

Release of Patient Information: HIPAA Considerations



UAMS REGIONAL PROGRAMS

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Use and Disclosure of PHI



Use and Disclosure of PHI and Medical Records

- UAMS Policy 2.1.13 covers use and disclosure of PHI
- This policy and all other HIPAA policies are available on UAMS intranet
- Sections of Policy 2.1.13 include:
 1. For UAMS Treatment, Payment and Operations
 2. Patient authorization form
 3. Disclosures to patient's legal representative
 4. Subpoenas
 5. Reporting to agencies

HIPAA Basics to Remember



Releases for UAMS 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**

Health Care Operations



Limited circumstances when UAMS can disclose PHI to another provider for that provider's health care operations:

- A. the provider either has or had a relationship with the individual who is the subject of the PHI being requested; and
- B. the PHI pertains to such relationship; and
- C. the disclosure is for one of the following two purposes:
 - (1) Quality assessment and improvement and other similar purposes;
or
 - (2) Accreditation, certification, licensing or credentialing activities, evaluating practitioner and provider performance, conducting training programs in which students, trainees, or practitioners learn under supervision to practice or improve their skills as health care providers.

The “Minimum Necessary Rule”



The “Minimum Necessary Rule” applies to all disclosures 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)**

Legal Representatives of Minors



- “the person authorized by law to act on behalf of the patient, such as the parent of a minor or a court-appointed guardian”
- UAMS must treat a patient’s Legal Representative as the patient for purposes of the use and disclosure of the patient’s protected health information
- Verify identity of legal representative – request demographic information and check signature on authorization form against other documents in medical record

Legal Representatives of Minors



- **Parent of minor child**
 - 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 Legal Representative for HIPAA purposes
- **Father**
 - Married to the mother
 - Listed as the father on the birth certificate
 - Court order establishing paternity
- **Court appointed guardian of a minor**
- **Minors who consent for themselves have same legal rights as adult patients**

Legal Representatives of Adults



- **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**
- **Ensure legal document giving authority to patient's representative is in effect**

Release of Records



- **Written Authorization is required for disclosures other than Treatment, Payment, Healthcare Operations (TPO) or when required or allowed by law**
 - 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")

Release of Records



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.**
- Be sure to check the dates on the document to ensure timely response**

Subpoenas



Subpoenas and discovery requests from parties in litigation 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; or
- When it is accompanied by a court order; or
- Written assurances that patient was notified of the subpoena for the patient's records, and the patient does not object to the production of the records, or the patient's objections were overruled by the court. To provide such written assurances, the party seeking the patient's records by subpoena must submit a written statement and documentation to UAMS showing that: (1) reasonable efforts were made by such party to ensure that the patient has been notified of the subpoena for the patient's records; (2) notice to the patient included sufficient information about the litigation or proceeding to permit the patient or patient's attorney to file objections with the court or administrative tribunal; (3) time for filing objections has elapsed; and (4) no objections were filed, or if objections were filed, the court or administrative tribunal ordered the disclosure, and a copy of the order should be provided.

Release of Records



Allowed or required by law:

- **Examples:**
 - Infectious disease reporting
 - Knife or gunshot wounds
 - Crime committed on the premises
 - Births and deaths occurring at UAMS
 - Coroners and medical examiners
 - Funeral directors
 - Child Maltreatment, Abuse or Neglect
 - Abuse of Elderly, Endangered or Impaired Adults
- **Must fill out Accounting for Disclosures Form**
- **Minimum necessary rule applies**

Coroners and Medical Examiners



UAMS may disclose PHI to coroners and medical examiners for the following purposes:

- **To identify a deceased person**
- **To determine a cause of death**
- **To the coroner or medical examiner to perform other duties authorized by law**

Funeral Directors



- **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**

Child Maltreatment, Abuse or Neglect



Disclosures Required by Law includes suspected child maltreatment, abuse or neglect

- Does not require patient's consent to disclose
- Required to report to DHS Ark Child Abuse Hotline
- DHS and law enforcement shall have access to medical records, photographs or videotapes relating to the existence or extent of the maltreatment, abuse or neglect
- Requires Accounting for Disclosures Form

Your HIPAA Office



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