

 THE UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER	<h1>Policy</h1>
UNMHSC Clinical Operations	

Use and Disclosure of Protected Health Information
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Primary Age Group: All Ages
 Newborns Pediatrics Adults

POLICY :

It is the policy of the University of New Mexico Health Sciences Center (UNMHSC) to protect our patients’ private health information maintained in designated record sets against unlawful use or disclosure, in accordance with applicable laws and regulations, and to disclose protected patient information only in accordance with the law and procedures stated in this policy.

This policy applies to all patient identifiable health information contained in designated records sets (See, UNMHSC Policy: HIPAA Designated Record Set), whether in oral, paper or electronic form, and to all UNMHSC employees, providers, volunteers, and contractors having access to the PHI.

CROSS REFERENCES:

- Patient Rights and Responsibilities
- HIPAA Designated Record Set
- HIPAA Patient Privacy: Right to Request to Amend Record Set
- Patient Right to Access
- Charges for Access
- Electronic transmissions/E-mail

GENERAL INFORMATION and DESIRED OUTCOME:

1. Protected patient health information
 - 1.1. oral, paper or electronic information;
 - 1.2. identifies or may be likely to lead to the identification of the individual patient; and
 - 1.3. the information relates to the past, present or future health of the individual patient.

2. A patient's personal representative as used in this Policy is:
 - 2.1 For an unemancipated minor, a personal representative is the individual patient's parent, guardian, custodian, or person serving *in loco parentis* to the minor.
 - 2.1.1 if the minor is authorized by state law to provide the only required consent for the medical, mental health, or rehabilitative services, the minor must consent unless the minor lacks decisional capacity.
 - 2.1.2 if New Mexico law is silent with regard to whether an unemancipated minor may solely consent to the medical or mental health services, then the physician will determine whether disclosure to the personal representative is in the unemancipated minor's best interests. Contact UNMHSC Office of General Counsel.
 - 2.2 For an adult who lacks decisional capacity, a personal representative is a court-appointed guardian, an agent named by the individual patient in an advance directive, or a surrogate health care decision-maker according to the New Mexico Uniform Health Care Decisions Act, § 24-7A-1, et. Seq., NMSA 1978, as amended.
 - 2.2.1 If a provider believes that disclosing to the personal representative may be harmful to the individual patient, the provider must contact UNMHSC Office of General Counsel, (505) 272-2377, MS09 5300 UNMHSC Health Sciences and Services Bldg., 318.
- 3 Designated record sets are maintained by UNMHSC (*See:* UNMHSC Policy "HIPAA Designated Record Sets"):
 - 3.1 To provide continuity of care to the patient;
 - 3.2 To evaluate the quality of the care and services to the patient and provide data necessary for hospital and clinical operations;
 - 3.3 To obtain payment or establish a claim for payment for rendered care;
 - 3.4 To provide a record to assist UNMHSC in defending against claims or lawsuits;
 - 3.5 For medical education, training, and research;
 - 3.6 To identify deceased persons by established medical, x-ray, dental or other records when identification cannot be established by ordinary means.
- 4 The UNMHSC will make reasonable efforts to limit the use or disclosure to the minimum amount of information necessary to accomplish the purpose of the use or disclosure, except when
 - 4.1 The request for information is made by the individual patient or the individual patient's personal representative;
 - 4.2 When the information is requested by the US Department of Health and Human Services
 - 4.3 Federal or state laws require use or disclosure beyond the minimum necessary.

