



## Policy

### Uses and Disclosures of Protected Health Information

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**Policy Owner:** HIPAA Advisory Group

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**Approved by:** John T. Randolph- Vice President,  
Chief Compliance Officer, UMMH

**Applicability:** This policy applies to all workforce Members who have access to protected health information

**Approved by:** Eric Dickson MD, CEO  
UMass Memorial Health

**Keywords:** authorization, deceased individuals, demographics, disaster relief, disclosure, fundraising, health care operations, law enforcement, marketing, payment, registries, research, third parties, treatment, use, victims of abuse, neglect or domestic violence, whistleblowers

## Policy

Protected Health Information (also referred to as PHI) is confidential and shall not be used or disclosed except as set forth in this policy or as required by law. Except when otherwise noted, the minimum necessary guidelines (linked) apply to all uses and disclosures of PHI. Workforce Members who may become aware of PHI in an incidental manner are responsible for maintaining the confidentiality of the information. Anyone found in violation of this policy will be subject to disciplinary action up to and including termination. Please contact your UMass Memorial Health Care's (also referred to as UMMH) entity's Privacy Office or the Office of General Counsel with any questions.

Any release of electronic health information (EHI) that is deemed allowable under this policy will be done in accordance with 21<sup>st</sup> Century Cures Act, also referred to as Information Blocking, its associated Rules and applicable policies, to the extent they apply.

## Definitions

**42 CFR Part 2** – is a set of federal regulations governing the confidentiality of any information about patients receiving diagnosis, treatment, or referral for treatment for a substance use disorder created/obtained by a Part 2 program. Part 2 programs are defined as programs that are federally assisted and are:

- (1) An individual or entity (other than a general medical facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (2) An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
- (3) Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

**Authorized Representative** – For purposes of this policy, (1) guardian (court appointed or parent of an unemancipated minor); (2) Health Care Agent (if Health Care Proxy has been invoked); (3) duly appointed representative of a deceased patient's estate or (4) other personal representative appointed by the patient

pursuant to a legal document. An Authorized Representative for disclosure of information may be different from an Authorized Representative for consenting to treatment. Please contact either the Office of the General Counsel or your UMMH Entity's Privacy Office for additional guidance.

**Business Associates** – a person or organization that receives, uses, discloses, creates, or obtains protected health information, or personal information, to perform a function or service on behalf a member of UMMH.

**De-identified** – health care information that is stripped of all identifying information and unique characteristics or codes including: name; address( including street address), city, county, zip code, or equivalent geocodes; names of relatives and employers; birth date; telephone and fax numbers; e-mail addresses; social security number; medical record number; health plan beneficiary number; account number; certificate/license number; any vehicle or other device serial number; web URL; Internet protocol (IP) address; finger or voice prints; photographic images; and any other unique identifying number, characteristic, or code. Age and some geographic location information may be included in the de-identified information, but all dates directly related to the subject of the information must be removed or limited to the year, and zip codes must be removed or aggregated (in the form of most 3-digit zip codes) to include at least 20,000 people. Extreme ages of 90 and over must be aggregated to a category of 90+ to avoid identification of very old individuals. Other demographic information, such as gender, race, ethnicity, and marital status are not included in the list of identifiers and must be removed.

**Designated Record Set** – a group of records maintained in any format, by or for a covered entity, that is the medical and billing record about the individual or used, in whole or in part, to make decisions about individuals. The designated record set includes the legal medical record, patient-submitted documentation and referral letters, consent and authorization forms, Medicare Advance Beneficiary Notice letter, Medicare Life Time Reserve letter, Notice of Non-coverage letters, and other waivers, and patient specific claims, statement of account balance and payment agreement. The designated record set does not include source data that are summarized, dictated or transcribed into the medical or billing record and administrative data such as audit trails, appointment schedules, practice guidelines, fundraising records, performance improvement reports, incident reports, documentation from medical staff committees and peer review files.

**Electronic Health Information (EHI):** For the period from April 5, 2021 until October 5, 2022, "EHI" will be limited to the protected health information (PHI) data elements listed in the United States Core Data version 1 for Interoperability (USCDI) Elements Chart (linked below in References). From October 6, 2022 forward, EHI will mean electronic PHI that would be included in UMMH's Designated Record Set, regardless of whether the group of records are used or maintained by or for a covered entity, but EHI shall not include: (1) Psychotherapy notes; or (2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

**Electronic Resources** – all forms of electronic communication devices including, but not limited to: telephones regardless of transmission method, voice mail, e-mail, fax machines, computers, PDA's (personal data assistants), wireless devices, numeric and alpha pagers, networks and other recording or transmitting devices.

**Financial Remuneration** – [See the related definition of "Marketing."] Direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual. Indirect payment would include payments made by a third party to a Business Associate of any Member of the UMMH Organized Health Care Arrangement (also referred to as OHCA).

