HIPAA PRIVACY RULE: USE OF PROTECTED HEALTH INFORMATION FOR TREATMENT, PAYMENT AND HEALTH CARE OPERATIONS

I. Policy

A. General rule

The University of Southern California (USC) ¹ is permitted to use and disclose an individual’s Protected Health Information² (PHI) for treatment, payment and health care operations, provided:

1. USC gives patients a Notice of Privacy Practices (Notice), which describes the ways in which USC may use patients’ PHI;

2. USC makes a good faith effort to obtain written acknowledgement of receipt of the Notice; and

3. USC only uses and releases the minimum amount of health information necessary when doing so for payment or health care operations purposes.

Regardless of the general rule above, disclosures of HIV test results, certain mental health records, psychotherapy notes and alcohol and drug treatment records may require a separate patient authorization or notice. Refer to USC HIPAA Policy CLIN-203 for information regarding the disclosure of such information.

¹ For purposes of the HIPAA Privacy Rule, USC includes USC Norris Cancer Hospital, Keck Hospital of USC, USC’s employed physicians, nurses and other clinical personnel, those units of USC that provide clinical services within the School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as the Keck Doctors of USC, those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

² Protected Health Information is identifiable information that relates to an individual’s past, present or future physical or mental condition or to payment for health care.
B. **Discussions with or in the presence of family members/caregivers**

USC is permitted to disclose certain patient information to family members or caregivers if the patient is given an opportunity to object or if the patient’s consent to the disclosure can be clearly inferred from the circumstances.

C. **Disclosures over the telephone**

In general, USC employees should not give patient status information over the telephone. Employees may release PHI over the telephone only in very limited circumstances as described below.

II. **Procedures**

A. **Use or disclosure of PHI for treatment**

1. As a general rule, USC may use or disclose PHI in connection with treatment of a patient.

2. *Definition.*

   “Treatment” means the provision, coordination, or management of health care and related services by one or more Health Care Providers, including the coordination or management of health care by a Health Care Provider with a third party; consultation between Health Care Providers relating to a patient; or the referral of a patient for health care from one Health Care Provider to another.

B. **Use or disclosure of PHI for payment**

1. *General rule.*

   USC may use or disclose PHI for USC’s own payment activities.

2. *Definition of payment activities.*

   Payment activities shall mean activities to obtain or provide reimbursement for the provision of health care. Examples of payment activities include:
a. Determinations of eligibility or coverage;

b. Billing, claims management, collection activities;

c. Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

d. Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

e. Disclosure to consumer reporting agencies of any of the following PHI relating to collection of premiums or reimbursement:

i. Name and address;

ii. Date of birth;

iii. Social Security number;

iv. Payment history;

v. Account number; and

vi. Name and address of the Health Care Provider and/or Health Plan.

3. Disclosure for payment activities of another covered entity or health care provider.

USC may disclose PHI to another Covered Entity or a Health Care Provider for the payment activities of the entity that receives the PHI.

C. Use or disclosure of PHI for health care operations

1. General rule.

USC may use and disclose PHI for the purpose of USC’s own health care operations.
2. **Definition of health care operations.**

Health care operations means any of the following activities:

a. Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of Health Care Providers and patients with information about treatment alternatives; and related functions that do not include treatment;

b. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan 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, accreditation, certification, licensing, or credentialing activities;

c. Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;

d. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

e. Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
f. Business management and general administrative activities of the entity, including, but not limited to:

i. Management activities relating to implementation of and compliance with the requirements promulgated pursuant to HIPAA;

ii. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer;

iii. Resolution of internal grievances;

iv. Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a Covered Entity or, following completion of the sale or transfer, will become a Covered Entity; and

v. Consistent with the applicable requirements of § 164.514 of the Privacy Rule, creating de-identified health information, fundraising for the benefit of the Covered Entity, and marketing for which an individual authorization is not required as described in § 164.514(e)(2).

3. Disclosure for health care operations of another covered entity.

USC may disclose PHI to another Covered Entity for Health Care Operations of the entity that receives the PHI, if all of the following conditions are met:

a. Both USC and the receiving entity either has or had a relationship with the patient who is the subject of the PHI being requested;

b. The PHI pertains to such relationship; and

3. The disclosure is either:
i. For either purpose of health care fraud and abuse detection or compliance; or

ii. For either of the following purposes:

(A) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of Health Care Providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(B) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan 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, accreditation, certification, licensing, or credentialing activities.

D. Disclosures to family/patient caregivers

1. General rule.

Subject to the limitations below, USC employees may disclose relevant PHI to a family member, other relative, or close personal friend of the patient, or any other person designated by the patient, or use or disclose the patient’s PHI in order to notify the patient’s family member (or other person responsible for the patient’s care) of the patient’s location, general condition or death. USC may disclose the patient’s PHI to public or private entities authorized by law or its charter to assist in disaster relief.
efforts in order to coordinate the notification efforts described in this Section.

2. **Limitations.**

   a. USC employees may not disclose any portion of the PHI that is not relevant to the patient’s current condition or the caregiver’s role.

   b. USC employees should not assume that a patient’s agreement or lack of objection implies agreement to disclose PHI indefinitely in the future.

3. **Disclosure permitted where patient agrees to disclosure.**

   Where a patient is present for and capable of agreeing to the disclosure, USC faculty and staff may disclose the patient’s PHI only in the following situations:

   a. **Agreement.** The patient agrees to the disclosure; or

   b. **No objection.** The patient does not express an objection to the disclosure when given the opportunity to do so; or

   c. **Reasonable inference.** The USC faculty or staff member reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

      i. Generally, when possible, a USC employee should ask the patient (outside the presence of the family member, close personal friend, etc.) whether the patient objects to such person’s presence during a procedure or discussion.

      ii. Reliance on inferences should be infrequent and based on sound clinical judgment.

      iii. **Example of reasonable inference:** if a patient’s family member is in the same room as patient during a procedure, staff typically can infer that disclosures to the family member are appropriate.
4. *Disclosure permitted when patient is unable to agree but disclosure is in patient’s best interest.*

Where a patient is not available or cannot agree or object to a use or disclosure because of incapacity or emergency, appropriate USC staff may disclose PHI as follows:

a. USC faculty or staff determine, in the exercise of professional judgment, that the disclosure is in the best interest of the patient. (For example, pharmacy staff may infer that it is in the best interests of patient to allow another person to pick up a prescription on behalf of patient.)

b. The disclosure is limited only to PHI directly relevant to the person’s involvement in the patient’s health care.

E. **Disclosures over the telephone.**

In general, USC employees should not give patient status information to a person over the telephone. Employees may release PHI over the telephone only in very limited circumstances, such as the following:

1. When the staff member recognizes the voice of a person who had previously been identified by a patient.

2. In order to facilitate immediate treatment or to interpret the health care practitioner’s instructions to a person who is assisting the patient, and only after the health care practitioner has determined that the patient is unavailable (and therefore cannot give consent) and has determined that it is in the best interest of the patient to disclose the PHI.

The PHI disclosed over the telephone should be limited to the information directly relevant to the person’s involvement in the patient’s care. If more detailed information is requested, the health care practitioner should make an appointment with the patient and the person requesting the information.

**Additional References**

45 CFR §§ 164.506; 164.510(b); 164.520