

# STANDARD ADMINISTRATIVE PROCEDURE

## 16.99.99.M0.13 HIPAA - Accounting of Disclosures for Subpoenas

*Approved October 27, 2014*

*Next scheduled review: October 27, 2019*

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### SAP Statement

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This procedure applies to Texas A&M Health Science Center (TAMHSC) health care providers, its participating physicians and clinicians, employees and business units who provide management, administrative, financial, legal, and operational support to or on behalf of the health care provider and has been designated as a member of the TAMHSC Health Care Component. This procedure pertains to protected health information covered by the TAMHSC Health Care Component's Notice of Privacy Practices.

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### Official procedure

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#### 1. GENERAL

Protected Health Information<sup>i</sup> may be disclosed pursuant to judicial or administrative process without the written authorization of the resident, or the opportunity for the resident to agree or object, subject to certain conditions. The Health Care Component will disclose PHI in the course of judicial or administrative process in response to a court or administrative tribunal order. The Health Care Component will disclose PHI in response to a subpoena, discovery request, or other lawful process that is not accompanied by a court order, subject to the conditions set forth in this procedure. In either case, the Health Care Component will disclose only that PHI expressly authorized by the subpoena, discovery request, other lawful process, or court order. (The Health Care Component may contact its legal counsel to review and verify the legality of a subpoena requesting PHI served.)

#### 2. PROCEDURE

- 2.1 If the subpoena or other lawful request is accompanied by an order of a court or administrative tribunal, the Health Care Component will verify the identity and authority of the individuals requesting PHI.
- 2.2 If the order of the court or other administrative tribunal is valid and meets the verification requirements, the Health Care Component will disclose only that PHI expressly authorized by such order.
- 2.3 If the subpoena, discovery request or other lawful process ("subpoena") is not accompanied by a court order, the Health Care Component will disclose the PHI only after obtaining satisfactory assurances from the party seeking the information that they have made reasonable efforts:

- 2.3.1 To notify the individual who is the subject of the requested PHI, or
- 2.3.2 To secure a qualified protective order.
- 2.3.3 Notice to individual. Prior to disclosing PHI when the subpoena is not accompanied by a court order and there is no qualified protective order meeting the requirements of the Privacy Rule, the Health Care Component will obtain a written statement and accompanying documentation from the requesting party that meets all of the following requirements:
  - 2.3.3.1 The written statement and documentation must demonstrate that reasonable efforts have been made to give notice of the request to the individual who is the subject of the requested PHI.
  - 2.3.3.2 The notice must contain sufficient information about the litigation or proceeding to permit the individual to raise an objection to the court or administrative tribunal.
  - 2.3.3.3 The written statement and accompanying documentation must demonstrate that:
    - Time for raising objections to the court or administrative tribunal has elapsed; and,
    - No objections were filed; or,
    - The court has resolved all objections filed by the individual or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- 2.3.4 Qualified Protective Order. A qualified protective order means an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
  - 2.3.4.1 Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and,
  - 2.3.4.2 Requires the return to the Health Care Component or destruction of the PHI, (including all copies made) at the end of the litigation or proceeding.
- 2.3.5 Prior to disclosing PHI when the subpoena is not accompanied by a court order and the above notice requirements are not met, the Health Care Component will obtain from the requesting party a written statement and accompanying documentation demonstrating that:
  - 2.3.5.1 The parties to the dispute giving rise to the request for PHI have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute, or
  - 2.3.5.2 The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.

- 2.3.6 If the requesting party is unable to meet the requirements for Notice or a Qualified Protective Order, the Health Care Component will notify the requesting party that it is unable to comply with the subpoena. (See sample “Response to a Subpoena” letter following this Procedure.)
- 2.3.7 If the requesting party decides to pursue the request for the PHI without meeting the above requirements, the Health Care Component Privacy Official will contact the Health Care Component’s Legal Counsel for further direction.
- 2.3.8 The Health Care Component Privacy Official shall document the information regarding the subpoena or other legal process that requests PHI in an Accounting of Disclosures Log.
- 2.3.9 The subpoena and any documents produced for the subpoena will be retained according to state and federal regulations.

### 3. VIOLATIONS

The Privacy Officer has general responsibility for implementation of this procedure. Employees who violate this procedure will be subject to disciplinary action up to and including termination of employment. Anyone who knows or has reason to believe that another person has violated this procedure should report the matter promptly to his or her supervisor or the Privacy Officer. All reported matters will be investigated, and, where appropriate, steps will be taken to remedy the situation. Where possible, every effort will be made to handle the reported matter confidentially. Any attempt to retaliate against a person for reporting a violation of this procedure will itself be considered a violation of this procedure that may result in disciplinary action up to and including termination of employment.

i HIPAA Code: §164.522(b)(1), §164.502(b)

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#### Contact Office

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TAMHSC Vice President of Finance and Administration