- 5 All UNMHSC and UNM Hospital staff, employees and volunteers who, because of their job descriptions, have need to access protected health information must have a current Certificate of Confidentiality on file; all staff, employees and volunteers requesting access to protected health information must produce valid identification.
- 6 UNMHSC is required to keep an accounting of disclosures of protected health information made after April 14, 2003. A individual patient has the right to receive an accounting of disclosures of protected health information made by the UNMHSC during the six years prior to the date the accounting is requested, except for disclosures for
 - 6.1 treatment, payment or hospital operations
 - 6.2 national security and intelligence purposes
 - 6.3 routine disclosures made to Business Associates or Trading Partners
 - 6.4 to the individual patient who is the subject of the protected health information;
 - 6.5 incidental disclosures made during use or disclosure otherwise permitted or required
 - 6.6 pursuant to an authorization
 - 6.7 the facility's directory or to persons involved in the individual patient's care or other notification purposes;
 - 6.8 to correctional institutions or law enforcement officials
 - 6.9 as part of a limited data set
 - 6.10 that occurred prior to April 14, 2003
- 7 For assistance and information about UNMHSC's uses and disclosures of protected health information, contact
 - 7.1 the UNMHSC Privacy Officer, (505) 272-2121, UNM Hospital, 2211 Lomas Blvd., NE, Albuquerque, NM 87106; or
 - 7.2 the UNMHSC Office of General Counsel, (505) 272-2377, UNMHSC Health Sciences & Services Bldg., 318.
- 8 Uses and disclosures:
 - 8.1 Authorization not required for:
 - 8.1.1 Treatment for the individual patient, including the coordination and management of health care among health care providers or by a health care provider with a third party, consultations between health care providers, and referrals of a patient for health care from one health care provider to another.
 - 8.1.1.1 UNMHSC may also disclose protected health information to another covered entity or health care provider for their payment activities for health services rendered to the individual patient.
 - 8.1.2 Payment, including using and disclosing the minimum necessary information to third party payers, insurance companies, ambulance services, other hospitals and providers who also have a treatment relationship with the patient in order for all providers of health care services to receive payment.

- 8.1.3 UNMHSC clinical operations, including such activities as quality assurance, peer review and risk management; fiscal management and planning; staffing; equipment and capital purchases; planning; program development and implementation, education, training, and skills improvement programs; resolution of internal grievances, and other activities which allow a hospital or clinic to maintain and develop its health care programs.
- 8.1.3.1 UNMHSC may disclose protected health information to another covered entity for its health care operations activity or fraud and abuse detection or compliance, if the other covered entity has or has had a relationship with the individual patient who is the subject of the protected health information being requested, and the requested information pertains to such relationship.
- 8.1.4 To report child, vulnerable adult, and resident abuse, neglect or exploitation to the appropriate government entity authorized by law to receive and investigate such reports and pursue social services, health care, and legal services for the patient.
- 8.1.4.1 UNMHSC must attempt to notify the vulnerable adult or the vulnerable adult's personal representative that a report is to be made, except that the vulnerable adult's personal representative should not be notified if the provider believes telling the personal representative would place the vulnerable adult in danger.
- 8.1.5 To report matters of national security and intelligence to the appropriate authorities.
- 8.1.6 To respond to a valid written request for past, present or future health information about an individual patient when the individual patient is currently in law enforcement custody or control, such as an inmate in a jail, prison, detention center, honor farm or halfway house, on parole or probation, or in a program of criminal rehabilitation prior to the termination of such parole or probation, or program of rehabilitation.
- 8.1.7 To assist law enforcement in identifying or locating a missing person or fugitive;
- 8.1.8 To disclose to law enforcement upon official written request, when the requested information is about an individual patient who is suspected to be a victim of a crime or to report a crime on the UNMHSC campus;
- 8.1.9 By a provider of emergency medical services in response to a medical emergency to report a crime, including the commission and nature of the crime; the location of the crime; the identity, description, and location of the perpetrator of such crime.
- 8.1.10 To health oversight authorities for required reporting of certain diseases and injuries and for other health oversight activities, such as for licensure and accreditation.

