

HIPAA PRIVACY RULE: PUBLIC POLICY DISCLOSURES THAT DO NOT REQUIRE A PATIENT AUTHORIZATION

I. Policy

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and applicable California law permits the University of Southern California (USC)¹ to disclose an individual's Protected Health Information² (PHI) without obtaining an individual's authorization in the following situations:

A. Treatment, payment, health care operations

USC may use or disclose PHI for treatment, payment and health care operations without an individual's authorization in accordance with USC HIPAA Policy CLIN – 201 and USC's Notice of Privacy Practices, provided the individual has acknowledged receipt of USC's Notice of Privacy Practices or USC has made good faith efforts to obtain the individual's acknowledgement of receipt.

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.

B. Public health activities

USC may disclose PHI for the public health activities and purposes described below:

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 health condition or to payment for health care.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

1. To a public health authority that is authorized by law to collect or receive PHI for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.
2. At the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority.
3. To a person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity, including:
 - a. To collect or report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
 - b. To track FDA-regulated products;
 - c. To enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products that have been recalled, withdrawn, or have other problems); or
 - d. To conduct post-marketing surveillance.
4. To alert 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 USC or the public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.
5. To public or private entities providing relief or assistance in disasters, for the purpose of coordinating with such entities the notification of family or other persons responsible for the care of the individual or of the individual's location, general condition or death. However, disclosures for these purposes are limited to basic information such as patient's name, city of residence, age, sex and general condition.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

C. Reporting of abuse or neglect

1. Child Abuse³: USC⁴ is required to report to designated child protective agencies, when it has knowledge of, or observes a child whom it knows or reasonably suspects has been the victim of child abuse or neglect.
2. Elder and Dependent Adult Abuse⁵: USC⁶ is required to report to local law enforcement agencies, when it has knowledge of, or suspects the abuse of elders or dependent adults. USC's reporting shall comply with Section I.C.4. below of this policy.
3. Injuries by Firearms, Assaultive or Abusive Conduct⁷: USC⁸ is required to report to local law enforcement agencies, when it treats persons with injuries believed to be caused by firearm or assaultive or abusive conduct as defined in California Penal Code section 11160 et seq. USC's reporting shall comply with Section I.C.4. below of this policy.
4. USC only may report abuse under Section I.C.2 or 3:
 - a. To the extent that that disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law; or

³ California Penal Code Section 11164 et. seq.

⁴ Mandated reporters under state law include "A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code."

⁵ California Welfare and Institutions Code Section 15610, 15630 et. seq.

⁶ Mandated reporters under state law include "administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency."

⁷ California Penal Code Section 11160 et seq.

⁸ Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately report: (1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm; or (2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

- b. If the individual agrees to the disclosure; or
 - c. To the extent the disclosure is expressly authorized by statute or regulation; and
 - (1) If the individual is unable to agree due to incapacity, a law enforcement officer or other public official authorized to receive the report represents that the PHI for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; or
 - (2) USC believes, in the exercise of professional judgment, that the disclosure is necessary to prevent serious harm to the individual or other potential victims.
5. Once the abuse is reported under Section I.C. 2 or 3, USC must promptly inform the individual that such a report has been or will be made, except if:
- a. USC, in the exercise of professional judgment believes that informing the individual would place the individual at risk of serious harm; or
 - b. USC would be informing a personal representative, and USC reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by USC, in the exercise of professional judgment.

D. Employers' activities

USC may disclose PHI to an employer about an individual who is a member of that employer's workforce if the health care services rendered to the employee were conducted at the specific, prior, written request and expense of the employer, and:

- 1. The PHI is relevant in a lawsuit, arbitration, grievance, or other claim to which the employer and employee are parties and in which the patient has

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

placed in issue his or her medical history, condition or treatment, provided that the information may only be used or disclosed in that proceeding; or

2. The PHI describes functional limitations of the patient that may entitle the patient to medical leave or describe limitations on the patient's fitness to perform a particular job.