**Health Care Operations** – activities related to covered general administrative and business functions including quality improvement, care coordination, credentialing, training, accreditation, certification, licensing, insurance rating and other activities relating to the creation, renewal or replacement of a contract for health insurance or health benefits, conducting or arranging for medical review, legal or auditing services, business planning and development, general administrative functions such as limited marketing

and fundraising (authorization may be required), restructuring, grievance management, customer service including satisfaction surveys and activities to support an organized health care arrangement.

**Health Insurance Portability and Accountability Act (HIPAA) of 1996** – was passed and signed into law on August 21, 1996. The US Department of Health and Human Services created regulations to enforce HIPAA as it applies to Individually Identifiable Health Information (the regulations are also referred to as "the Privacy Rule").

**Institutional Review Board (IRB)** – a committee formally constituted by an institution and authorized by the DHHS to review research involving human subjects, and to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB approves the initiation of new research conducts reviews of ongoing research and approves an alteration or a waiver of the individual authorization.

**Limited Data Set (LDS)** – PHI that includes broad geographic information and dates (such as birth, death, admission, and discharge), but excludes the following direct identifiers of the individual or of relatives, employers, or household Members of the individual: names, postal address information other than town or city, state, and zip code, telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers and serial numbers, including license plate numbers, device identifiers and serial numbers, web Universal Resource Locators (URLs), Internet Protocol (IP) address numbers, biometric identifiers, including finger and voice prints, full face photographic images and any comparable images.

**Marketing** – [See the related definition of "Financial Remuneration."] any communications about a product or service that is intended to encourage recipients of the communication to purchase or use the product or service. **The following activities are *not* considered marketing for purposes of complying with HIPAA requirements:**

- (i) To provide refill reminders or otherwise communicate information about a drug or biologic that is currently being prescribed for the individual. Note: UMMH Entity's do not accept financial remuneration from third parties in exchange for making refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual.
- (ii) For the following treatment and health care operations purposes, **except** where any Member of the UMMH OHCA receives Financial Remuneration in exchange for making the communication:
  1. For treatment of an individual by any Member of the UMMH OHCA, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;
  2. To describe a health-related product or service that is provided to any Member of the UMMH OHCA, including communications about the entities participating in a health care provider network; or
  3. For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent that these activities do not fall within the definition of treatment.
  4. Communication that merely promotes health in a general manner and does not promote a specific product or service from a particular provider. Such communications may include population-based activities to improve health or reduce health care costs as part of "health care operations." Therefore, communications, such as mailings reminding women to get an annual mammogram, providing information about how to lower cholesterol, developing new diagnostic tools in health care), providing information about health or "wellness" classes, about support groups, and about health fairs are permitted, and are not considered marketing.

- (iii) Face-to-face communication made by any Member of the UMMH OHCA to an individual;
- (iv) A promotional gift of nominal value provided by any Member of the UMMH OHCA to an individual (to the extent permitted by other policies regarding the provision of items of value to patients).

Questions about whether a potential disclosure of PHI is marketing should be directed to the entity's Privacy Office.

**Mature Minor** – except in the case of abortion and sterilization, a minor may be treated as a mature minor and therefore, consent to his/her own treatment, when the physician determines that the best interests of the minor will be served by not notifying his/her parents of the intended medical treatment and that the minor is capable of providing informed consent to the treatment. The mature minor rule may only be applied after the physician's thorough consideration of the facts in each case. The Office of General Counsel may be contacted to discuss application of the rule at any time.

**Next of Kin** – In the absence of a Health Care Agent or Guardian, the order for establishing Next-of-Kin is as follows: spouse, adult children, parent(s), adult sibling(s), adult grandchildren, grandparent(s), adult great-grandchildren, adult nieces/nephews, and adult uncles, aunts or first cousin.

**Organized Health Care Arrangement (OHCA)** – is a clinically integrated care setting in which more than one covered entity participates and in which the participating covered entities need to share protected health information (PHI) for the purposes of treatment, payment or health care operations. The OHCA participants hold themselves out to the public as participating in a joint arrangement. The Members of the UMMH OHCA include, but is not limited to the following entities: UMass Memorial Medical Center; Central New England Health Alliance (includes UMass Memorial Health Alliance-Clinton Hospital and Health Alliance Home Health and Hospice); Community Healthlink; Marlborough Hospital; UMass Memorial Medical Group; private hospital-based physicians; and other private physicians while working at our facilities.

**Part 2 Program Director** – means (1) In the case of a Part 2 Program that is an individual, that individual. (2) In the case of a part 2 program that is an entity, the individual designated as director or managing director, or individual otherwise vested with authority to act as chief executive officer of the part 2 program.