- 8.1.11 To the medical examiner or a coroner for identification of a deceased individual patient, the determination of death, and to carry out their other lawful duties;
- 8.1.12 To funeral directors to carry out their duties, and in reasonable anticipation of death.
- 8.1.13 For research purposes if the researcher first obtains the appropriate waiver or approval of the institutional review board (“IRB”; “HRRC”) or otherwise complies with the HIPAA Privacy Policy. (See, Policy: Use and Disclosure of Protected Health Information for Research). Documentation of IRB/HRRC approval or waiver must be maintained by UNMH MIS.
- 8.1.14 To the government about an individual patient who is on active military service or is a veteran receiving veteran’s services.
- 8.1.15 To government programs providing public health benefits to the individual patient;
- 8.1.16 To disclose protected health information as authorized by and to the extent of the law to comply with worker’s compensation or other similar programs.
- 8.1.17 For inclusion in the hospital directory and to provide general health information to friends and family who call and request the status of a patient by name, unless the individual patient opts out of this provision.
- 8.1.18 To provide a hospital patient’s name, religious affiliation to a member of the clergy unless the individual patient opts out of this provision.
- 8.1.19 To the appropriate organization for cadaveric organ, eye or tissue donation
- 8.1.20 For specialized government functions.
- 8.1.21 To avert serious imminent threat to health or safety of the individual patient or another person.
- 8.1.22 To family and friends calling to inquire about a specific hospitalized individual patient’s condition, stated in general terms (e.g., “critical,” “stable,” “improved”), including the individual patient’s location in the hospital, unless the individual patient requests that no information be given.
- 8.2 **Authorization required** for:
- 8.2.1 All non-routine uses and disclosures of protected health information;
- 8.2.2 For UNMHSC marketing activities if the individual patient is provided an opportunity to opt out of further contact by the UNMHSC, but no authorization required if
- 8.2.2.1 the marketing activity occurs in a face-to-face meeting between a provider and the individual patient and marketing information is about products and service related to the individual patient’s health;
- 8.2.2.2 the marketing activity involves a gift or service of nominal value.

8.2.2.2.1 if the marketing involves direct or indirect payment to the UNMHSC from a third party, the Authorization must state that the remuneration is involved.

8.2.2.3 Use and disclosure of psychotherapy notes, unless the use or disclosure is

8.2.2.3.1 use by the originator of the psychotherapy notes

8.2.2.3.2 under supervision, use and disclosure in educating, training, improving the skills of mental health providers in counseling.

9 Core elements of a valid authorization:

- 9.1 Specific and meaningful description of the information to be disclosed ;
- 9.2 Specific justification for disclosure of the entire record.
- 9.3 Addressed to the UNM Health Sciences Center, a clinical facility of the UNMHSC, or a UNMHSC credentialed provider;
- 9.4 Identifies the persons or class of persons to whom the disclosures are to be made;
- 9.5 Specifies the purpose of the disclosure
 - 9.5.1 When the individual patient initiates the authorization for his or her own purposes, a statement such as “At the individual patient’s request” is sufficient
- 9.6 An expiration date or event (e.g., “none”; “end of research”);
- 9.7 The patient’s or personal representative’s signature and date;
 - 9.7.1 If signed by a personal representative, a description of his or her authority to act for the individual patient, i.e.;
 - 9.7.2 An unemancipated minor’s authorization must be signed by the minor’s personal representative (e.g., parent; legal guardian; custodian; person *en loco parentis* to the minor). (**NOTE:** See Exceptions Section A2.1 this policy re: Minors);
 - 9.7.2.1 If the personal representative is other than an unemancipated minor’s parent, then proof of authority and documentation in the designated record set is required.
- 9.8 The authorization contains a statement notifying the individual patient that the individual patient may revoke the authorization in writing at any time except to the extent the UNMHSC has used or disclosed the information according to the authorization;
- 9.9 The authorization contains a statement notifying the individual patient that the information disclosed according to the authorization may not be protected against disclosure by the third party authorized to receive the information;

- 9.10 For deceased persons, the authorization is signed by the next of kin, or legal administrator or personal representative of the deceased's estate with proof of authority and proper identification documented in UNMHSC file:
- 9.11 If the Individual patient is unable to sign the authorization by reason of physical or mental status, the authorization must be signed by the patient's personal representative.
- 9.12 Authorizations for disclosure of records of drug and alcohol rehabilitation services, HIV/AIDS testing results, mental health services, psychotherapy notes, research subjects, genetic information and analysis must comply with additional legal requirements as set out in applicable sections in this policy.

