversee the health care system.
- ✓ UAMS may disclose PHI to coroners and medical examiners for the purpose of identifying a deceased person, for determining a cause of death, or for coroner or medical examiner to perform other duties authorized by law.
- ✓ UAMS may disclose PHI as needed for the funeral director to carry out their duties. UAMS may share PHI prior to, and in reasonable anticipation of, the patient's death.
- ✓ UAMS may use or disclose PHI to an organ procurement organization or entity engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.
- ✓ UAMS may disclose PHI to comply with the laws relating to workers' compensation or other similar programs that provide benefits for work-related injuries or illness without regard to fault.

Subpoenas and Court Orders Checklist

- ✓ Disclosures pursuant to a court order, a court-ordered warrant, or a grand-jury subpoena must be answered, with the requested PHI, and do not require an authorization.
 - The information must be limited to the PHI described in the order and may only be disclosed to the individuals identified in the order or subpoena.
 - A copy of the order or subpoena should be sent to the Office of General Counsel via fax. If you have any questions about whether information may be released, contact the HIPAA Office.
 - Be sure to check the dates on the document, to ensure timely response.

- ✓ Subpoenas and discovery requests from attorneys must be answered; however PHI may only be disclosed under the following circumstances:
 - When a HIPAA-compliant authorization, signed by the patient or Legal Representative, is attached
 - when it is accompanied by a court order, or
 - the attorney includes written assurance that the patient was notified of the request, that the patient had time to object, and that they did not object.
 - If you receive a request that does not comply with these requirements, you may either contact the HIPAA Office, or General Counsel's Office, or contact the attorney making the request, to ask them to provide the additional documentation or inform them that you cannot release the requested information.

- ✓ Subpoenas or Investigative Demands from law enforcement officials, such as the police, the prosecutor's office, the FBI, or the attorney general's office, must be answered and do not require a patient authorization. The following limitations apply:
 - The information requested is relevant and material to a legitimate law enforcement inquiry;
 - the request is specific and limited in scope to the extent reasonably practicable in light of the purpose from which the information is sought; and
 - de-identified information could not reasonably be used.

Section IV Deceased Patient Records

HIPAA protects the privacy of patient information even after a patient has died.

When a request for patient records is received, and the patient is deceased, first check to see whether the release may be granted based on an Authorization signed by the patient prior to death, or one of the exceptions discussed in Section III of this guide.

If the request is not accompanied by an Authorization signed by the patient prior to death (and does not fall into one of the exceptions), then an Authorization must be obtained from the Legal Representative. Under HIPAA and Arkansas law, the only person authorized to sign as the Legal Representative of a deceased patient is the court-appointed Executor or Administrator of the Estate.

The only exception is when the deceased patient's records are needed for the treatment of a living relative, in which case the records may be sent to the relative's physician.

Remember that a Power of Attorney or Healthcare Proxy document is no longer in effect once the patient dies.

When friends or relatives of deceased patients request records, the following guidelines may be helpful:

- ✓ Be mindful that the person with whom you are speaking has lost a loved one.
- ✓ First ask them what information they need, and why. Explain that you will try to help them.
- ✓ If they are wanting the records just for their own curiosity or information, explain to them that the privacy laws that protect their health information continue to protect that information after they die; therefore, under the law, we are not allowed to disclose their relative's records to them, unless they are appointed by a court to act on behalf of the estate of the deceased.
- ✓ If they are wanting the records because there will be a lawsuit, explain to them that in order to sue or be sued, the estate of the deceased patient will have to be "opened" in a probate court. At that point, an Executor or Administrator will be appointed by the court, and this individual will have the authority to request medical records. Ask the person to return or have their attorney contact us when they are further along in the process and have an executor or administrator appointed.
- ✓ If they want the records to help diagnose or treat a relative of the deceased, explain that we can provide the deceased patient's record to the living relative's physician.
- ✓ Explain that a "Special Administrator" can be appointed by the court, just for the purpose of filling out paperwork (like an Authorization form). So it is not necessary to probate an entire estate just to have an Administrator appointed. A local attorney or legal aid society should be able to help them with this. It is a simple process.

Section V Patient Requests

Under HIPAA, patients have a right to access and request copies of their medical records. UAMS may charge patients a reasonable fee for copies.

Patients may also request that access to or disclosure of their health information be restricted. The patient must submit a written request, describing the information that is to be restricted, a statement about whether the restriction applies to use (within UAMS) or disclosure (outside of UAMS), and to whom the restriction will apply (for example, which clinic). Restrictions cannot be granted if they would restrict disclosures required by law (see Section III) or for payment purposes. If the patient's request is denied, the patient should be notified verbally (and documented) or in writing.

Patients may also request that their health record be amended, if for example, they feel that something is documented incorrectly. The request must be submitted in writing. UAMS must respond to the request within 60 days; therefore it is important to notify the Privacy Officer for your facility as soon as an amendment request is received. The Privacy Officer will work with the appropriate clinical staff to determine whether the amendment may be made (in the form of addendum to the record). If the amendment request is denied, the patient must be provided with a written response stating the reason for the denial and informing them of the appeal process.

Patients may request an accounting of disclosures, telling them all of the times that their health information was shared, except for treatment, payment, or healthcare operations, or when the disclosure was made pursuant to an Authorization. See the **Accounting for Disclosures Checklist** for a list of all of the disclosures that must be accounted for.

Accounting for Disclosures Checklist

- ✓ Arkansas Department of Health for TB, HIV, STD, or other infectious disease reporting.
- ✓ Arkansas Department of Health for State Health Data Clearinghouse reporting;
- ✓ Arkansas Department of Health, Division of Vital Records, for reporting of births or deaths;
- ✓ Office of Long Term Care Division of the Arkansas Department of Health and Human
- ✓ Services for purposes of investigating complaints or carrying out other authorized functions of that Office;
- ✓ FDA reporting for death, adverse event, or devices subject to tracking;
- ✓ Organ, eye and tissue donation agencies;
- ✓ Registries outside of UAMS which require disclosures, such as Cancer Registry,
- ✓ Immunization Registry, and Trauma Registry;
- ✓ Spinal Cord injury reporting;
- ✓ Cases of abuse/neglect requiring reporting to authorities;
- ✓ County Coroner or County Sheriff for sudden infant death cases;
- ✓ County Sheriff and City Policy to report intentional infliction of knife or gunshot wounds;
- ✓ U.S. Department of Health and Human Services for purposes of investigating or determining
- ✓ UAMS' compliance with HIPAA regulations;
- ✓ Coroners and Medical Examiners to identify a deceased person or to determine cause of death
- ✓ or to perform other duties authorized by law;
- ✓ State Crime Lab, if (1) specimen is accompanied by a label with PHI on it; and (2) release is
- ✓ performed without authorization;
- ✓ Funeral Directors;
- ✓ Courts or administrative agencies in response to subpoena, warrant, or similar process
- ✓ authorized by law;
- ✓ Other law enforcement purposes, such as providing PHI to law enforcement about a
- ✓ suspected or actual crime victim, and to avert a serious threat to the health or safety of a
- ✓ person or to the public (unless law enforcement has requested that accounting not be provided for a specified period of time);
- ✓ Disclosures to and by Business Associates with whom UAMS has a Business Associate agreement, only if the disclosures are not for an exempt purpose, such as for payment or health care operations of UAMS.