**Payment** – activities undertaken by or on behalf of any Member of the UMMH OHCA to obtain reimbursement for the provision of health care. This includes coordination of benefits, billing, claims management, collections, medical necessity reviews, disclosures to consumer reporting agencies and utilization management.

**Privacy Officer** – The person designated by the UMMH Entity to have responsibility for the UMMH Entity's Privacy Program.

**Protected Health Information (PHI)** – Information created, transmitted, received or maintained by the UMMH Entity's, including demographic information, related to the:

- Past, present, or future physical or mental health or condition of an individual;
- Provision of health care to an individual; or
- Past, present, or future payment for the provision of health care to an individual; **together with** any of the identifiers in the list below.

**Note:** Information for deceased individuals continues to be PHI until the individual has been deceased for more than 50 years.

Names (of patients, relatives, or employers)	Social security numbers	Device identifiers and serial numbers
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All geographic subdivisions smaller than a State	Medical record numbers	Web Universal Resource Locators (URLs)
All elements of dates (except year) including birth date, admission date, discharge date, date of death; and all ages over 89	Health plan beneficiary numbers	Internet Protocol (IP) address numbers
Telephone numbers	Account numbers	Biometric identifiers, including finger and voice prints
Fax numbers	Certificate/license numbers	Full face photographic images and any comparable images
Electronic mail addresses	Vehicle identifiers and serial numbers, including license plate numbers	Any other unique identifying number, characteristic, or code

PHI does not include information maintained about an individual by UMMH for employment purposes, such as employee health records.

**Psychotherapy notes** - notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**Qualified Service Organization** – an individual or entity that provides services to a Part 2 Program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy and has entered into an agreement with a Part 2 Program where they agree to be fully bound by 42 CFR Part 2 and that if necessary it will resist in judicial proceedings efforts to obtain this protected information except as permitted under 42 CFR Part 2.

**Statutorily Protected Information** – records or information that are awarded special protection under federal or state law including, but not limited to information regarding Mental Health Diagnosis and/or Treatment provided by Psychologist, Psychiatrist, Mental Health Clinical Nurse Practitioner, Licensed Mental Health Counselor and Licensed Social Worker, Alcohol and Substance Use, Domestic Violence Counseling, Genetic Screening Test Results, Sexual Assault Counseling, Sexually Transmitted Diseases, AIDS/HIV Test Results, and Abortion (consent forms of court orders).

**Treatment** – the provision of health care by, or the coordination or management of health care among, health care providers, or; the referral of a patient from one provider to another, or; the coordination of health care or other services among health care providers and third parties authorized by the health plan or the individual.

**UMass Memorial Health Care (UMMH)** – the parent corporation whose Member corporations include but are not limited to UMass Memorial Medical Center; UMass Memorial Health Alliance-Clinton Hospital; Community Healthlink; Marlborough Hospital; UMass Memorial Medical Group; private hospital-based physicians; and other private physicians while working at our facilities.

**UMass Memorial Health Care, Inc. (UMMH) Entities** – any legal entity wholly owned or controlled, directly or indirectly, by UMass Memorial Health Care, Inc.

**Workforce Members** – all employees, contractors, volunteers, trainees (including medical students, interns, residents, allied health professional and business students), members of the medical staff including employed and private physicians, nurses in expanded roles, physician assistants, temporary



employees, and other persons employed, credentialed or under the control of any member of the UMMH OHCA whether or not they are paid by a member of the UMMH OHCA.

## Required Criteria for Procedure

**Note: Certain UMMH entities (example: UMass Memorial Medical Group) that are not supported by UMMH Health Information Management (HIM) or Patient Financial Services (PFS) will be responsible for taking actions assigned to HIM or PFS below.**

### A. Uses and Disclosures of Protected Health Information Requiring Authorization

This section describes the situations for which **an authorization is required** to use or disclose Protected Health Information.

#### 1. Disclosure to Patient or Authorized Representative or Next of Kin

PHI may be disclosed to the following individuals in the following situations which are not related to the normal flow of information related to treatment: a patient, including an emancipated or Mature Minor, a patient's Authorized Representative, or to the Authorized Representative of a deceased patient, with a signed Authorization for the Disclosure of Protected Health Information form. The minimum necessary standard does not apply.

Patients or an Authorized Representative must complete an authorization form and make arrangements through HIM to access, inspect or receive a copy of their health record. Refer to policy Patient Rights under HIPAA, for the process of the patient's right to access (inspect/copy) the Designated Record Set. HIM staff must verify the patient's or Authorized Representative's identification and obtain a signed and valid authorization. Requests to access, inspect or receive copies of psychiatric records must be in accordance with the UMMH Member Entity's Release of Protected Health Information policy.