10 An authorization will be deemed invalid if:

- 10.1 The expiration date has passed.
- 10.2 The authorization has not been filled out completely.
- 10.3 The authorization is known by UNMHSC to have been revoked.
- 10.4 Any information in the authorization is known by the UNMHSC to be false.
- 10.5 The authorization does not contain a statement that information disclosed pursuant to the authorization may no longer be protected after disclosure.
- 10.6 The authorization does not contain a statement that the individual patient may revoke the authorization at any time except to the extent the UNMHSC has already acted on the authorization.
- 10.7 The authorization is not properly executed.

11 Legal process

- 11.1 Subpoenas must be accompanied by the authorization of the individual patient or by satisfactory assurances, in writing, documenting that
 - 11.1.1 the party requesting the information has made a good faith attempt to provide written notice to the patient;
 - 11.1.2 the notice included sufficient information about the litigation or proceeding in which the health information is requested in order to permit the individual patient to raise objections with the court or administrative tribunal; and
 - 11.1.3 the time for the individual patient to raise objections has elapsed and
 - 11.1.3.1 no objections were filed; or
 - 11.1.3.2 all objections filed have been resolved by the court or tribunal and the
 - 11.1.3.3 disclosures being sought are consistent with such resolution.
- 11.2 Letters from an attorney requesting protected health information must be accompanied by a valid authorization (*See* Section Nine), or by a subpoena and the required assurances.

11.3 Questions or concerns, contact the:

11.3.1 UNMHSC Privacy Officer, (505) 272-2121, *fax* 272- ,
UNM Hospital, 2211 Lomas Blvd., NE, Albuquerque, NM 87106; or

11.3.2 UNMHSC Office of General Counsel, at (505) 272-2377, *fax* 272-1938,
UNMHSC, MS09 5300, Health Sciences & Services Bldg., 318.

12 Methods of Disclosure

12.1 Paper copies of the information to be disclosed must be made by the HIM/Medical Records department, unless otherwise authorized by UNMHSC.

12.2 Electronic disclosures (e.g., by telephone, fax, computer) must be made according to the UNMHSC policy on electronic transmission of protected health information.

13 Charges for copies or summaries of records

13.1 *See* UNMHSC Policy: “Charges/Patient Release Information”;

13.2 Copies for Applicants for Disability Benefits (Social Security Administration):

13.2.1 Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on a disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, the UNMHSC HIM/Medical Records Department shall furnish the requestor with a copy of that patient’s medical records.

13.2.2 Charges are according to Policy: “Charges/Patient Release Information”;

13.3 Inform the requestor of charges in accordance with the policy, “Charges/Patient Release Information,” and that the requestor may be billed by the University and/or its business associate responsible for making such copies or producing the agreed-to summaries of the protected health information;

13.4 Any exception to this procedure must be approved by the Director of HIM/Medical Records, the Patient Assistance Coordinator, or by the UNMHSC clinical facility’s administrator.

14 Disclosure of Specially Protected Health Information

14.1 Disclosure of information from confidential drug and alcohol abuse rehabilitation records (42 CFR Part 2):

14.1.1 With the valid authorization of the individual patient, or, if the individual patient lacks decisional capacity, the authorization of the individual patient’s personal representative

14.1.2 Without the individual patient’s authorization

14.1.2.1 To medical personnel to the extent necessary to meet a bona fide medical emergency;

14.1.2.2 To qualified personnel for scientific research, management audits, financial audits, or program evaluation, but such

personnel may not identify directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner;

- 14.1.2.3 To insurer or other third party payer only for the purpose of obtaining payment for services. The program director may exercise the right of the individual patient to consent to a disclosure for this purpose, if the individual patient, other than a minor or an adult who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf;
 - 14.1.2.4 When authorized by an appropriate order of a court of competent jurisdiction granted upon a showing of good cause and the order is accompanied by a subpoena *duces tecum*;
 - 14.1.2.5 Reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities
- 14.1.3 Except as authorized by court order (see 1.2.4 above), no record may be used to initiate or substantiate any criminal charges against a patient or conduct any investigation of a patient;
- 14.1.4 Form of Authorization for disclosure of 42 CFR Part 2 records:
- 14.1.4.1 The authorization is in writing and contains:
 - 14.1.4.1.1 The specific name or general designation of the program or person permitted to make the disclosure.
 - 14.1.4.1.2 The name or title of the person or organization to which disclosure is to be made (e.g., Centers for Medicare and Medicaid Services(CMS), including the appropriate intermediary or carrier, specified by name);
 - 14.1.4.1.3 The name of the individual patient;
 - 14.1.4.1.4 The purpose or need for the disclosure (e.g., for processing a claim for Medicare payment and for such evaluation of the treatment program as is legally and administratively required in the overall conduct of the Medicare program);
 - 14.1.4.1.5 How much and what kind of information is to be disclosed;
 - 14.1.4.1.6 The signature of the patient or personal representative;
 - 14.1.4.1.7 The date on which the authorization is signed;
 - 14.1.4.1.8 The date on which the consent is signed;
 - 14.1.4.1.9 Statement that the authorization is subject to revocation at any time, except to the extent that the

