
**University of Wisconsin-Madison
Policy and Procedure**

Policy Number: 3.8
Policy Title: The Minimum Necessary Standard
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I. Policy

The HIPAA Privacy Rule requires application of the “minimum necessary” standard for the use, disclosure or request for protected health information, except as specifically stated in the regulations. UW-Madison will only use, disclose, or request the minimum amount of protected health information as is necessary to accomplish the intended use or disclosure. This is known as the “minimum necessary” standard.

The minimum necessary standard does not apply to the following:

1. Disclosures to or requests for protected health information by a health care provider for treatment purposes.
2. Disclosures of protected health information to the patient or the patient’s legally authorized representative.
3. Uses or disclosures of protected health information made pursuant to an authorization signed by the patient or the patient’s legally authorized representative.
4. Uses or disclosures of protected health information that are required by law.
5. Uses or disclosures of protected health information that may be required for compliance with HIPAA (including disclosures made to the US Department of Health and Human Services in response to an investigation of compliance with HIPAA).

II. Definitions

- A. **Disclosure:** The release, transfer, provision of access to, or divulging in any manner of PHI by an individual within the HCC or ACE with a person or entity outside the HCC or ACE.
- B. **Incidental Use or Disclosure:** An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that

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occurs as a result of another use or disclosure that is permitted by the Privacy Rule.

- C. Legally Authorized Representative: A person with authority to act on behalf of an adult, emancipated minor, un-emancipated minor, or deceased individual in making decisions related to health care and/or health care information. The legally authorized representative of un-emancipated minors includes a parent, guardian, or other persons acting *in loco parentis* of the minor.
- D. Minimum Necessary: Using, disclosing, or requesting the minimum amount of protected health information as is necessary to accomplish the intended use or disclosure.
- E. Need-to-know: The limiting of access to information to just that information for which an individual has a legitimate clinical or business need.
- F. Protected Health Information (“PHI”): Health information, or health care payment information, including demographic information collected from an individual, which identifies the individual or can be used to identify the individual. PHI does not include student records held by educational institutions or employment records held by employers.
- G. Role: The category or class of person or persons doing a type of job, defined by a set of similar or identical responsibilities.
- H. University of Wisconsin Affiliated Covered Entity (“UW ACE”): The UW-Madison Health Care Component (except University Health Services and the State Laboratory of Hygiene), the University of Wisconsin Medical Foundation and the University of Wisconsin Hospital and Clinics. See Privacy Policy # 1.2 “Designation of UW Affiliated Covered Entity”.
- I. UW-Madison Health Care Component (“UW HCC”): Those units of the University of Wisconsin-Madison that have been designated by the University as part of its health care component under HIPAA. See Privacy Policy # 1.1 “Designation of UW-Madison Health Care Component” for a listing of these

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units.

- J. Use: The sharing, employment, application, utilization, examination, or analysis of PHI by an individual within the UW HCC or the UW ACE.

III. Procedures

A. Minimum Necessary as it Applies to Access to and Use of PHI

1. All access to PHI, whether it be electronic or hardcopy, must be limited to individuals who have a legitimate clinical or business need-to-know the information. Accessing or using more information than is necessary to do one's job is prohibited.
2. Each UW HCC unit's Privacy Coordinator is responsible for identifying roles within each unit. This will normally be done with assistance from Directors/Managers. A role is defined as the category or class of person(s) doing a job, defined by a set of similar or identical responsibilities. For example, UW HCC units may identify the following roles:
 - a. Treatment provider
 - b. Support to treatment provider
 - c. Admissions/registration
 - d. Business services
 - e. Clinic management
 - f. Health Information Management (HIM)/medical record staff
 - g. Housekeeping/environmental services, and
 - h. Maintenance

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3. Each unit's Privacy Coordinator (or designee) must analyze each role and determine to what degree staff in that role require access to PHI.
 - a. Access to the highest level of PHI (e.g. unlimited access to electronic information or the entire hard-copy medical record) may be justified in the following circumstances:
 - i. The "role" provides direct clinical care (e.g. nurses, physicians, athletic trainers, speech or language pathologist, audiologists, psychologists, mental health therapists, physical therapists, pharmacists, social workers, dieticians, and health care trainees/health care students in assigned rotation or clerkship) and access to different parts of the medical record for different patients may vary from patient to patient depending on the circumstances surrounding the provision of care.
 - ii. The "role" conducts quality assurance, peer review and related functions and access to potentially all protected health information is necessary because different review processes may require access to different parts of a patient's medical record.
 - iii. The "role" is legal or risk management function and access to potentially all of a patient's PHI is necessary because review and use of the PHI may require access to different parts of the medical record depending on the circumstances surrounding the legal or risk management inquiry.
 - iv. Various "roles" related to Health Information Management (Medical Records) as necessary to code, release, file, transport, and secure medical records.
 - v. "Roles" in business services/billing in which access to

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potentially the entire medical record is necessary to provide third party payors with information related to payment of a claim.

