

## ACCESS, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

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**PURPOSE:** To provide guidelines for the access, use and disclosure of protected health information (PHI), and for protecting the confidentiality and integrity of patients' PHI, in accordance with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended, and specifically 45 CFR §§ 164.502(b), 164.506, 164.508, 164.510, 164.512 and 164.530 (collectively referred to as HIPAA).

**DEFINITION(S):** For the definitions of all capitalized terms used, but not defined, in this Policy and Procedure, and in the various other HIPAA policies and procedures, please refer to HIPAA.

### **POLICY:**

1. These HIPAA Policies and Procedures apply to the ENTITY. The HIPAA Policies and Procedures dictate when and how PHI may be shared within the ENTITY, and with patients, personal representatives, other family members and friends, and third parties.
2. In the event the ENTITY is acting in the role of a business associate, the ***Business Associate Policy*** and the ***ENTITY as Business Associate Policy*** shall apply, and the ENTITY shall be required to comply with the HIPAA Policies and Procedures when handling and maintaining the PHI of the person or entity for which the ENTITY is serving as a business associate.
3. PHI may only be released to entities outside of the ENTITY as permitted by the HIPAA Policies and Procedures, applicable laws, and HIPAA.
4. The Facility Administrator or equivalent workforce member shall serve as the Privacy Officer and Security Officer for the ENTITY. Any responsibilities of the Privacy Officer identified in the HIPAA Policies and Procedures may be carried out by the Privacy Officer, or by the Privacy Officer's designee under the supervision of the Privacy Officer.
5. ENTITY workforce members must only access, use and disclose PHI;
  - a. As permitted under applicable Federal and State laws; and
  - b. In a manner consistent with the HIPAA Policies and Procedures.
6. **Permitted Disclosures**. The ENTITY is ***permitted*** to disclose PHI:
  - a. To patients;
  - b. To patients' personal representatives, consistent with the ***Personal Representative Policy***;
  - c. For treatment, payment, or health care operations, as defined in the ***Uses & Disclosures – Routine, Not Requiring Authorization Policy***.

- d. Incident to a use or disclosure otherwise permitted or required by HIPAA, consistent with the *Incidental Disclosures Policy*.
  - e. Except for uses and disclosures of genetic information, pursuant to and in compliance with a valid authorization, consistent with the *Uses & Disclosures – Routine, Requiring Authorization Policy*;
  - f. To a patient's (or decedent's) family, friends or acquaintances as permitted by the *Uses & Disclosures – Routine, Not Requiring Authorization Policy*.
  - g. As permitted by an in compliance with the following HIPAA policies and procedures:
    - i. *De-Identified Information Policy*;
    - ii. *Limited Data Set – Data Use Agreement Policy*;
    - iii. *Uses & Disclosures – Routine, Requiring Authorization Policy*.
7. **Required Disclosures.** The ENTITY is *required* to disclose PHI:
- a. To a patient or personal representative, as described in the *Personal Representative Policy, Patient Rights Policy – Access or Amendment of Records* and *Uses & Disclosures – Special Circumstances – No Authorization Required Policy*; and
  - b. To the Secretary of the Department of Health and Human Services to investigate or determine the ENTITY's compliance with HIPAA.
8. **Prohibited Disclosures.** The ENTITY is *prohibited* from using and disclosing PHI as follows:
- a. Uses and disclosures of genetic information for underwriting purposes are prohibited by HIPAA; or
  - b. In connection with the sale of PHI, except as expressly permitted by the *Uses & Disclosures – Routine, Requiring Authorization Policy*.
  - c. The ENTITY will not use or disclose PHI in connection with fundraising activities.
9. **Minimum Necessary.** When using or disclosing PHI or when requesting PHI from another covered entity or business associate, the ENTITY must make reasonable efforts to limit PHI to the *minimum necessary* to accomplish the intended purposes of the use, disclosure or request. See the *Minimum Necessary/Need to Know Policy, Minimum Necessary/Need to Know – Disclosures to Health Plans Policy, Minimum Necessary/Need to Know – Disclosures to Billing Companies Policy, and Minimum Necessary/Need to Know – Disclosures to Transcription Service Policy*. This requirement does not apply to:
- a. Disclosures to, or requests by, a health care provider for treatment;
  - b. Uses or disclosures permitted or required to be made to the patient or personal representative;
  - c. Uses or disclosures made pursuant to an authorization. See the *Uses & Disclosures – Routine, Requiring Authorization Policy*;
  - d. Disclosures made to the Secretary of the Department of Health and Human Services;
  - e. Uses and disclosures required by law; and
  - f. Uses and disclosures that are required for compliance with HIPAA.