program or person, making the disclosure, has already acted in reliance on it (Acting in reliance includes the provision of services in reliance on a valid authorization or consent to disclose information to a third-party payer.);

14.1.4.1.10 If the patient wishes, the consent statement may be expanded to permit disclosure by a provider to any other person, organization, or program, as appropriate. Authorization may also be given to CMS and its contractors to re-disclose specific information to third party payers for insurance purposes. The provider should keep the signed authorization with the patient's medical records;

14.1.4.1.11 If the patient wishes, the consent statement may be expanded to permit disclosure by a provider to any other person, organization, or program, as appropriate. Authorization may also be given to CMS and its contractors to re-disclose specific information to third party payers for insurance purposes. The provider should keep the signed authorization with the patient's medical records;

14.1.4.1.12 The date, event, or condition upon which the consent will expire if not revoked before. The date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

14.1.5 REQUIRED STATEMENT MUST ACCOMPANY DISCLOSURE:

“This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.”

14.2 Disclosure of HIV/AIDS Testing results

14.2.1 With the authorization of the individual patient (whether adult or unemancipated minor)

14.2.2 With an appropriate court order if the individual patient is unable or unwilling to authorize disclosure and the requestor is

14.2.2.1 An exposed “first responder” (e.g., EMT, law enforcement, firemen and public safety officer, nurse, physician or other health-care provider rendering aid to the individual patient); or

14.2.2.2 A victim of criminal sexual assault

14.2.3 REQUIRED STATEMENT MUST ACCOMPANY DISCLOSURE:

"This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A person who makes an unauthorized disclosure of this information is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine or not more than five hundred dollar (\$500), or both."

14.3 Disclosure of sexually transmitted diseases including HIV/AIDS to government/public health authorities

14.3.1 With the authorization of the individual patient or, if appropriate, the individual patient’s personal representative;

14.3.2 Without the individual patient’s or individual patient’s personal representative’s authorization, disclosure may be made only to:

14.3.2.1 The New Mexico Department of Health and the Centers for Disease Control and Prevention of the United States Public Health Service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease. HIV/AIDS test results are transmitted to the Department of Health in accordance with reporting requirements established by regulation. [State regulation 7 NMAC 4.3.11, Notifiable Diseases/Conditions in New Mexico, Section 11.2.4 Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) outlines requirements for reporting to the state Office of Epidemiology.]

14.3.2.2 A health facility or health care provider that procures, processes, distributes or uses:

14.3.2.2.1 A human body part from a deceased person, with respect to medical information regarding the person;

14.3.2.2.2 Semen for the purpose of artificial insemination; (for HIV/AIDS patient, semen provided prior to the effective date of the HIV Test Act, June 16, 1989, for the purpose of artificial insemination);