E. Health oversight activities

USC may disclose PHI to a health oversight agency⁹ for oversight activities¹⁰ 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:

1. The health care system;
2. Government benefit programs for which health information is relevant to beneficiary eligibility;
3. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
4. Entities subject to civil rights laws for which health information is necessary for determining compliance.

F. Judicial and administrative proceedings

There are typically two ways in which USC will disclose PHI to a court, an administrative tribunal, or to a party to an action, as described below. Unless otherwise indicated by USC policy, the legal requests discussed below should be

⁹ Health oversight agencies include: an agency or authority of the United States, a State or territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting including the employees or agents of such public agency, contractors or persons or entities to whom it has granted system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

¹⁰ A health oversight activity does not include investigations or other activities in which an individual is the subject of the investigation or activity and such investigation or activity neither arises out of nor is directly related to the individual's (1) receipt of health care, (2) claim for public benefits related to health, or (3) qualification for or receipt of public benefits or services when a patient's health is integral to the claim for benefits or services, unless the claim is conducted in conjunction with a health oversight activity.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

provided to the USC Office of the General Counsel for its review and direction prior to the disclosure of PHI.

1. *Judicial or administrative orders.*

USC must disclose PHI pursuant to an order of a court or administrative tribunal relating to a judicial or administrative proceeding.

2. *Subpoenas or discovery requests.*

USC must disclose PHI pursuant to a subpoena or other discovery request that is not accompanied by an order of a court or administrative tribunal only if USC receives satisfactory assurance from the party seeking the information that reasonable efforts have been made to ensure that the individual whose PHI has been requested has been given appropriate notice¹¹ of the request.

G. Law enforcement officials

There are two ways in which USC will typically disclose PHI to law enforcement officials. Unless otherwise indicated by USC policy, the legal requests discussed below should be provided to the USC Office of the General Counsel for its review and direction prior to the disclosure of PHI.

1. *Judicial or administrative order.*

USC must disclose PHI to law enforcement officials pursuant to an order of a court or administrative tribunal. Such an order may be the only document presented, or it may be accompanied by an administrative subpoena, summons, investigative demand or other similar process authorized under law. (Except as otherwise required under mandatory reporting laws, disclosure of PHI to law enforcement officials regarding a victim of a crime, or PHI that may assist law enforcement officials in identifying or locating a suspect, fugitive, material witness or missing person, requires an order of a court or administrative tribunal.)

2. *Search warrant.*

USC must disclose PHI to law enforcement officials pursuant to a valid

¹¹ Appropriate notice means full compliance by the requesting party with California Code of Civil Procedure Section 1985.3.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

search warrant. Special rules apply to a search warrant seeking PHI for documentary evidence in the possession of a physician or psychotherapist.

H. Decedents

USC may disclose PHI about decedents to coroners and funeral directors as follows:

1. *Coroners:*

USC is required to disclose PHI to a coroner or medical examiner in the course of an investigation for the purpose of identifying the decedent or locating next of kin, or when investigating deaths, or when authorized by the decedent's representative. USC may also disclose PHI to a county coroner upon request for purposes not listed above, if the disclosure is made in the course of an investigation by that office.

2. *Funeral directors:*

- a. USC may disclose PHI to a funeral director, as necessary for the funeral director to carry out his/her duties with respect to the decedent.
- b. USC may disclose PHI to a funeral director prior to and in reasonable anticipation of the individual's death.
- c. USC is required to disclose to a funeral director removing the body, if the decedent died of a reportable disease.

I. Organ and tissue procurement

USC may disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissues for the purpose of facilitating or aiding organ, eye or tissue donation and transplantation. This exception to the authorization requirement does not allow disclosures in connection with live donor activities.