10. **Restrictions on Disclosure.** If the ENTITY has agreed to a *restriction* on disclosure of a patient's PHI, consistent with the *Patient Rights – Request Restrictions or Alternative Means of Communication Policy*, the ENTITY may not use or disclose the PHI covered by the restriction in violation of such restriction, unless one of the exceptions set forth in the policy applies.
11. **De-Identified Information.** The ENTITY may use PHI to create information that is not individually identifiable health information or disclose PHI only to a business associate for such purpose, whether or not the de-identified information is to be used by the ENTITY. Health information that has been de-identified consistent with the *De-Identified Health Information Policy* is considered not to be individually identifiable health information (i.e., it is de-identified). HIPAA does not apply to de-identified information, provided that:
  - a. Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of PHI; and
  - b. If de-identified information is re-identified, the ENTITY may use or disclose such re-identified information only as permitted or required by HIPAA.
12. **Disclosures to Business Associates.** The ENTITY may disclose PHI to a business associate, and may allow a business associate to create, receive, maintain or transmit PHI on its behalf, if the ENTITY obtains satisfactory assurance that the business associate will appropriately safeguard the information. The ENTITY is not required to obtain such satisfactory assurances from a business associate that is a subcontractor, unless the ENTITY itself is serving as a business associate. The satisfactory assurances must be documented through a written Business Associate Agreement (BAA). See the *Business Associate Policy* and *ENTITY as Business Associate Policy*.
13. **Deceased Individuals.** The ENTITY must comply with HIPAA with respect to PHI of a deceased patient for a period of 50 years following the death of the patient.
14. **Personal Representatives.** To the extent required as described in the *Personal Representative Policy*, the ENTITY must treat a Personal Representative as the patient for purposes of HIPAA.
15. **Confidential Communications.** In the event a patient has requested alternative communications as described in the *Patient Rights – Request Restrictions or Alternative Means of Communication Policy*, the ENTITY must comply with such request in communicating PHI.
16. **Uses and Disclosures Consistent with Notice of Privacy Practices.** The ENTITY may not use or disclose PHI in a manner inconsistent with its Notice of Privacy Practices. See the *Privacy Notice Policy*. The ENTITY may not engage in fundraising activities or marketing unless the Notice of Privacy Practices contains the statements required by HIPAA relating to such activities.

17. **Disclosures by Whistleblowers.**The ENTITY is not considered to have violated the requirements of HIPAA if a member of its workforce or a business associate discloses PHI in the capacity as a whistleblower, consistent with HIPAA.
18. **Disclosures by Workforce Member Crime Victims.**The ENTITY is not considered to have violated the requirements of HIPAA if a member of the ENTITY's workforce who is the victim of a criminal act discloses PHI to a law enforcement official consistent with HIPAA.
19. **Consent for Uses or Disclosures Permitted.**The ENTITY may obtain the consent of a patient or personal representative to use or disclose PHI to carry out treatment, payment, or health care operations. Such consent shall not be effective to permit a use or disclosure of PHI when an authorization is required (see the *Uses & Disclosures – Routine, Requiring Authorization Policy*) or when another condition must be met for such use or disclosure to be permissible under HIPAA.
20. If the nature of the disclosure is not clear, please refer to the HIPAA Policies and Procedures or contact the Privacy Officer before the PHI is released.
21. All of the HIPAA Policies and Procedures may be found in the Surgery Partners Clinical Portal.