

HIPAA PRIVACY RULE: ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

I. POLICY:

A. General Right to Request Accounting

This policy describes the process for responding to a patient's request for an accounting of disclosures of his or her Protected Health Information.¹

Upon a written request by the patient or the patient's Personal Representative,² the University of Southern California (USC)³ will provide the requestor with an accounting of all disclosures of Protected Health Information (PHI) about the patient made by USC or a business associate of USC as described below. The patient is entitled to receive an accounting of disclosures of PHI made during the six (6) year period immediately prior to the date of the request for an accounting. The content of the accounting will comply with this policy.

B. Disclosures Requiring an Accounting. USC must account for disclosures of PHI made without a patient authorization, except as set forth below. Generally, these disclosures fall into the following categories: (1) certain disclosures of PHI related to research; and (2) public policy disclosures. USC also must account for inadvertent or erroneous disclosures of PHI.

1. Disclosures of PHI for Research.⁴ USC must account for the following disclosures of PHI for research purposes:

¹ Protected Health Information is defined as identifiable information that relates to the individual's past, present or future physical or mental health condition or to payment for health care.

² To determine whether an individual is a Personal Representative as defined by the HIPAA Privacy Rule, please refer to USC HIPAA Policy CLIN – 202, "Personal Representatives of Patients."

³ For purposes of the HIPAA Privacy Rule, USC includes those entities that comprise Keck Medicine of USC, including but not limited to, 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 Keck School of Medicine, School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as USC Care Medical Group, affiliated medical foundations of Keck and their physicians, nurses and clinical personnel, USC Verdugo Hills Hospital, its nurses and other clinical personnel, Verdugo Radiology Medical Group, Verdugo Hills Anesthesia, and Chandnish K. Ahluwalia, M.D., Inc. and those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

⁴ For further information, please refer to USC HIPAA Policy RES – 301, "Uses and Disclosures of Protected Health Information for Research Purposes."

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- Pursuant to IRB approved waiver of the HIPAA authorization;
 - Pursuant to an Investigator certification that the use of PHI is “preparatory to research”;
 - Pursuant to an Investigator certification that he/she is conducting decedent research.
2. IRB Waiver Exception. For research protocols that have received an IRB approved waiver of the HIPAA authorization and require disclosure of PHI maintained by USC for fifty (50) individuals or more, USC may instead provide the following accounting for those records:
- The name of the protocol or other research activity;
 - A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
 - A brief description of the type of Protected Health Information that was disclosed;
 - The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
 - The name address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
 - A statement that the Protected Health Information of the individual may or may not have been disclosed for a particular protocol or other research activity.
3. Public Policy Disclosures.⁵ USC must account for the following disclosures of PHI that may be made without a HIPAA authorization:
- a. Public Health Activities. To a public health authority that is authorized by law to collect information for the purpose of preventing or controlling disease, injury or disability;
 - b. Child Abuse Reporting. To a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

⁵ For further information, please refer to USC HIPAA Policy GEN – 103, “Uses and Disclosures of Protected Health Information that Do Not Require an Authorization.” **DO NOT RELEASE INFORMATION FOR ANY OF THESE REASONS WITHOUT FIRST REVIEWING THIS POLICY. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE USC OFFICE OF COMPLIANCE.**

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- c. Elder and Dependent Abuse Reporting. To a governmental authority authorized by law to receive reports of elder and dependent Abuse reporting;
- d. Injuries by Firearms, Assaultive or Abusive Conduct. To local law enforcement agencies, when treating persons with injuries believed to be caused by firearms, assaultive or abusive conduct;
- e. FDA Reporting. To a person subject to the jurisdiction of the Food and Drug Administration;
- f. Communicable Disease Exposure Notification. To a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;
- g. Employment-Related Disclosure. To an employer, about an patient who is a member of the workforce of the employer, in connection with a legal action or claim in which employer and employee are parties and the employees has placed medical history, treatment or condition in issue or to describe functional limitations of the employee relating to medical leave or the employee's fitness to perform a particular job;
- h. Health Oversight Activities. To a health oversight agency for oversight activities authorized by law, including audits; civil, administrative or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative or criminal proceedings or actions; or other activities necessary for appropriate oversight of: (i) the health care system; (ii) government benefit programs for which health information is relevant to beneficiary eligibility; (iii) entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or (iv) entities subject to civil rights laws for which health information is necessary for determining compliance;
- i. Judicial and Administrative Proceedings. In the course of any judicial or administrative order of a court, subpoena or discovery request;