14.3.2.2.3 Blood or blood products for transfusion or injection; or

14.3.2.2.4 Human body parts for transplant with respect to medical information regarding the donor recipient;

- 14.3.2.2.5 Health facility staff committees or accreditation or oversight view organizations that are conducting program monitoring, program evaluation or service review, as long as any identity remains confidential;
 - 14.3.2.2.6 Authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and
 - 14.3.2.2.7 For purposes of application or reapplication for insurance coverage, and to insurers or reinsurers upon whose request the test was performed.
 - 14.3.2.2.8 Test results of persons formally charged for allegedly committing certain criminal offenses may be disclosed to the victim of the alleged criminal offense or the victim's parent or legal guardian.
- 14.3.3 With authorization of the adult or minor individual patient or, if the individual patient lacks decisional capacity, the individual patient's (See Section 4.2 for definition) Disclosure may be made to:
- 14.3.3.1 Patient or the appropriate personal representative;
 - 14.3.3.2 Any person designated in a legally effective authorization to release of the test results executed prior to or after the test by the patient or the patient's appropriate personal representative;
 - 14.3.3.3 An authorized agent, a member of the medical staff or an employee of UNMHSC or provider if the health care facility itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information;
 - 14.3.3.4 The authorization to disclose information form must be in writing and include:
 - 14.3.3.4.1 The name of the organization (hospital, etc.) which is making the disclosure;
 - 14.3.3.4.2 The name or title of the person or organization to which disclosure is to be made;
 - 14.3.3.4.3 The name of the patient;\
 - 14.3.3.4.4 The purpose or need for the disclosure;
 - 14.3.3.4.5 The extent or nature of information to be disclosed;
 - 14.3.3.4.6 A statement specifying a date (not to exceed one year, after which renewal is required), event, or condition upon which consent will expire without written revocation;

- 14.3.3.4.7 The date on which the consent is signed;
- 14.3.3.4.8 A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. This includes the provision of treatment services in reliance on a valid consent to disclose information to the third party payer.
- 14.3.3.4.9 The signature of the patient, or, if the patient lacks capacity, the signature of the legally authorized representative.

15 Disclosure of mental health and developmental disabilities information:

- 15.1 Without authorization of the individual patient or the individual patient's personal representative, as appropriate to (Note: The form described under this section 15.1 should be filled in and placed in the chart, recording any release of information, and specifying that consent is not needed for this specific release.)
 - 15.1.1 A mental health or DD professional or employee or trainee working with mentally disordered or developmentally disabled persons, to the extent that individual patient's practice, employment or training on behalf of the patient requires that the individual patient have access to such information;
 - 15.1.2 When necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on himself or another;
 - 15.1.3 A primary caregiver of the patient; the information shall be limited to what is necessary for the continuity of the patient's treatment in the judgment of the treating physician or certified psychologist who discloses the information;
 - 15.1.4 An insurer contractually obligated to pay part or all of the expenses relating to the treatment of the patient at the residential facility. The information disclosed shall be limited to data identifying the patient, the facility and the treating or supervising physician and the dates and duration of the residential treatment.
- 15.2 With the authorization of the individual patient or, if the patient lacks capacity, the individual patient's personal representative, to:
 - 15.2.1 Patient over 14 years of age and their parent, guardian or legal
 - 15.2.2 custodian;
 - 15.2.3 Parent, guardian or legal custodian of patient under age 14;
 - 15.2.3.1 Disclosures requested in both 4.2.1 and 4.2.2 must be approved by an appropriate mental/behavioral health provider. If a physician or other mental health or DD professional believes and notes in the patient's medical records that such disclosure would not be in the

best interest of the patient, then disclosure to the patient or parent, legal guardian custodian may be denied.

- 15.3 CORE ELEMENTS OF VALID AUTHORIZATION to disclose mental health and developmental disability information:
 - 15.3.1 The authorization must be in writing;
 - 15.3.2 A statement of the patient's right to examine and copy the information to be disclosed;
 - 15.3.3 The name of the hospital or UNMHSC clinic, unit, department, provider that is to make the disclosure;
 - 15.3.4 The name or title of the proposed recipient of the information;
 - 15.3.5 The name of the patient;
 - 15.3.6 A description of the use that may be made of the information;
 - 15.3.7 The date the authorization is signed;
 - 15.3.8 The signature of the individual patient or, if the patient lacks capacity, signature of the individual patient's personal representative as defined in this policy.
- 16 Disclosure of genetic information obtained after May 20 1998 or results of genetic analysis obtained after May 20, 1998 from medical records (Legal liabilities attaching to violations to the Genetic Information Privacy Act apply to genetic information or analysis results regardless of when they were obtained.)
 - 16.1 Without authorization of patient or appropriate personal representative, (as defined in Section 15.2), a person's genetic information or results of genetic analysis may be obtained, transmitted or used, pursuant to federal or state law or regulations only.
 - 16.1.1 To identify a person in the course of a criminal investigation by a law enforcement agency;
 - 16.1.2 The person has been convicted of a felony, for purposes of maintaining a DNA database for law enforcement purposes;
 - 16.1.3 To identify deceased persons
 - 16.1.4 To establish parental identity;
 - 16.1.5 To screen newborns;
 - 16.1.6 If the genetic information or results of the genetic analysis are not identified with the person or person's family members;
 - 16.1.7 By a court for determination of damage awards pursuant to the Genetic Information Privacy Act;
 - 16.1.8 By medical repositories or registries;
 - 16.1.9 For the purpose of medical or scientific research and education, including retention of genetic information or genetic analysis if the identity of the person or person's family members is not disclosed; or