#### 2. Disclosure to Third Parties

PHI may be disclosed to a person or entity designated by the patient or his/her Authorized Representative on a signed, dated, and valid authorization. Note that under 42 CFR Part 2, information can only be released by: (1) the patient, (2) their guardian, (3) an agent acting under an affirmed health care proxy, (4) an Authorized Representative of a deceased patient, or (5) in the case of a minor, if the minor consents to their care the minor, or (6) if it is their parents that consent, then both the minor and the parent has to consent. The disclosure is based on the description of information specified on the authorization and is otherwise not subject to minimum necessary. Refer to policy Patient Rights under the HIPAA, for the process of the patient's right to access (inspect/copy) the Designated Record Set

#### 3. Research Uses When Authorization is Required

Some research studies, particularly clinical trials, require patient authorization for the research team to use PHI. The research authorization may have "end of study" or another similar statement that implies continued release through the end of the study as the expiration date for the authorization, so long as the authorization has not been revoked. Note that in some cases, the UMass Chan Medical School's (also referred as UMCMS) IRB can waive the authorization requirement following strict federal guidelines. In this case, the researcher must present their waiver of authorization letter to allow use of PHI. Questions should be directed to the UMCMS Center for Clinical and Translational Research or the UMMH Entity's Privacy Office.

#### 4. Marketing Uses and Disclosures

PHI may be used by UMMH for marketing with a valid authorization permitting use or disclosure for this purpose. PHI may also be disclosed to a Business Associate who is performing Marketing services on behalf of a UMMH Entity provided there is a valid authorization permitting the use of PHI for Marketing, and there is a valid Business Associate Agreement. Marketing authorizations must

disclose that a member of the UMMH OHCA is receiving Financial Remuneration from a third party if that is the case. Only the minimum amount of PHI required to perform the Marketing function should be used or disclosed.

**5. Fundraising Uses and Disclosures Using More than Demographics, Dates of Service, Department of Service, Treating Physician, Outcome Information, or Health Insurance Status**

- a. PHI beyond demographics, dates of service, department of service, treating physician, outcome information, or health insurance status may be used by a UMMH Entity for fundraising with a valid authorization permitting use or disclosure for this purpose.
- b. PHI may also be disclosed to a Business Associate who is performing fundraising services on behalf of a UMMH Entity provided there is a valid authorization permitting use of PHI for fundraising and there is a valid Business Associate Agreement.
- c. Only the minimum amount of PHI required to perform the fundraising function should be used or disclosed.
- d. The UMMH Entity is required to provide the recipient of any fundraising communication with a clear and conspicuous opportunity to opt out of receiving further fundraising communications.
- e. The UMMH Entity may not condition treatment or payment on the individual's choice with respect to the receipt of fundraising communications.

The UMMH Entity may not make any further fundraising communications to an individual who has opted out of receiving such communications. See the UMMH **Patient Rights under Health Insurance Portability and Accountability Act Policy** for more information on the opt out process.

**6. Sale of PHI**

Generally, UMMH Entities do not sell PHI. An authorization signed up a patient or Authorized Representative would be required in the event that a President of a UMMH Entity approved the sale of PHI. The authorization must state that the disclosure will result in remuneration to the UMMH Entity.

**7. Psychotherapy notes**

Psychotherapy notes are entitled to heightened confidentiality. A UMMH Entity must obtain an authorization for any use or disclosure of psychotherapy notes, except under the following circumstances:

- a. To carry out the following treatment, payment, or health care operations:
  - i. Use by the author of the psychotherapy notes for treatment;
  - ii. Use or disclosure by a UMMH Entity for the UMMH Entity's training programs (e.g., by students, trainees, or practitioners for group, joint, family, or individual counseling training); or
  - iii. Use or disclosure by a UMMH Entity to defend itself in a legal action or a complaint, brought by or on behalf of the patient;
- b. As required by the Secretary for Health and Human Services for compliance reviews,
- c. As permitted by law,
- d. For oversight of the author of the psychotherapy notes,
- e. By the coroner and medical examiner, or
- f. As necessary and reasonable to prevent or lessen a serious or imminent threat to the health and safety of a person or the public.

**8. Statutorily Protected Information**

Statutorily Protected Information may not be disclosed to an entity external of UMMH without an authorization, court order or as otherwise permitted by law and must be in accordance with the UMMH entity's Release of Protected Health Information policy. Information that is statutorily protected includes:

- Abortion consent forms or court orders,
- Certain types of Domestic Violence Counseling,

- Communications with certain mental health providers,
- Alcohol and Substance Use Disorder Information from a Part 2 program protected under the law 42 CFR Part 2,
- Genetic Screening Test Results,
- HIV/AIDS Testing and Results,
- Sexual Assault Counseling and
- Certain Sexually Transmitted Diseases.

