

POLICIES AND PROCEDURES REGARDING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

ALL PERSONS WHO HANDLE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AND/OR ELECTRONIC PROTECTED HEALTH INFORMATION (PHI) ARE EXPECTED TO KNOW AND ABIDE WBY THE FOLLOWING POLICIES AND PROCEDURES.

USES AND DISCOSURES OF PROTECTED HEALTH INFORMATION

There are two (2) types of disclosures, "permitted" and "required"; each will be explained below.

Further, certain requests for disclosure will require you to limit the information provided to the MINIMUM NECESSARY INFORMATION needed to satisfy the request or to complete the task for which the information is relevant. Those instances will be identified.

I. PERMITTED USES OR DISCLOSURES

Permitted disclosure of Psychotherapy Notes requires specific authorization from the patient. Authorization for disclosure of Psychotherapy Notes cannot be combined with any other authorization except another authorization for disclosure of Psychotherapy Notes.

The following instances are the only "permitted" uses and disclosures of PHI, in addition to those instances wherein disclosure is "required" (required disclosure will be discussed later). Further, permitted disclosure shall be limited to the minimum necessary information required to satisfy the request or to complete the task for which the information is relevant; however, there are 4 exceptions listed on page 2.

PHI is permitted to be used or disclosed:

1. For treatment, payment or healthcare operations (TPO), as permitted under the Privacy Regulations; or
2. Incidental to a use or disclosure otherwise permitted or required under the Privacy Regulations; or
3. With a valid authorization (Informed Consent to Release Information); or
4. Pursuant to an agreement, as allowed under the Privacy Regulations, regarding those uses and disclosures that require an opportunity for the individual to agree or to object to the use or disclosure; or
5. When Center for Family Psychiatry (CFFP) believes the disclosure is necessary to prevent serious harm to the individual or other potential victim; or
6. As otherwise permitted by, and in compliance with, the Privacy Regulations.

Exception: disclosure is not limited to the minimum necessary information in the following instances:

1. For treatment purposes.
2. Information requested pursuant to a valid authorization by the individual who is the subject of the data.
3. For compliance with standardized HIPAA transactions.
4. For instances otherwise required or authorized by law.

A. WORKFORCE ACCESS TO PHI

Staff access to PHI shall be limited to:

1. Employees who have a specific work function need for the information and for the purpose of completing that work function, and shall be based on the individual's role in the clinic;
2. The category or categories of PHI necessary to complete the work function;
3. Employees and/or contractors engaged in payment and collections and shall be limited to only the minimum information required for billing and collections procedures. This policy shall apply to checks collected, credit and debit receipts, envelopes, statements and invoices sent to consumers.
 - a) Auditors are subject to the "minimum necessary" standard and will be provided PHI only to the extent necessary for audit purposes. drafts, notes, and preliminary drafts created, collected, and maintained by the agency's internal auditing officer are considered confidential if the information pertains to individuals, and the are considered protected nonpublic information if they do not pertain to individuals until the final report has been published or the audit or investigation is no longer being pursued actively. Thereafter, the information's classification reverts back to its pervious classification.

B. REQUESTS FOR USES OR DISCLOSURES OF PHI

1. Any request from any person for PHI must include the requestor's name, and unique identifier, and must specifically identify the information requested.
2. The clinic will not release the entire record unless necessary, as determined by these policies and procedures.
3. Staff may rely on the belief that the PHI requested is the minimum amount necessary to accomplish the purpose of the request if:
 - a) The information is requested by another person previously approved for access; or
 - b) The information is requested by a HIPAA covered entity; or
 - c) The information is requested by a professional, such as an attorney or an accountant, providing professional services either as an employee or as a business associate of the CFFP; or
 - d) Making a disclosure to a public official who represent that the information is the minimum necessary or is required by law; or
 - e) An institutional review board or privacy board represents in writing that the proposed research meets the minimum necessary standard.

II. REQUIRED DISCLOSURES

CFFP is required to disclose PHI in the following instances;

1. When the patient request his/her PHI in accordance with these policies and procedures; or
2. If the patient requests an accounting in accordance with these policies and procedures; or
3. If the U.S. Secretary of Health and Human Services and designated representatives request access to PHI in accordance with these policies and procedures regarding compliance reporting, reviews and access to information.

A. DISCLOSURES REQUIRED BY LAW

1. Disclosures Ordered by a Court or Administrative Tribunal

The "minimum necessary" standard does not apply to disclosures ordered from an administrative tribunal or by court order. However, only the information directly requested by such an order shall be provided.

In accordance with the requirements and restrictions outlined in this policy, CFFP may disclose PHI in the course of any judicial or administrative proceeding, in response to:

- a) An order of a court or tribunal; or
- b) A subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or tribunal unless prohibited by the Data Practices Act or other law.