- vi. The “role” needs access to potentially the entire medical record because the individuals in those roles need to investigate employee or patient issues or complaints (e.g. Directors, Managers, Supervisors).
 - vii. Senior management, administration staff and the UW HCC unit Privacy Coordinator who potentially need access to the entire medical record for treatment, payment, or health care operations purposes.
 - viii. Directors/Managers are responsible for assuring staff has access to appropriate level of PHI. This includes electronic or paper.
- b. Varying levels of access to PHI may be appropriate, depending upon role definition, for the following (staff with varying levels of need to access PHI for their role often have access to the entire hard-copy medical record, and are expected to access and use only that PHI in the hard-copy medical record, that they would normally have access to electronically):
- i. The “role” provides support to direct clinical providers (e.g. clinic assistants, clerical support staff, and physician secretaries) and access needs to varying levels of PHI depend on the type of support provided (e.g. ordering tests, supplies, and etc. for patients, maintenance of charts, data collection related to treatment, completion of billing or compliance paperwork).
 - ii. Business management roles in which access to limited PHI (e.g. demographic and financial information) is necessary

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for business and operations analysis and decision-making.

- iii. Information Services and Technology staff who need access to electronic systems to provide technological support to these systems.
 - iv. Admissions/Registration staff that need access to limited PHI to process admissions documents, provide information to payors for benefits information and related purposes, and to schedule clinic visits or procedures.
 - v. Public Affairs staff who need access to limited PHI to handle inquiries from outside sources and to manage marketing and fundraising activities.
- c. Minimal access to use of PHI is appropriate for the following roles depending on job duties:
- Some volunteers or others who need minimal access to PHI, for example, to assist families and friends with directory information, to provide information in the surgical waiting room, and to deliver items to patients.
- d. Access to use of PHI, except when Incidental, is inappropriate for the following roles:
- i. Housekeeping/Environmental services;
 - ii. Transportation staff who handle and deliver PHI (i.e. in a sealed envelope or box);
 - iii. Plant engineering/facility management.

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SUMMARY OF “ROLES” AND LEVELS OF ACCESS TO PHI

	All PHI	Limited PHI	Minimal PHI	No PHI	Limitations
Clinical Staff	X				Need-to-know
QI/QA staff	X				Need-to-know
Legal/Risk Management Staff	X				Need-to-know
HIS/Med Records staff	X				Need-to-know
Directors, Managers, Supervisors	X				Need-to-know
UW Privacy Officer/ Coordinators	X				Need-to-know
Admissions /Registration	X (some)	X (most)			
Support to Direct Clinical Providers		X			Need-to-know
Business Management Roles		X			Need-to-know
IS/IT staff		X			Need-to-know
Public Affairs		X			Need-to-know
Volunteers			X(some)	X(most)	Need-to-know

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Housekeeping/ Environmental Services				X	NA
Transportation				X	NA
Facility Maintenance				X	NA

B. Minimum Necessary as it Applies to Disclosures of PHI

1. Routine Disclosures. When responding to requests for disclosures made on a periodic or recurring basis, the UW HCC unit must limit the disclosures to the amount reasonably necessary to achieve the purpose. A “routine” disclosure is one made on a routine or recurring basis, and/or is relatively straightforward and appropriate to release per state and federal law. Disclosures in response to routine requests must be evaluated and released according to the following limiting measures:
 - a. By what is specifically authorized
 - b. By what is specifically requested
 - c. Documents (e.g. procedure notes, test results etc.) related to specific dates

Examples of Routine Disclosures where Minimum Necessary rule applies.