J. Research

USC may use or disclose PHI without the individual's consent or authorization in accordance with USC HIPAA Policy RES - 301.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

K. Health or safety

USC may, consistent with applicable law and standards of ethical conduct, use or disclose PHI if it believes in good faith, that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the use or disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. USC is presumed to have acted in good faith in making such disclosure, if the belief is based upon actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

L. Specialized government functions

1. *Military and veterans activities:*

USC may use and disclose the PHI of individuals who are armed forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. Uses and disclosures regarding foreign military personnel are authorized on the same basis. Certain disclosures also are authorized in connection with separation or discharge from military service (limited to components of the Department of Defense or Department of Transportation for certain disclosures to the Department of Veterans Affairs regarding veterans eligibility for benefits).

2. *National security and intelligence activities:*

USC may disclose PHI to authorized federal officials for the conduct of intelligence, counter-intelligence, and other national security activities authorized by the National Security Act and implementing authority (for example, Executive Order 12333).

3. *Protective services for the President and others:*

USC may disclose PHI to authorized federal officials for the provisions of protective services to the President or other persons as authorized by 18 U.S.C. § 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. § 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. §§ 871 and 879.

Contact the Office of General Counsel for assistance in responding to these requests.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

M. Correctional institutions

USC may disclose PHI of an inmate or individual to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual, if the correctional institution or such law enforcement official represents that the PHI is necessary for:

1. the provision of health care to such individuals;
2. the health and safety of such individual or other inmates;
3. the health and safety of officers or employees of, or others at the correctional institution or those persons responsible for the transporting of inmates;
4. law enforcement on the premises of the correctional institution; or
5. the administration and maintenance of the safety, security and good order of the correctional institution.

N. Workers' Compensation

USC may disclose PHI as authorized by, and to the extent necessary to comply with California law relating to workers' compensation or other similar programs, including the right of the Workers' Compensation Appeals Board to receive physician reports. In addition, the Workers' Compensation Appeals Board is authorized to issue subpoenas for the attendance of witnesses and the production of records in any workers' compensation inquiry, investigation, hearing or proceeding in California.

O. Accreditation purposes

USC may disclose PHI to any private or public body responsible for accreditation of the health care provider or health plan. However, in doing so, PHI may not be removed from the premises, nor may the accrediting body make any further disclosures of the PHI.

P. Licensing purposes

USC may disclose PHI to any private or public body responsible for licensing the health care provider or health plan. However, in doing so, PHI may not be removed from the premises, nor may the licensing body make any further disclosures of the PHI. In addition, the California Department of Health Services

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

may enter and inspect health care facilities in order to secure compliance with California licensing requirements and to conduct periodic inspections, including the authority to examine the records of individual patients.

Q. Peer review purposes of other entities

USC may disclose PHI about an individual to another entity for peer review purposes of another entity, but only if:

1. USC and the other entity are joined through a recognized arrangement such as an organized health care arrangement (OHCA) that permits the sharing of such PHI without an authorization; or
2. USC and the recipient entity have or had a relationship with the patient whose PHI would be shared, and to the extent that the disclosure is either for health care fraud and abuse detection or compliance or for one or more of the following health care operations:
 - a. Conducting quality assessment and improvement activities (including outcomes evaluation and development of clinical guidelines);
 - b. 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;
 - c. Evaluating and reviewing the qualifications and performance of professionals and plans, conducting graduate medical training programs; training non-health care professionals, accreditation, certification, licensing, and or credentialing activities.

R. Mental health and developmental disability information

PHI relating to mental health and developmental disability treatment governed under state law may not be disclosed except as set forth in USC HIPAA Policy CLIN – 203, “Special Privacy Considerations.” There are a number of exceptions to this prohibition; consult with the Office of General Counsel or Office of Compliance if you have any questions regarding those exceptions.

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

Additional References

45 C.F.R. §§164.501, 164.510, 164.512

Responsible Office: Office of Compliance
<http://ooc.usc.edu/>
complan@usc.edu
(213) 740-8258

Issued by: Elizabeth Garrett
Provost and Senior Vice President,
Academic Affairs

Todd R. Dickey
Senior Vice President, Administration

Date issued: November 15, 2011

University of Southern California
Page 11 of 11