- 16.1.10 For the purpose of emergency medical treatment consistent with applicable law.
- 16.1.11 Actions of an insurer and third parties dealing with an insurer in the ordinary course of conducting and administering the business of life, disability, income or long-term care insurance are exempt from the above provisions if the use of genetic analysis or genetic information for underwriting purposes is based on sound actuarial principles or related to actual or reasonably anticipated experience. However, before or at the time of collecting genetic long-term care insurance, the insurer shall notify in writing an applicant for insurance or the insured that the information may be used, transmitted or retained solely for the purpose stated above.

***NOTE: Nothing in section 16 authorizes obtaining, retaining, transmitting or using a patient's genetic information or the results of genetic analysis if the patient or, as appropriate, the patient's personal representative objects on the basis of religious tenets or practices.**

- 16.2 With the individual patient's authorization, or, as appropriate, the individual patient's personal representative, for :

16.2.1 Psychotherapy notes except:

- 16.2.1.1 To carry out treatment, payment or other health care operations
- 16.2.1.1.1 Use by the originator of the psychotherapy notes for treatment
- 16.2.1.1.2 Use by the facility for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
- 16.2.1.1.3 Use by the facility to defend itself in a legal action or other proceeding brought by the patient or the patient's personal representative.

16.2.2 REQUIRED ELEMENTS OF THE AUTHORIZATION:

- 16.2.2.1 The name of the organization (hospital, etc.) or provider to make the disclosure;
- 16.2.2.2 The name or title of the person or organization to which disclosure is to be made;
- 16.2.2.3 The name of the individual patient;
- 16.2.2.4 The purpose or need for disclosure;
- 16.2.2.5 A specific date (not to exceed one year, after which renewal is required), event, or condition upon which the authorization will expire without written revocation.
- 16.2.2.6 The date on which the consent is signed;
- 16.2.2.7 The signature of the individual patient, or, if individual patient lacks capacity, the signature of the personal representative, printed name, and proof of authority (e.g., "parent of a minor"; "court appointed guardian").

REFERENCES: Health Insurance Portability and Accountability Act of 1996 , 45 CFR Parts 160 and 164; 42 USCA s 290dd-2 (1992), (Confidentiality of Records); 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records); NMSA 1978, Section 24-7A-5 and 24-7A-8 (1997), (Uniform Health Care Decisions Act); 7 NMAC 7.2.7.10; NMSA 1978, Section 24-1-9.4 and Section 24-1-9.5(1996), (Sexually Transmitted Diseases); NMSA 1978, Section 24-2B-6 (1999), (Human Immunodeficiency Virus Testing); NMSA 1978, Section 24-1B-7 (1997), (County Maternal Child Health Plan); 7 NMAC 4.3.8 and 7 NMAC 4.3.11 (Control of Disease & Conditions of Public Health Significance); 42 CFR s 438.224; NMSA 1978, Section 43-1-19 (1998), (Mental Health and Developmental Disabilities); NMSA 1978, Section 24-21-1 to 24-21-7 (1998), (Genetic Information Privacy); HCFA Manuals, Hospitals – HO 191.4; HCFA State Operating Manual (SOM).

R. Philip Eaton, MD, Vice President, Health Sciences

Date

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