Sale of Protected Health Information Generally Prohibited

Effective Date: September 22, 2014
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<th>Functional Owner</th>
<th>UW-Madison HIPAA Privacy Officer</th>
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<td>Executive Sponsor</td>
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Policy Summary

The HIPAA Privacy Rule and HITECH regulations prohibit covered entities from selling a patient’s protected health information absent an authorization from the patient. UW-Madison does not sell patient protected health information without patient authorization to do so.

Who This Policy Applies To

Applies to all members of the UW-Madison Health Care Component.

Rationale

In enacting HIPAA, Congress mandated the establishment of Federal standards for the privacy of individually identifiable health information. Under the patchwork of laws existing prior to adoption of HIPAA and the Privacy Rule, personal health information could be distributed—without either notice or authorization—for reasons that had nothing to do with a patient’s medical treatment or health care reimbursement. For example, unless otherwise forbidden by State or local law, without the Privacy Rule patient information held by a health plan could, without the patient’s permission, be passed on to a lender who could then deny the patient’s application for a home mortgage or a credit card, or to an employer who could use it in personnel decisions. The Privacy Rule establishes a Federal floor of safeguards to protect the confidentiality of medical information. State laws which provide stronger privacy protections apply over and above the new Federal privacy standards.

Policy Detail

1. UW-Madison does not sell protected health information except pursuant to a patient authorization.
2. Sale of protected health information does not include a disclosure of protected health information:
   2.1 For public health purposes as otherwise permitted by the Privacy Rule (e.g., as a limited data set pursuant to a data use agreement for purposes of conducting public health activities).
   2.2 For research purposes where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes.
2.3 For treatment and payment purposes.

2.4 For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence.

2.5 To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities.

2.6 To the patient at the patient’s request.

2.7 Required by law.

2.8 For any other purpose permitted by the Privacy Rule, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

**Consequences for Non-Compliance**

Failing to comply with this policy may result in discipline for the individual(s) responsible for such non-compliance.

Further, the US Department Health and Human Services (HHS) Office for Civil Rights (OCR) is responsible for enforcing the HIPAA Privacy and Security Rules, and an individual’s non-compliance may result in institutional non-compliance and/or an investigation by OCR. OCR attempts to resolve investigations by obtaining voluntary compliance and entering into Corrective Action Plans and Resolution Agreements. Failures to comply with HIPAA or cooperate with OCR in an investigation may result in civil and/or criminal penalties.

**Supporting Tools**

Additional information may be found at www.compliance.wisc.edu/hipaa

**Definitions**

1. **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.

2. **Payment**: The activities undertaken by a health care provider to obtain payment for the provision of care or by a health plan to provide reimbursement for the provision of care.

3. **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.

4. **Research**: A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.
5. **Sale of Protected Health Information**: A disclosure of PHI by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI.

6. **Treatment**: The provision, coordination, or management of health care and related services.

7. **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 the University of Wisconsin Affiliated Covered Entity (UW ACE)”.

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

9. **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 HIPAA Policy 1.1 “Designation of UW-Madison Health Care Component” for a listing of these units.

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**Responsibilities**

HIPAA Privacy Officer  
HIPAA Security Officer

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**Link to Current Policy**

[TBD]

**Link to Related Policies**

https://compliance.wisc.edu/policies-and-forms/

**Link to Policy History**

N/A

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**Review / Approval**

- HIPAA Executive Board, March 26, 2020