Please contact your UMMHentity's Privacy Office or the Office of General Counsel if you have any questions.

Note: 42 CFR Part 2 information can only be disclosed with the individuals or entities designated by the appropriately executed authorization. The restrictions on disclosure under Part 2 do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of patients with substance use disorders if the communications are:

- (i) Within a part 2 program; or
- (ii) Between a part 2 program and an entity that has direct administrative control over the program.

Further, the restrictions on disclosure under Part 2 do not apply to communications between a part 2 program and a qualified service organization of information needed by the qualified service organization to provide services to the program. There are very limited circumstances when Part 2 can be released without an authorization, which are listed below.

### **9. Minors**

Minors who consent to their own care consent to the release of their PHI that pertains to that care. Please see the Informed Consent policy for more information about when minors can consent to their own care. Otherwise, a parent or guardian must consent to the release of the minor's PHI. Information protected under 42 CFR Part 2, where the child has consented to care protected under that law, can only be released by the child. Information protected under 42 CFR Part 2, where the parent or guardian has consented to care protected under that law, can only be released with the authorization of both the parent/guardian and the child. When a minor is unable to consent for care that is protected under 42 CFR Part 2, the fact that this minor sought application to a 42 CFR Part 2 program can only be communicated if the minor provides written consent or if a Part 2 Program Director finds that the minor lacks capacity to make a rational choice. Facts relevant to reducing a substantial threat to the life or physical well-being of the minor applicant or any other individual may be disclosed to the parent/guardian if the Part 2 Program Director judges that:

10.

- (1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under an authorization to their parent/ guardian; **and**
- (2) (2) The minor applicant's situation poses a substantial threat to the life or physical well-being of the minor applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent/guardian.

### **10. An Authorization is required for uses or disclosure of PHI for any other purpose which is not specifically identified in Section B below.**

#### **B. Use or Disclosure of Protected Health Information Without Authorization**

This policy is not meant to interfere with the normal flow of information between providers and patients. PHI may be provided to a patient or his/her Authorized Representative or Next of Kin



**without** an Authorization for the Disclosure of Protected Health Information when provided as part of the normal flow of information related to the patient's treatment, such as involving and informing the patient about his/her care, providing the patient with discharge instructions, lab results or other information for the patient to participate in his/her own treatment. Note: information protected under 42 CFR Part 2 can only be shared with a guardian that has the authority or affirmed health care proxy, for living patients, otherwise a valid authorization allowing for the explicit sharing of this information must be signed to allow for the sharing of this information. The minimum necessary standard does not apply. Providers are encouraged to make note in the record of the information provided to patients.

There are situations where PHI may be used or disclosed without authorization as indicated below. This does not preclude requesting an authorization. **For Items 3 through 5 below, it is the responsibility of the Workforce Member making the use or disclosure to complete an Accounting of Disclosures form and forward this form to Health Information Management.** All patients have the right to request an accounting of how the UMMH Entity discloses their PHI for purposes other than Treatment, Payment, and Health Care Operations.

**1. For Treatment**

PHI may be used and disclosed to other health care providers for purposes of diagnosing, consulting, treating, or managing patient care. Providers may also use and disclose information about patients they are "covering" for another provider, even if the patient does not require direct interaction. Minimum necessary does not apply when using or disclosing PHI for treatment purposes, though workforce members may only use and disclose records of patients under their care. Information protected under 42 CFR Part 2 cannot be shared for treatment purposes without explicit authorization, with the limited exception of "bona fide medical emergencies." Part 2 programs are allowed to share information protected under Part 2 if an immediate threat to the health or safety of any individual. This information can be redisclosed by medical personnel for treatment purposes as needed. Immediately following disclosure, the part 2 program shall document, in writing, the disclosure in the patient's records, including: (1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility; (2) The name of the individual making the disclosure; (3) The date and time of the disclosure; and (4) The nature of the emergency.

**2. For Payment and Health Care Operations**

PHI may be used and disclosed by the UMMH Entity for purposes of Payment and Health Care Operations. A UMMH Entity may also disclose PHI to a Business Associate who is performing Payment or Health Care Operations (including, but not limited to, credentialing, accreditation, licensing, care coordination, quality improvement, and customer service) on behalf of the UMMH Entity provided there is a valid Business Associate agreement.

- a) Only the minimum amount of PHI required to perform these functions should be used or disclosed.
- b) PHI may also be released to another covered entity for its payment purposes. For example, to an ambulance company for services it provided to an UMMH patient.
- c) Physicians and other licensed independent professionals who bill independently may use information on patients they have treated, provided coverage for, or consulted for Payment and Health Care Operations purposes.
- d) A UMMH Entity may disclose PHI to other HIPAA covered entities for the Health Care Operations of the **other** covered entity if:
  - i. Both the UMMH Entity and the other covered entity has or had a relationship with the individual who is the subject of the PHI being requested,
  - ii. The PHI pertains to such relationship, and the disclosure is for the purpose of:
    - a) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines (but not research); patient safety activities; population-based activities relating to improving health or reducing health care costs, protocol development; case

management and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

- b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities, or
- c) Conducting health care fraud and abuse detection or compliance program activities.