Exceptions;

1. The provisions of this policy do not take precedence over other requirements of the Privacy Regulations with respect to the use and disclosure of PHI or the Data Practices Act.
2. Workforce members must implement this policy in conjunction with other policies that address permitted uses and disclosures. When another policy has stricter provisions regarding the disclosure of PHI, the workforce member must comply with the requirements of the stricter policy.

Required Assurances:

To disclose PHI in the course of a judicial or administrative proceeding, CFFP must receive written statements and supporting documentation from the party seeking the disclosure assuring either:

1. The party attempted to notify the individual about whom the PHI was requested, that the disclosure had been requested: and

- a) A good-faith effort to deliver the notice to the individual was made (or, if the individual's whereabouts were unknown, the notice was mailed to the individual's last known address);
 - b) The notice contained sufficient information about the legal proceeding to permit the individual to raise an objection to the court or tribunal;
 - c) The time for the individual to raise an objection with the court or tribunal has run out, and
 - i. No objections were filed; or
 - ii. The court or tribunal has resolved all filed objections and the resolutions were consistent with the disclosures being sought.
2. Reasonable effort was made by the party requesting the disclosure to secure a qualified protective order (an order of a court or tribunal, or stipulation between the parties involved in the proceeding) that:
- a) Prohibits either party from disclosing the relevant PHI for any purpose other than called for in the proceeding, and
 - b) Requires the return or destruction of the PHI (including all copies) at the end of the legal proceedings.

CFFP Attorney Consultation:

No action should be taken on an order of a court or tribunal, subpoena, discovery request, or similar directive until it has been reviewed by CFFP attorney's office and direction is provided on how to respond.

2. PHI About a Victim of a Crime or Abuse

The "minimum necessary" standard shall apply to information released to law enforcement regarding victims of crime, abuse, neglect, or domestic violence. CFFP staff may reasonably rely on the representations of law enforcement officials as to what PHI is minimally necessary.

a) Disclosures About Victims of Abuse, Neglect, or Domestic Violence

CFFP may disclose to a social services agency or other appropriate government agency authorized by law to receive reports of abuse, neglect, or domestic violence, the PHI of an individual whom workforce members have reasonable cause to believe is the victim of such abuse.

i. Verify the authority of disclosure recipients

To comply with a disclosure request made by a person or entity external to the organization, verify the identity and authority of the requestor in accordance with the policy regarding verification of persons requesting disclosure.

ii. Permission to disclose

CFFP may disclose PHI regarding victims of abuse, neglect, or domestic violence when authorized by law and one or more of the following circumstances apply:

1. The individual about whom the PHI was obtained agrees to the disclosure; or
2. CFFP believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
3. A law enforcement or public official who is authorized to receive such a report represents that the PHI is necessary for an immediate enforcement activity; and
4. The individual is incapacitated and therefore unable to grant permission for the disclosure; and
5. Waiting for the individual to agree or disagree would negatively impact the authority's ability to carry out the enforcement activity in a timely manner.

iii. Informing the individual

If CFFP discloses information about an individual that it suspects is the victim of abuse, neglect, or domestic violence, CFFP shall inform the individual that the disclosure has been or will be made.

Exception: CFFP is not required to inform an individual, or their personal representative, that the disclosure has been or will be made if:

1. Doing so would place the individual at risk of serious harm; or
2. The personal representative authorized to receive information about the disclosure on behalf of the individual, is, in the professional judgment of CFFP, possibly responsible for the abuse or neglect suffered by the individual.

iv. Documentation

Disclosures of PHI must be documented in the client chart. This requirement excludes disclosures to the data subject, disclosures within the workforce for the purpose of treatment, payment or healthcare operations and other permitted disclosures unless documentation is required by law or this policy. Program policy and sound practice may require documentation in addition to what is required in this policy.

1. When use and/or disclosure is authorized by the informed consent of the client, a signed copy of the document shall be retained in the record. If the consent was obtained by the CFFP, the copy retained should be the original.
2. When use and/or disclosure is pursuant to subpoena, court order, or other document that legally authorizes the disclosure, a copy of the authorizing document shall be retained in the record.

3. For each disclosure, the following items shall be noted in the patient record:
 - a) The date of disclosure.
 - b) The name of the entity or person who received the PHI and, if known and not contained on the consent form, the address of such entity or person.
 - c) A description of the PHI disclosed.
 - d) A brief statement of the purpose of the disclosure that reasonably informs the reader of the basis for the disclosure; or, in lieu of such a statement, a copy of a written request for a disclosure if any.
 - e) The signature of the person making the notation in the chart/record.