Requester	Purpose of Request	What is Disclosed
Business Associates (Collection Agency, Transcription Service, etc.)	Obtain information to carry out business purpose	When outside the exceptions- Need to Know Only
Health Oversight Agency	Audits and investigations	Only release minimal information requested

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Law enforcement	Investigate accident or Locate a victim or suspect of crime	Only release minimal information requested
Insurance carrier	Billing, collection, of payment	Limit release of documents to the dates of services in question
Court order	Legal issues such as placement of mentally or physically handicapped child	Only what is requested per written order

2. Non-Routine Disclosures. When responding to requests for non-routine disclosures, the UW HCC unit must limit the disclosures to the amount reasonably necessary to achieve the purpose based on the criteria established below. Non-routine means the disclosure is made infrequently, or processing the request often requires legal assistance. All non-routine disclosures shall be directed to the unit Privacy Coordinator for review and processing. When necessary, the unit Privacy Coordinator will consult with the UW-Madison Privacy Officer to aid in the review and processing of a request. The UW HCC unit will apply the following criteria when reviewing requests for non-routine disclosures:
- a. Specificity of the request
 - b. Purpose/importance of the request
 - c. Impact on patients
 - d. Impact on the UW HCC unit
 - e. Extent to which disclosures would increase number of individuals or organization with access to PHI
 - f. Likelihood of re-disclosure
 - g. Ability to achieve the same purpose with de-identified information

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- h. Technology available to limit the disclosures of the PHI
 - i. Cost of limiting the disclosure of PHI
 - j. Other factors
 - 3. Examples of non-routine disclosures:
 - a. Court order
 - b. Request from federal or state governmental agency
 - c. To county/investigating agency, protective services
 - d. To foster care, group home, child care institutions, or correctional facility for minor
 - e. To the military for purposes other than recruitment
 - f. Insurance carrier audit
- C. Minimum Necessary as it Applies to Requests by UW HCC Staff for PHI from Other Covered Organizations
 - 1. Requests by UW HCC staff for PHI from other organizations covered by the HIPAA Privacy Rule, including business associates, must be limited to the portions of the record reasonably necessary to accomplish the purpose for which the request is made.
 - 2. Any request for the entire medical record that is not made by a health care provider for treatment purposes must have in the request justification for requesting the entire medical record.

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D. Monitoring of Minimum Necessary Requirement

1. UW HCC unit Privacy Coordinators will carry out periodic reviews, at least annually but more frequently when appropriate, of access levels to determine:
 - a. Changes in staff member position or scope of responsibilities; and
 - b. Changes in information available through information components.
2. UW HCC unit Privacy Coordinators, in collaboration with data security analysts, will periodically monitor access to determine appropriateness of staff review of PHI. Tracking incidents of unauthorized access will increase the security of patient's health information and decrease the risk of privacy violations. Methods for auditing access may include:
 - a. Conducting random spot-checks of patients to determine appropriateness of access;
 - b. Using exception reports to determine time of access, length of access, access to "confidential" or "publicly recognizable" patient PHI;
 - c. Reviewing "role-based" access by position and unit of assignment within the organization; or
 - d. Reviewing requests for and access to "hard copy" patient records.
3. Reports of monitoring done under 1. and 2. above should be filed with the UW HIPAA Privacy Officer by each UW HCC unit Privacy Coordinator.

IV. Documentation Requirements

- A. Monitoring reports by UW HCC unit Privacy Coordinators (see III.D. 3 above).

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- B. At the option of the UW HCC unit Privacy Coordinator, access to PHI by staff member may be documented. A sample form for this documentation is attached.

V. Forms

Determination of Access to Protected Health Information (Sample)

VI. References

- 45 CFR 164.502(b) HIPAA Privacy Rule
- 45 CFR 164.510 HIPAA Privacy Rule
- 45 CFR 164.512 HIPAA Privacy Rule
- 45 CFR 164.522(a) HIPAA Privacy Rule

VII. Related Policies

- Policy Number 3.2 “Uses and Disclosures of Protected Health Information That Require Patient Authorization”
- Policy Number 3.3 “Uses and Disclosures of Protected Health Information Not Requiring Patient Authorization or an Opportunity to Agree or to Object”
- Policy Number 3.4 “Uses and Disclosures of Protected Health Information That Require Providing the Patient with an Opportunity to Agree or to Object”
- Policy Number 3.5 “Uses of Protected Health Information for Education and Training”
- Policy Number 3.6 “Uses and Disclosures of Protected Health Information for Marketing”
- Policy Number 3.7 “Uses and Disclosures of Protected Health Information for Fundraising”
- Policy Number 3.9 “Verifying Identity and Authority of Outsiders Seeking Disclosure of a Patient’s Protected Health Information”

VIII. For Further Information

For further information concerning this policy, please contact the UW-Madison HIPAA

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Privacy Officer or the appropriate unit HIPAA Privacy Coordinator or sub-Coordinator.
Contact information is available within the “Contact Us” tab at hipaa.wisc.edu.

Reviewed By

Chancellor
Chancellor’s Task Force on HIPAA Privacy
UW-Madison HIPAA Privacy Officer
UW-Madison Office of Legal Affairs

Approved By

Interim HIPAA Privacy and Security Operations Committee