Requests from patients or their Authorized Representatives for billing information should be directed to Patient Financial Services ("PFS"). PFS may disclose PHI to the patient or his/her Authorized Representative without an authorization. PFS must verify the patient's or Authorized Representative's identification and relationship to the patient prior to disclosing PHI. Please note that if a patient requests that we not provide information to their insurance company, we are not allowed to send their information. Please contact PFS for more information how to process this request.

42 CFR Part 2 does not allow for sharing of information for payment or operation purposes and requires an authorization for these uses. Note that under Part 2, care coordination does not fall within the definition of operations and requires explicit consent for that use. The exception to sharing information protected under 42 CFR Part 2 for billing purposes is when a patient (who is not a minor, does not have a guardian or affirmed health care agent) has been found for any period of time to suffer from a medical condition that prevents them from knowing or effective action on their own behalf, a Part 2 Program Director may exercise the right of the patient to authorize a disclosure under an authorization for the sole purpose of obtaining payment for services from a third-party payer.

### 3. **Treatment Communications**

PHI may be used by the UMMH Entity or disclosed to a contracted Business Associate without authorization for general communications that describe: provider or plan networks, products and services of the UMMH Entity, alternative treatments, providers or settings; or for services such as refill/appointment reminders, case management, and care coordination. These services are listed in the Joint Notice of Information Practices.

Treatment communication also includes communication that promotes health in a general manner and does not promote a specific product or service from a particular provider. Such communications may include population-based activities to improve health or reduce health care costs as part of Health Care Operations for example, communications about annual mammograms, lowering cholesterol, new developments in health care (e.g., new diagnostic tools), health or "wellness" classes, support groups, and health fairs are permitted, and do not require an authorization.

### 4. **To Registries and Other Entities Subject to the Jurisdiction of the Food & Drug Administration**

PHI may be used to track patients whose pharmaceuticals or devices require registry reporting. PHI may be disclosed to registries that are subject to the jurisdiction of the Food & Drug Administration (FDA). Only the minimum necessary information should be used or disclosed. Part 2 information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers. Immediately following disclosure, the part 2 program shall document, in writing, the disclosure in the patient's records, including: (1) The name of the medical personnel to whom disclosure was

made and their affiliation with any health care facility; (2) The name of the individual making the disclosure; (3) The date and time of the disclosure; and (4) The nature of the error. . When PHI is disclosed to a registry, an Accounting of Disclosures form should be completed and forwarded to Health Information Management.

**5. When Required or Permitted by Law**

PHI may be used, disclosed, and tracked by authorized Workforce members of the departments responsible for the activities below including but not limited to the UMMH Privacy Office or UMMH Entity's Privacy Office, HIM or the Office of General Counsel, in preparation for disclosures required or permitted by law. The Workforce Member who discloses the information is responsible for verifying the identification of the requester through picture identification and/or reviewing a written request on official letterhead. The recipient of such request may rely on the requester to define its minimum necessary requirements. A copy of a written request and an Accounting of Disclosures form must be completed and forwarded to Health Information Management. Any questions or concerns should be directed to the Office of General Counsel or UMMH Entity's Privacy Office before PHI is disclosed. Examples of when PHI may be disclosed include:

- a. Required by Law including but not limited to a valid subpoena or court order
- b. Public Health activities authorized by law such as disease prevention/control (vital statistics including births and deaths, child abuse, neglect, or domestic violence, public health investigation and intervention, communicable diseases, reporting adverse events, product tracking, work-related injuries or illness for work-place medical surveillance), for disaster relief purposes, for activities related to the quality or safety; For Part 2 Information and Reporting
  - i. For the purposes of reporting incidents of suspected child abuse or neglect, Part 2 information can be released. After the reporting has been done, Part 2 information can no longer be released under this exception and must be done through appropriate manners such as a Part 2 compliant court order or signed authorization.
  - ii. For other types of reporting, if it is required under Massachusetts law or is deemed important to report, the reporting must be done either:
    - a. anonymously,
    - b. or in a way that does not disclose that the person making the threat is a patient in a Part 2 program or has a substance use disorder,
    - c. or obtain a court order if time allows.
- c. Civil and criminal investigations from health oversight agencies;
  - i. Note that if the requested information includes 42 CFR Part 2 information, there are additional requirements that must be met, which include a written agreement. Please contact the Privacy Office or the Office of the General Counsel for additional information.
- d. Judicial and administrative proceedings pursuant to a court order or administrative tribunal, note that Part 2 information can only be released under a Part 2 compliant court order;
- e. Absent an order of a court or administrative tribunal, a UMMH Entity may respond to a subpoena or other lawful process by a party to the proceeding only if the following are provided: (1) satisfactory assurances that reasonable efforts have been made to give the individual whose information has been requested notice of the request; (2) satisfactory assurances that the party seeking such information has made reasonable efforts to secure a qualified protective order that prohibits disclosure except for the stated purpose and requires return or destruction of information at the end of the litigation or proceeding, or provides notice to the individual regarding the protective order, or (3) a valid authorization signed by the patient or the patient's Authorized Representative expressly authorizes the disclosure of PHI.
- f. Limited disclosure may be permitted, but is not usually required, for law enforcement purposes related to crime victims, crime on the premises, identification of possible criminals pursuant to a court order or warrant, or a subpoena or summons issued by a

