

HIPAA for HIM

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Overview

- The Health Insurance Portability and Accountability Act (HIPAA) definitions
- Verification
- Patient rights under HIPAA
- HIPAA Authorization for Release of Information elements
- When Authorization is not required
- Personal representatives

HIPAA Definitions

- **Authorization-** written permission from the individual to the covered entity, which allows use and disclosure of PHI for purposes other than treatment, payment, and health care operations. Authorizations require certain core elements to be included.

HIPAA Definitions

- **Covered Entities-** any health care providers, health plans, or clearinghouses that electronically transmit medical information such as billing, claims, enrollment, or eligibility verification must meet HIPAA guidelines. Covered entities also include medical practices, employers, rehabilitation centers, nursing homes, public health authorities, life insurance agencies, billing agencies, and some vendors, service organizations, and universities.

HIPAA Definitions

- **Legal Representative** - 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.

HIPAA Definitions

- **Minimum Necessary** – This refers to a limit of the amount of information included in transactions in order to complete a task or fulfill a record request.

HIPAA Definitions

- **Protected Health Information (PHI)** - medical information that contains any of a number of patient identifiers including name, Social Security number, telephone number, medical record number or ZIP code. The regulation protects all individually identifiable health information in any form (electronic, paper-based, oral) that is stored or transmitted by a covered entity. The definition in the rule retains the exception relating to individually identifiable information in “education records” governed by FERPA.

HIPAA Definitions

- **Treatment, Payment, and Health Care Operations (TPO)** - as defined by the Privacy Rule:
 1. “Treatment” generally means the provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another.
 2. “Payment” encompasses the various activities of health care providers to obtain payment or be reimbursed for their services and of a health plan to obtain premiums, to fulfill their coverage responsibilities and provide benefits under the plan and to obtain or provide reimbursement for the provision of healthcare.
 3. “Health care operations” are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment.

HIPAA Definitions

- **Use/Disclosure:**
 - “Use” means transfer of PHI *within* UAMS
 - “Disclosure” means transfer of PHI *outside* of UAMS

Verification of Identity & Authority

- Verification of Identity/Authority (Policy 3.1.28) verify the identity (who is it?) and the authority (do they have a right?) before disclosing PHI
- How far do you have to go to verify?

Patient Rights Under HIPAA

- Request to access or copy medical record (Policy 3.1.28)
- Request to amend medical record (Policy 3.1.32)
- Request to restrict access to medical record (Policy 3.1.34)
- Request for accounting of disclosure (Policy 3.1.26)

HIPAA Authorization

- 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 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.")

HIPAA Authorization

- All elements of the authorization must be present and filled out
- The HIPAA Office will audit these randomly
- Don't forget to verify identity and authority
- Remember you can refuse to honor an authorization

When Authorization Is Not Required

- Subpoenas
 - Patient authorization, or
 - Court order, or
 - Adequate assurances that the party whose PHI is requested has been given notice of the request with adequate time to object, and that no objection was made

When Authorization Is Not Required

- Policy 3.1.28 Agencies authorized by law to receive PHI only under specific circumstances and only to the extent authorized
 - Public health
 - Health oversight agencies (DHHS, licensing boards, etc.)
 - Coroners and medical examiners and funeral directors
 - Worker's compensation
 - Law enforcement

Adopted Infants

- Policy 3.1.28 Medical Records of Adopted Infants: The persons authorized in the Consent to Adoption such as the adoption agency or the adoptive parent's attorney may have the medical information and medical records of the infant. Refer to the Consent to Adoption to determine who is authorized.

Personal Representatives

- (Policy 3.1.28) Patient's Legal Representative: Except as provided by this Policy, UAMS must treat a patient's Legal Representative as the patient for purposes of the use and disclosure of the patient's PHI.

Personal Representatives

- The person is authorized by law to act on behalf of the patient in connection with the patient's health care decisions, such as:
 - Parent of their minor child;
 - 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.

Personal Representatives

- 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;
- For Incapacitated persons for whom there is no health care proxy or other authority, see to Ark. Code Ann. 20-17-214.

Personal Representatives

- Remember – verify identity and authority

Personal Representatives – Deceased Patients

- Release only to **legal** representative – a person (legal entity) authorized by Arkansas law to act on behalf of the estate
- Must have a court document (remember a will is not effective until probated)

Personal Representative – Deceased Patients

- Arkansas Code Annotated § 28-2-102 (a)(19) "Personal representative" means an executor or administrator

Personal Representatives – Deceased Patients

- "Probate" is the public process of:
 - Filing and validating a will in court
 - Paying all the debts and taxes of the deceased person
 - Dividing up the assets according to the will or Arkansas law

Personal Representatives – Deceased Patients

- Probate attorney
- VOCALS
(<http://www.arlegalservices.org/Home/PublicWeb/HelpLine/helpLineCALS>)
- Self-service
(<http://courts.state.ar.us/aoc/forms.cfm#PROBATE>)

Personal Representative – Permanently Unconscious or Terminally Ill

- Ark. Code Ann. § 20-17-202
 - Declaration signed by the patient and witnessed by 2 people
 - Appointment of health care proxy in declaration

Personal Representative – Permanently Unconscious or Terminally Ill

- When no health care proxy has been appointed
- Ark. Code Ann. § 20-17-214
 - Patient who, in the opinion of the attending physician, is no longer able to make health care decisions
 - Then in the following order:

Personal Representative – Permanently Unconscious or Terminally Ill

- (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.

UAMS HIPAA Office

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<http://hipaa.uams.edu>