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- j. Law Enforcement. To a law enforcement official pursuant to a judicial or administrative order or search warrant;
- k. Coroner or Medical Examiner. To a coroner or medical examiner to assist such official in authorized duties;
- l. Funeral Directors. To a funeral director to assist such individual in carrying out his or her duties;
- m. Organ and Tissue Procurement. To an organ procurement organization for organ, eye or tissue donation purposes;
- n. Threat to Health or Safety. To a third party to prevent serious threat to health or safety;
- o. Military and Veterans Activities. To appropriate U.S. or foreign military command authorities regarding an individual who is a member of U.S. or foreign armed forces;
- p. Protective Services. To authorized federal government officials for the provision of protective services to the President of the United States, foreign heads of state and certain other government officials and to conduct investigations related to such protective services;
- q. Workers' Compensation. As authorized by and to comply with workers' compensations laws (i.e., laws that provide compensation for work-related injuries and illnesses regardless of fault);
- r. Licensing Purposes. To a third party private or public body responsible for licensing of a health care provider or health plan.
- s. Breach. The result of a Breach of Protected Health Information, as described in USC HIPAA Policy, "Breach of Protected Health Information"; and
- t. Required By Law. As required by law, as described in USC HIPAA Policy GEN – 103, "Uses and Disclosures of Protected Health Information that Do Not Require an Authorization."

C. Exceptions from Accounting Requirement. USC is **not** required to provide a patient an accounting of disclosures of Protected Health Information that were made for the following purposes:

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1. To carry out Treatment, Payment and Health Care Operations,⁶ as described in USC HIPAA Policy CLIN – 201, “Uses and Disclosures of Protected Health Information for Treatment, Payment and Health care Operations”;
2. To the patient;
3. To Business Associates who have entered into a Business Associate Agreement, provided that the disclosure is used for treatment, payment, or healthcare operations;
4. Incident to a use or disclosure otherwise permitted, as described in USC HIPAA Policy GEN – 104, “Limiting Uses and Disclosures of Protected Health Information to the Minimum Necessary”;
5. Pursuant to a HIPAA compliant Authorization in accordance with USC HIPAA Policy GEN – 102, “Obtaining Authorizations for Uses and Disclosures Other than Treatment, Payment and Health care Operations”;
6. To a family member, caregiver or Personal Representative for purposes related to treatment, payment of health care operations, in accordance with USC HIPAA Policies CLIN – 201 “Uses and Disclosures of Protected Health Information for Treatment, Payment and Health care Operations,” and CLIN – 202, “Personal Representatives of Patients”;
7. To the Facility Directory;
8. For national security or intelligence purposes;
9. To correctional institutions or law enforcement officials having lawful custody of an inmate or other individual protected health information about such inmate or individual, provided that the use or disclosure is for the provision of health care, health and safety of the individual or other inmates or persons responsible for transporting inmates, for law enforcement on the premises and for maintaining the good order of the

⁶ On May 31, 2011, the Department of Health and Human Services published a Proposed Rule for covered entities who maintain an electronic health record (EHR). The Proposed Rule would require that covered entities account for disclosures of PHI, *including* disclosures to carry out treatment, payment or health care operations, if made through an EHR. The Proposed Rule would also provide patients the right to receive an “access report” for uses and disclosures of their electronic PHI in a designated record set. In addition, the period of time that a covered entity must account for disclosures would be decreased from six years to three years prior to the date of the request. As USC presently maintains some PHI in an EHR, these changes would apply to USC if and when final regulations are promulgated, and this Policy will be updated accordingly.

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correctional institution; or

10. As part of a limited data set in accordance with USC HIPAA Policy RES – 301, “Uses and Disclosures of Protected Health Information for Research Purposes”.

D. Required Exceptions. USC must temporarily suspend a patient’s right to receive an accounting of disclosures that were made to a health oversight agency or law enforcement official if the health oversight agency or law enforcement official informs USC that providing such an accounting to the patient would be reasonably likely to impede such agency’s or official’s activities. The terms and length of such suspension will be as follows:

1. Written Request. The length of time specified in a written request for a suspension that USC receives from the health oversight agency or law enforcement official.
2. Oral Request. Thirty days from the date of the health oversight agency’s or law enforcement agency’s oral request for a suspension, unless USC receives a written request during such 30 day period, in which case USC will continue the suspension for the length of time specified in such written request. In the event that USC receives an oral request, it must document the occurrence of the request, including the identity of the agency or official making the request.

II. PROCEDURES:

A. Request for an Accounting. The patient or his or her Personal Representative that requests an accounting must make a request **in writing** on USC’s *Request for Accounting* Form. A copy of USC’s “*Request for Accounting*” Form can be downloaded from the USC policies website at <http://policy.usc.edu/hipaa>.

B. Referral to the Department Clinic Manager or the Health Information Management Office and Notification to the Office of Compliance. Patient requests for an accounting should be referred to the Department Clinic Manager or the Health Information Management Office who will be responsible for responding to the patient’s request, with additional coordination with the Risk Department, as necessary. The Department Clinic Manager or the Health Information Management Office should immediately notify the Office of Compliance upon receipt of any request for an accounting.

C. Requests to be in Writing. If a patient makes an oral request, the Department Clinic Manager or the Health Information Management Office should inform the

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patient that such requests must be made in writing. In addition, a copy of USC's *Request for Accounting* Form should be provided to the patient. The Department Clinic Manager or the Health Information Management Office may refuse an oral request for an accounting on the basis that such request is oral and not written.