judicial officer, state or federal grand jury subpoena, administrative subpoenas or summons, civil or authorized investigative demands, or similar process authorized by law (suspect, fugitive, material witness, or missing person, victim of a crime, emergency calls or deaths suspected to be related to criminal conduct). Giving information about decedents to coroners, funeral directors, medical examiners;

- g. To organ procurement organizations for cadaveric donation of organs, eyes, and tissues;
- h. To prevent or lessen a serious threat to health or safety;
- i. For specialized government functions such as military and veteran's activities, national security and intelligence, protective services for the President, medical suitability for Department of State officials, and to correctional institutions if necessary for health and safety;
- j. For workers compensation; and
- k. For health care oversight activities (which may include fraud investigations or whistleblower disclosures made in good faith to appropriate parties), Note that if the requested information includes 42 CFR Part 2 information, there are additional requirements that must be met, which include a written agreement. Please contact the Privacy Office or the Office of the General Counsel for additional information

#### 6. **Preparatory Research or Research When Authorization is Waived**

In some cases, PHI can be used by a research team without patient authorization. There are two circumstances when this could occur:

- a. An IRB approves preparatory research to determine whether a potential research issue exists. Researchers may be given access to PHI for preparatory research purposes as long as the PHI does not leave UMMH premises, unless such PHI is a part of a Limited Data Set and there is a data use agreement in place.
- b. An IRB issues a waiver of authorization. The IRB must follow federal guidelines to waive this requirement. The Researcher must present the waiver letter and the docket number assigned to the study and complete an Accounting of Research Disclosures form for each patient or the researcher must provide a patient listing with required information on the UMMS Summary Accounting for Research Disclosures form and forward the information to the UMMS Center for Clinical and Translational Research, when the expected number or disclosures is greater than 50 patient records. Questions should be directed to the UMCMS Center for Clinical and Translational Research or UMMH Entity Privacy Office.

#### 7. **Fundraising with Limited Use of PHI**

- a. PHI may be used by UMMH for fundraising without authorization provided that only demographics, dates of service, department of service, treating physician, outcome information, or health insurance status are used. This exception does not include information protected under 42 CFR Part 2, which would require a written signed authorization for this purpose.
- b. A UMMH Entity may also disclose PHI to a Business Associate who is performing fundraising services on behalf of UMMH without authorization provided that only demographics, dates of service, department of service, treating physician, outcome information, or health insurance status are disclosed, and there is a valid Business Associate agreement.
- c. Only the minimum amount of PHI required to perform the fundraising function should be used or disclosed.
- d. The UMMH Entity is required to provide the recipient of any fundraising communication with a clear and conspicuous opportunity to opt out of receiving further fundraising communications.
- e. The UMMH Entity may not condition treatment or payment on the individual's choice with respect to the receipt of fundraising communications.
- f. The UMMH Entity may not make any further fundraising communications to an individual who has opted out of receiving such communications. See the ***Patient Rights under Health Insurance Portability and Accountability Act (HIPAA) Policy*** for more

information on the opt out process.

**8. When De-Identified**

Information that has been De-identified (as defined in this policy) by removing all PHI may be used or disclosed without authorization, provided the mechanism to re-identify, if any, is not disclosed.

**9. When Limited Data Set is Used**

A Limited Data Set may be used for purposes of research, public health or Health Care Operations without authorization as long as a data use agreement is in place with the recipient. Please refer to your UMMH Entity's Data Use Agreement Policy or contact your UMMH Entity's Privacy Office for more information.