3. Disclosures for Law Enforcement Purposes

CFFP may disclose PHI to law enforcement officials in support of law enforcement activities, in circumstances as follows:

- a) When required to do so by law or by legal proceeding; or
- b) When such information may be useful to substantiate past or potential acts of crime, and in compliance with the provisions of this policy; or
- c) When reporting occurrences of certain wounds or other physical injuries, to the extent and within the limitations required by statute; or
- d) or court order, warrant, subpoena, or summons issued by a judicial official or grand jury, provided that:
 1. The information is relevant to a legitimate law enforcement inquiry; and
 2. The request is specific and limited to the scope and purpose of the investigation; and
 3. De-identified information could not reasonably be used. (For further information, refer to the policy regarding de-identification of PHI)
- e) After verifying the identity of the authorized officials requesting the PHI for the purposes of law enforcement activities, in accordance with the policy regarding verification of persons requesting disclosure.

A. Disclosures for Locating or Identifying Suspected Crime Victims or Perpetrators

CFFP may disclose PHI in support of law enforcement efforts to identify or locate a suspect, fugitive, witness or missing person. The disclosure shall be limited to the following information regarding the patient:

1. Name and address of the patient.
2. Date and place of birth.
3. Social security number.
4. Date and time of treatment.
5. Date and time of death, if applicable.
6. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

B. Disclosures Regarding Suspected Victims of Crimes

If CFFP suspects that a patient has been the victim of a crime, but is not compelled by law to disclose the information to law enforcement authorities, CFFP may disclose the information to law enforcement authorities if:

- a) The patient agrees to the disclosure; or
- b) The patient is unable to agree to or disagree with the disclosure due to incapacitation or other emergency circumstance, and:
 1. A law enforcement official represents that such information is needed to determine whether a person other than the patient has committed a crime, and such information is not intended to be used against the patient;
 2. The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
 3. The disclosure is in the best interests of the patient as determined by CFFP, in its professional judgment.

Exception: CFFP must report suspected child abuse to Child Protective Services. Patient authorization is not required.

C. Disclosures by Staff Members Who are Victims of a Crime

CFFP is not considered to be in violation of the Privacy Regulations if a member of its workforce who is the victim of a criminal act discloses PHI to a law enforcement official, provided that:

- a) The PHI disclosed is about the suspected perpetrator of the criminal act; and
- b) The PHI disclosed is limited to the information that may be disclosed for law enforcement purposes, as described in the policy regarding disclosures for law enforcement purposes.

D. Disclosures Regarding Deceased Patients Whose Death May Have Occurred as the Result of a Crime

CFFP may disclose PHI to law enforcement authorities if CFFP suspects that a deceased patient's death may have resulted from a criminal activity.

E. Investigation of a Felony, Fleeing Felon, or Parole/Probation Violation

CFFP may disclose PHI to law enforcement authorities if it suspects that the information provides credible evidence that a crime may have occurred on the premises of CFFP.

F. Chemical Dependency

Under Federal Statutes, data about chemical dependency patients is classified as private and release to law enforcement agencies can take place only under limited circumstances. Law enforcement persons generally must have a Court Order to obtain chemical dependency data. A Subpoena is generally not sufficient authority to authorize disclosure of chemical dependency information.

G. Correctional Institutions and Other Law Enforcement Custodial Situations

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

- a) Provision of health care to such individuals;
- b) The health and safety of such individual or other inmates;
- c) The health and safety of the officers or employees of or others at the correctional institution;
- d) The health and safety of such individuals and officers or other people responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- e) Law Enforcement on the premises of the correctional institution; or
- f) The administration and maintenance of the safety, security, and good order of the correctional institution.

4. Health Oversight and Public Health Activities

A. Disclosure to a Health Oversight Agency

CFFP may disclose PHI 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 the proper oversight of:

1. The healthcare system.
2. Government benefit programs for which PHI is relevant to benefit eligibility.
3. Entities subject to government standards for compliance with respect to PHI.
4. Entities subject to civil rights laws for which PHI is necessary to determine compliance.

Exception: A health oversight activity does not include an investigation or other activity in which the patient is the subject of the investigation or other activity does not arise out of and is not directly related to:

1. The receipt of health care;
2. A 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 public benefits or services.

B. Disclosures for Public Health Activities

CFFP may, as authorized by law, disclose PHI to public health or government authorities or their agents to:

1. Collect or receive information for the purposes of preventing or controlling disease, injury or disability, including, but not limited to:
 - a) Reporting of disease.
 - b) Birth or death.
 - c) The conduct of public health surveillance, investigations or interventions.
2. Officials of foreign governments acting in collaboration with public health authorities, and who have been authorized to receive such information by the public health authority.
3. Public health or appropriate governmental authorities authorized by law to receive reports of child abuse and neglect.
4. 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. Such purposes include:
 - a) To collect or report adverse events (or similar activities 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 or look back (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of look back).
 - d) To conduct post marketing surveillance.