D. Process for Handling Requests for Accounting. The Department Clinic Manager or the Health Information Management Office will be responsible for:

- Requesting that each relevant USC clinical unit provide copies of their accounting logs;
- Arranging delivery of the accounting to the patient;
- Documenting the response to the request.

The Health Information Management Office or the Department Clinic Manager is responsible for handling denials of requests for accounting and also for determining and collecting from the patient the fees to be charged to respond to the request for accounting.

E. Content of the Accounting. The patient should be provided with a written accounting that includes all of the following information:

- The date of the disclosure;
- The name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person;
- A brief description of the Protected Health Information disclosed; and
- A brief statement of the purpose of the disclosure that reasonably informs the patient of the basis for the disclosure.

F. Timing of Response. The Department Clinic Manager or the Health Information Management Office shall act on a patient's request no later than sixty (60) days after its receipt of the request. If USC is unable to act on the request within sixty (60) days, USC may request an extension of no more than thirty (30) days by providing the patient with a written statement indicating the reasons for the delay and the date by which USC will respond. USC may have only one such thirty (30) day extension.

G. Fee for Accounting. USC, through the Department Clinic Manager or the Health Information Management Office, will provide the first accounting to a patient in any twelve (12) month period without charge in connection with processing and producing the requested accounting. For each subsequent request for an accounting during such twelve (12) month period, USC may charge the patient a reasonable cost-based fee for expenses incurred in copying and completing the

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requested accounting (i.e., clerical costs), provided that the Department Clinic Manager or the Health Information Management Office advises the patient in advance of the fee and provides the individual with an opportunity to withdraw or modify the request in order to reduce or avoid the fee.

H. Multiple Disclosures Exception. If, during the accounting period (6 years from the date of request, unless the patient requests an accounting for a shorter time period), USC has made three (3) or more disclosures of Protected Health Information to (1) the same person or entity (other than the patient), or (2) the Secretary of the U.S. Department of Health and Human Services, the written accounting may, with respect to such multiple disclosures, contain the following:

1. The information listed above for the first disclosure during the accounting period;
2. The frequency or number of the disclosures made during the accounting period; and
3. The date of the last such disclosure during the accounting period.

I. Retention of Accounting. The Department Clinic Manager or the Health Information Management Office shall retain a copy of the *Accounting Request* Forms as well as any other written correspondence to and from the patient relating to the accounting in the patient's record(s) for a period of six years from the date the accounting request is received or the date the written accounting is created, as applicable.

III. INTERNAL PROCEDURES FOR TRACKING DISCLOSURES OF PHI

A. Department Clinic Manager or Health Information Management Office Approval. A clinical unit should not release PHI without an authorization (except for treatment, payment and health care operations purposes) without the approval of the Department Clinic Manager or the Health Information Management Office, in coordination with Risk Management, as appropriate. Questions relating to appropriate release of PHI should be referred to the USC Office of Compliance for further assistance.⁷

⁷ Please note that requests for PHI for non-TPO purposes can come in many forms, including requests for patient records, billing records, IDX information or other reports from the relevant provider billing system, database information, etc.

B. Preparation of Accounting Log. Before releasing PHI without an authorization (except for treatment, payment and health care operations purposes or other exceptions set forth above), the Department Clinic Manager or the Health Information Management Office, will arrange to complete USC's "HIPAA Privacy Rule Accounting Log," in connection with that disclosure. The accounting log contains the information that USC must provide to the patient or the patient's Personal Representative upon request for an accounting, pursuant to this policy.

C. Disclosures of PHI without an Authorization for Research Purposes. Before disclosing PHI pursuant to:

- A USC IRB approved waiver of HIPAA authorization;
- An investigator certification that the PHI relates to "preparatory to research"; or
- An investigator certification that the PHI relates to decedents research

the Department Clinic Manager or the Health Information Management Office shall require the investigator to provide a copy of the IRB's written waiver or USC's template investigator certification for "preparatory to research" or decedents research activities, depending on the research being conducted.⁸ The purpose of this requirement is to ensure that USC is complying with its policies and procedures relating to the HIPAA Privacy Rule.

D. Internal Protocols. Each clinical unit covered by the HIPAA Privacy Rule shall follow the protocols set by the Office of Compliance and the Health Information Management Office for ensuring compliance with this policy. The USC Office of Compliance shall monitor compliance with this provision.

Additional References:

45 C.F.R. § 164.528

Responsible Office:

Office of Compliance

<http://ooc.usc.edu>

complian@usc.edu

(213) 740-8258

⁸ See USC HIPAA Policy RES – 301, "Uses and Disclosures of Protected Health Information for Research Purposes," and USC's template forms relating to research at <http://ooc.usc.edu> or <http://policy.usc.edu/hipaa>.

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