**10. With Verbal Permission**

PHI may be used with verbal permission from the patient or Authorized Representative, rather than a signed authorization, in the circumstances listed below:

- a. The Inpatient Hospital Directory – callers or visitors who ask for a patient by name will be given the location and condition of the hospitalized patient, unless the patient is admitted to psychiatric or substance use disorder units or the patient or Authorized Representative or Next Of Kin requests that this information be withheld. Patients are given the opportunity to “opt out” of the hospital directory. In this case the UMMH Entity will neither confirm nor deny their presence. Patient names will also be released to clergy unless the patient or Authorized Representative or Next Of Kin specifies otherwise.
- b. UMMH Workforce Members may disclose PHI to family members and others who were involved in the care or payment for care, unless doing so is inconsistent with any prior expressed preference of the patient that is known to the UMMH Entity.
  - i. Such disclosures must be limited to the PHI relevant to the family member or other person's involvement in the individual's health care or payment for health care.
  - ii. For example, the UMMH Entity could describe the circumstances that led to an individual's passing with the decedent's sister who is asking about her sibling's death. In addition, UMMH could disclose billing information to a family member of a decedent who is assisting with closing the decedent's estate. However, in both of these cases, the UMMH Entity generally should not share information about past, unrelated medical problems.

Finally, these disclosures are permitted and not required, and thus, a UMMH Workforce Member that questions the relationship of the person to the decedent or otherwise believes, based on the circumstances, that disclosure of the decedent's PHI would not be appropriate, is not required to make the disclosure.

Note that no information protected under 42 CFR Part 2 can be released based on a verbal permission.

**C. Methods of Disclosure**

PHI may be used or disclosed with or without authorization based on the criteria described above. The following standard disclosure disclaimer statement should be included with mailed, e-mailed and faxed disclosures:

“The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, re-transmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.”

Any information that is being released under a valid authorization that includes information protected under 42 CFR Part 2 must include the following notice of prohibition of re-disclosure:



“This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.” or “42 CFR part 2 prohibits unauthorized disclosure of these records.” The information may be disclosed:

1. **In Person**

The UMMH Workforce Member making the disclosure must verify identification of unknown individuals through picture identification, signature comparison, checking for official letterhead or electronic address on written requests.

2. **By Interoffice Mail or Interoffice Courier**

The UMMH Workforce Member making the disclosure must verify the address of the intended recipient telephonically or through electronic mail. A cover letter must be attached to the information indicating the confidential nature of the material and a contact person should be identified in the case that mail is misdirected.

3. **By United States Mail/ Commercial Delivery Service (such as UPS or FedEx)**

The UMMH Workforce Member making the disclosure must verify the address against the authorization or other official record, such as a patient's address found in the medical record. A cover letter must be attached to the information indicating the confidential nature of the material and a contact person should be identified in case that mail is misdirected.

4. **Facsimile (fax)**

The UMMH Workforce Member making the disclosure must verify the fax number of the intended recipient. The fax must be sent at a time when the recipient is available to immediately receive the fax, or it can be sent to a fax machine that is known to be in a secure location where only those authorized to view information have access. A cover page must accompany all other faxes indicating the confidential nature of the material and a contact person should the fax be misdirected. The cover page should also include the sender's name and phone number, the authorized recipient's name, address and phone number, and the number of pages sent.

5. **Telephone**

There may be times when it is necessary to disclose PHI over the phone for treatment, payment or health care operations. Reasonable efforts should be made to ensure patient confidentiality such as using a phone in a private location and using minimal patient identifiers. Only the treating provider or his/her authorized delegate may disclose test results to a patient over the phone.

6. **Electronic Mail/ Patient Portal**

The exchange of PHI through electronic mail system (E-mail) will be done in ways consistent with the UMMH **Acceptable Use of Electronic Resources Policy**. Generally, E-mail should be used for business-related purposes of UMMH. Note that individuals have the right to request their PHI be sent through unencrypted email. If an individual request their PHI be sent through unencrypted email, they must be warned that there is some level of risk that their PHI could be read or accessed by a third-party while in transit. If the individual after being warned still requests their PHI be sent through unencrypted email, the Workforce Member must comply with the request. Note that this is a limited exception to the UMMH **Acceptable Use of Electronic Resources Policy** or any other entity policies that require that PHI be sent secure.

UMMH Workforce Members can also encourage and recommend the use of the member entities patient portal to have electronic access to their record (My-Chart).

### Entity/Department Specific Procedures

N/A

### Supplemental Materials

[Authorization for the Disclosure of PHI form](#)  
[Accounting of Disclosures form](#)  
[Accounting of Research Disclosures form](#)  
[UMMS Summary Accounting of Research Disclosures form](#)  
[US Core Data for Interoperability](#)

### References

UMMH Research Disclosures Policy  
UMMH Patient Rights under HIPAA Policy  
UMMH Breach of Confidential Information Policy  
UMMH Acceptable Use of Electronic Resources Policy  
45 CFR 164.501-532 (various sections)