	Department:	Policy No.:
HAWAII HEALTH SYSTEMS C O R P O R A T I O N "Quality Healthcare For All"	Quality Through Compliance	CMP 047A
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Disclosure	HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	Page: 1 of 4

Last Reviewed: August 19, 2013. Next Review: August 19, 2016

I. PURPOSE: This Policy establishes the identification of people or entities to whom (or to which)
Protected Health Information (PHI) will be disclosed by HHSC, and establishes when it is necessary
to verify their authority to receive the PHI.

II. DEFINITIONS:

<u>Protected Health Information (PHI)</u> – Health information, including demographic information collected from an individual, created or received by HHSC that:

- 1. Identifies the individual or for which there is reasonable basis to believe the information can be used to identify an individual.
- 2. Relates to:
 - a. The individual's past, present, or future physical or mental health or condition;
 - b. The provision of health care to the individual, or:
 - c. The past, present, or future payment for the provision of health care to the individual.
- 3. Is stored or transmitted in any medium.
- 4. Are not federally funded educational records (FERPA-Family Educational Rights and Privacy Act), or in employment records held by a covered entity in its role as employer, or in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), or regarding a person who has been deceased for more than 50 years.

III. POLICY:

- A. This policy applies to all situations in which HHSC is asked or required to disclose, or seeks to disclose, protected health information (PHI). (Under HIPAA, a "disclosure" is the release, transfer, provision of access to, or divulging in any other manner of PHI to a person or entity outside of the entity that possesses the PHI.)
 - 1. When HHSC knows the identity of the person requesting the PHI, no additional verification of identity is required. However, under some circumstances, it may be necessary to verify the person's authority (or right) to get access to particular PHI.
 - 2. When HHSC does not know the person requesting the PHI, HHSC is required by law to verify both of the following before disclosing PHI:
 - a) The requestor's identity
 - b) The requestor's authority to obtain the PHI in question
 - 3. Verification of identity or authority, or both, is just one step in the process that HHSC must follow before it discloses PHI. For example, other policies, such as the minimum necessary policy, may also apply.

- B. Verifying Identity and Authority
 - 1. General rule of reasonableness: The HIPAA privacy rules specify that verification policies and procedures are to be applied reasonably. "Reasonable" application includes using common sense being alert for telltale inconsistencies in a person's request for access to PHI, using common health care industry practices, paying attention to details when questioning people and examining credentials or documents they present and, in the event of doubt, checking with supervisors or others (such as counsel) before disclosing PHI.
 - Good faith belief in a person's identity (and, for public officials, their authority)
 after careful checking (using the outline below) is an essential element of
 reasonableness.
 - b) Actual knowledge of falsity or of an inconsistency in a person's identity or authority makes it unreasonable to disclose PHI to that person.
 - c) Certain circumstances listed below require the exercise of professional judgment before a disclosure of PHI is proper:
 - Professional judgment includes using the professional's experience and common practice to make reasonable inferences about the individual's best interests.
 - ii. Professional judgment is the province of a doctor, nurse, administrator, attorney or someone in a similar professional position.
 - 2. General rules for examining documents used to verify identity or authority:
 - Legal documents issued by a court such as a court order, search warrant, arrest warrant, subpoena or similar document bearing the signature of a judge, magistrate, or other judicial officer. Unless the circumstances suggest the document is a forgery or has been tampered with, a document of this type can be taken at face value based on what it says (that is, a document of this type is self-authenticating).
 - b) Legal documents not issued by a court and not signed by a judge, magistrate, or other judicial officer. This may include some subpoenas or litigation demands for production of documents, records or other things. These documents require examination by legal counsel before they can be taken at face value (that is, a document of this type is not necessarily self-authenticating). For example, HHSC/HHSC may have the right to object in court to the demands in such a document.
 - c) Letters issued by a government agency for identification or to state authority must be on the appropriate agency letterhead, dated and signed.
 - Letters issued by non-governmental sources for identification or to state authority should be referred to HHSC counsel or a designated administrator for further verification.
 - 3. Family and friends:
 - When the patient is present and has the capacity to act, it is sufficient for verification purposes if the patient makes an oral statement identifying the person as someone who can receive PHI.
 - b) When the patient is not present or lacks the capacity to act (for example, in an emergency or because of the patient's unconsciousness or disorientation), verification of the identity of a person to whom PHI can be disclosed is accomplished through the exercise of professional judgment.
 - c) Examples: Describing or discussing diagnoses and treatments or ordering or picking up filled prescriptions, medical supplies, X-rays or other images.
 - d) HHSC requires that the release of PHI to a family member or friend, and the circumstances making it reasonable to do so, be documented with a brief note in the patient's medical record.

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- 4. Personal representatives (includes parents or guardians):
 - a) Verify identity:
 - i. Where the identity of the personal representative requires verification and the representative is a family member or friend, follow the procedure above in "3" for family and friends.
 - ii. Where the authority of an identified person requires verification, require a document and verify the document under paragraph III.B, above.
 - b) Verify authority:
 - i. The authority of a personal representative usually should be stated in a document. If no document is offered, refer the person to HHSC counsel or a designated administrator for further verification.
 - ii. If a document is presented, examine it under paragraph "2", above.
- 5. Persons seeking disclosure of PHI based on documents (other than personal representatives):
 - a) Require a signed HIPAA Authorization on HHSC Authorization form. The person requesting PHI must be named in the Authorization as the person to whom PHI is to be disclosed.
 - b) Verify identity:
 - Where the identity of the recipient requires verification and the representative is a family member or friend, follow the procedure above in "3" for family and friends.
 - ii. Where the authority of the recipient requires verification, require a document and verify the document under paragraph "2", above.
- 6. Public officials seeking disclosure of PHI based on their identity and authority:
 - a) Verify Identity by examining governmental identification credentials (usually an officially issued card). NOTE: A uniform or badge, alone or in combination, is insufficient for verification of identity or authority except in emergency situations when:
 - i. Time is critical, and:
 - ii. The total circumstances make it reasonable to infer the identity of a law enforcement officer or other government official.
 - b) Verify Authority by examining the justification offered by the public official under the circumstances.
 - i. Oral justification may be reasonable under some circumstances (for example, a search for a suspect who may need medical help).
 - ii. Written justification may be reasonably required when:
 - a. Time is available to the public official to produce a written statement of authority (whether or not there is an emergency);
 - b. The official's request is out-of-the-ordinary, or;
 - c. Circumstances raise doubts about the request or demand.
- 7. Disaster relief agencies:
 - a) In emergencies, consider the totality of the circumstances using reasonableness.
 - b) In non-emergencies, consult with the Chief Compliance and Privacy Officer, Regional Compliance Officer, HHSC legal counsel, or the Regional Chief Executive Officer or designee.
- 8. Funeral Homes or Mortuaries:
 - a) Require written verification of identity and authority.
 - b) Appropriate documentation may include:
 - i. Signed contract with the deceased or deceased's family
 - ii. A letter on the funeral home's letterhead signed by the deceased's personal representative or, before death, by the deceased.

- iii. A letter signed by the deceased's personal representative or, before death, by the deceased.
- iv. A signed HIPAA Authorization on HHSC Authorization form, signed by the deceased's personal representative.
- C. HHSC facilities shall implement procedures to operationalize this Policy
- IV. APPLICABILITY: This Policy applies to all HHSC facilities.
- V. AUTHORITY: 45 CFR§164.514(h)(1).
- VI. ATTACHMENT: None.