C. Disclosures to Individuals

As authorized by law, and to support the interventions or investigations of public health authorities, CFFP may disclose PHI to individuals who may have been exposed to a communicable disease, or may otherwise be at risk of contracting or spreading a disease or condition.

D. Disclosures to Avert a Serious Threat to Health or Safety

CFFP may disclose PHI, in accordance with applicable law and standards of ethical conduct, if workforce members have reasonable cause to believe that:

1. The disclosure is to a person or persons reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; or
2. The disclosure is necessary for law enforcement authorities to identify or apprehend an individual;
 - a) Because of a statement by an individual admitting participation in a violent crime that the CFFP reasonably believes may have caused serious physical harm to the victim; or
 - b) Where it appears from all circumstances that the patient has escaped or absconded from a correctional institution or from lawful custody.

Note: There is a presumption of good faith when disclosures are made to avert serious threat to health or safety; however, a disclosure must be based on actual knowledge or reliance on a credible representation by a person with apparent knowledge or authority.

Note: Limit on information disclosed.

The information disclosed under the provisions of this policy must be limited to PHI allowable for disclosure to law enforcement officials for the purpose of identifying or locating individuals. (See Section II.A.3. above relating to disclosures required by law and specifically for law enforcement purposes.

E. Disclosures for workers Compensation

CFFP may disclose PHI to the extent necessary to comply with laws relating to workers' compensation or other similar programs established by law to provide benefits for work-related injuries or illnesses without regard to fault.

F. Disclosures to Employers

CFFP may disclose the PHI of a patient to the patient's employer, in accordance with the following:

1. The PHI disclosed consists of findings concerning a work-related illness or injury or a work-related medical surveillance.
2. The PHI is necessary to record illnesses or injuries, or to carry out responsibilities for workplace medical surveillance, in order for the employer to comply with its obligations regarding Occupational Safety & Health Administration (OSHA and Workers Compensation, coal mines, metal mines, and noise exposure).

Notice to Employee of Disclosure to Employer

If CFFP, whether acting as a contractor or employee of the employer, discloses an employee's PHI to his or her employer in relation to the medical surveillance of the workplace and work-related illnesses and injuries, CFFP shall notify the employee of such disclosure by giving to the employee a copy of the notice identifying such a disclosure. *(The specific requirements can be found at <https://www.law.cornell.edu/cfr> then click on "Title 29" to locate 29 CFR 1904 through 1928 and "Title 30" then "Chapter 1" to locate 30 CFR parts 50 through 90)*

G. Whistleblowers

CFFP is not considered to be out of compliance with the HIPAA Privacy Regulations if a member of its staff or a business associate discloses PHI, provided that:

1. The staff member or business associate believes in good faith that CFFP has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by CFFP potentially endangers one or more patients, workers, or the public; and
2. The disclosure is to:
 - a) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of CFFP or to an appropriate healthcare accreditation organization for the purpose of reporting an allegation of failure to meet professional standards or misconduct; or
 - b) An attorney retained by or on behalf of the staff member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the circumstances that have led or may lead to the individual's decision to act as, and actions as, a whistleblower, as defined by law.

5. Disclosures for Specialized Government Functions

CFFP may disclose PHI for specialized government functions, including;

A. Armed Forces and Foreign Military Personnel

CFFP may disclose PHI regarding patients who are members of the Armed Forces when relevant to determine the patient's ability to participate in a military mission, as determined by an appropriate military command authority. CFFP may also disclose PHI regarding patients who are Foreign Military Personnel when relevant to determine the patient's ability to participate in a military mission, as determined by their appropriate foreign military authority.

Prior to disclosure, CFFP must confirm that the following information:

- 1) The identity of the authorized official requesting the PHI;
- 2) That the intended use for the PHI is to determine the patient's ability to participate in a military mission.

B. National Security and Intelligence Activities

CFFP may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, *et seq.*) and implementing authority (e.g. Executive Order 123333).

C. Protective Services for the President and Others

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

6. Decedents

When a patient dies, the data retains the classification it had when the patient was living.

A. Proof of Death

Among the types of verification that may be used as proof that a patient has died are:

1. Death Certificate
2. Autopsy Report
3. Obituary
4. Chapel Funeral card

B. Assumption of Death

If not provided with a death certificate, CFFP shall assume the patient is dead if:

1. Ninety (90) years have elapsed since the creation of the data, or
2. Ninety (90) years have elapsed from patient's birth, whichever is earlier unless readily available information indicates that the patient is still living. Then, even if one of the criteria above has been met, CFFP shall maintain the data as private or confidential data on the living patient.

Exception: Chemical Dependency - Under federal statutes private data about a patient who has received treatment for chemical dependency does not become public after the patient's death.

C. Rights

The deceased individual's privacy rights may be exercised by the personal representative of the state, or in accordance with Michigan law.