
Department: UW Medicine Compliance

Subject: PP-16f Use & Disclosure of Protected Health Information (PHI)
Permitted for Specialized Government Functions

Policy Number: 16f

Effective Date: May 21, 2007

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Policy:

In certain circumstances UW Medicine¹ may use or disclose protected health information (PHI) for Specialized Government Functions.

I. Specialized Government Functions

- A) Military and Veteran Activities
- B) Homeland and National Security
- C) Workers Compensation
- D) Washington Department of Corrections
- E) Other Correctional Institutions

II. Documentation of Disclosures

I. Specialized Government Functions

- A) Military and Veteran Activities.
UW Medicine may disclose PHI to Military Health Care providers for treatment purposes. Additionally UW Medicine may disclose PHI to Military officials only if Washington state law exceptions permitting disclosure are met.² Possible exceptions might include:

¹ UW Medicine includes the following entities: University of Washington Medical Center and Clinics; Harborview Medical Center and Clinics; UW Medicine Neighborhood Clinics (University of Washington Physicians Network); UW Physicians Sports Medicine Clinic; UW Physician's Eastside Specialty Center; Hall Health Primary Care Center; and University of Washington Physicians.

² Under HIPAA, a hospital may disclose PHI to the Secret Service (a member of Homeland Security) or any other authorized federal officials for the provision of protective services to the President, the President's immediate family, past Presidents, and certain heads of state. 45 CFR 164.512(k)(3) However, Washington State law does not contain a similar exception, so Washington state law must be followed in this area.

- 1) A patient or legally authorized surrogate has authorized the release by signing a valid authorization.³ See UW Medicine Privacy policy: *PP-08 Use & Disclosure of Protected Health Information Requiring Authorization.*
- 2) A patient poses an imminent danger and the release of the information will avoid or minimize this imminent threat posed by the patient. See UW Medicine Privacy policy: *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes.*
- 3) Regarding a patient who was brought or caused to be brought to the hospital by certain authorities. See UW Medicine Privacy policy: *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes.*
- 4) An admitted patient is listed in the facility directory, has not opted out of the directory and is asked for by name. In this case a one- word condition and general location may be released. See UW Medicine Privacy policy: *PP-13 Use & Disclosure of Protected Health Information Related to Inpatient Facility Directories*

B) Homeland and National Security Activities.

UW Medicine may disclose to authorized federal officials when otherwise required by law for:

- 1) Homeland security: The Department of Homeland Security is an umbrella agency consisting of numerous smaller agencies. Homeland Security does not include the Federal Bureau of Investigation (FBI) or the Central Intelligence Agency (CIA), but does include, among others, the Immigration and Naturalization Service and the Secret Service. Many Homeland Security agents do not have a law enforcement basis for requiring the disclosure of PHI. Upon encountering an individual from Homeland Security who requests access to PHI, UW Medicine definitively identifies which specific agency the requester is from, whether or not the requester has law enforcement power, the reason the requester wants the information, and the specific types of PHI that the requester seeks. If the individual does not have law enforcement power, than no PHI should be disclosed to the requestor.
- 2) The Secret Service: UW Medicine may disclose to the Secret Service when the Secret Service is acting in its capacity of providing protective services to the President, the President's immediate family, past Presidents and certain heads of state, *only* if Washington state law exceptions permitting disclosure are met.⁴ Possible exceptions might include:

³ RCW 70.02.030.

⁴ Under HIPAA, a hospital may disclose PHI to the Secret Service (a member of Homeland Security) or any other authorized federal officials for the provision of protective services to the President, the

- a. A patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁵ See UW Medicine Privacy policy: *PP-08 Use & Disclosure of Protected Health Information Requiring Authorization*.
 - b. A patient poses an imminent danger and the release of the information will avoid or minimize this imminent threat posed by the patient. See UW Medicine Privacy policy: *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes*.
 - c. Regarding a patient who was brought or caused to be brought to the hospital by certain authorities. See UW Medicine Privacy policy: *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes*.
 - d. An admitted patient is listed in the facility directory, has not opted out of the directory and is asked for by name. In this case a one- word condition and general location may be released. See UW Medicine Privacy policy: *PP-13 Use & Disclosure of Protected Health Information Related to Inpatient Facility Directories*
- 3) National security issues: Disclosure of PHI to the Secret Service or other authorized federal officials relating to the conduct of lawful intelligence, counterintelligence and other national security activities conducted by the FBI and CIA may be made only if another exception permitting disclosure is also met. See subsections a - d immediately above for possible exceptions.⁶
- It is important to note the FBI and the CIA are not a part of Homeland Security. Therefore, if an agent from Homeland Security requests records pursuant to National Security and the agent is not a member of the FBI or CIA, the agent should be directed to get a court order.
- 4) USA PATRIOT Act Court Orders: The USA PATRIOT Act⁷, as it amends the Foreign Intelligence Surveillance Act, allows the FBI to obtain specialized court orders for “any tangible thing” that could relate to “international terrorism or clandestine intelligence activities.” The court order must be made by a qualified court and the court order itself cannot be disclosed to any persons other than those necessary to

President's immediate family, past Presidents, and certain heads of state. 45 CFR 164.512(k)(3) However, Washington State law does not contain a similar exception, so Washington state law must be followed in this area.

⁵ RCW 70.02.030.

⁶ Under HIPAA, a hospital may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities conducted by the FBI and the CIA. See the National Security Act (50 USC 401 et seq.) and 45 CFR 164.512(k)(2) for more information. However, Washington State law does not contain a similar exception, so Washington state law must be followed in this area.

⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

carry out the order.⁸ Although Washington law generally requires notifying a patient of a health care provider's disclosure of PHI, state law is preempted in this case. This means that the patient is not allowed to know that his or her PHI is being disclosed—this is the critical difference between a USA PATRIOT Act court order and any other court order presented to a hospital for the disclosure of PHI. USA PATRIOT Act court orders should not be made part of the medical record or included in a disclosure log.

C) Workers Compensation.

UW Medicine may disclose PHI as authorized by and only to the extent necessary to comply with laws relating to workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illness without regard to fault.

D) The Washington Department of Corrections:

- 1) At the written request of personnel of the Department of Corrections, mental health providers⁹ shall release all information related to mental health services¹⁰ delivered to a person subject to the jurisdiction of the Indeterminate Sentence Review Board¹¹ when the information is necessary to carry out the responsibilities of the Department of Corrections. The information must be provided only for the purpose of completing presentencing investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The information to be released shall include all relevant records and reports.

(Please See Procedure I for what the written Request must include.)

- 2) When the purpose of the request is for a pre-sentence release investigation, UW Medicine must provide the requested records within seven calendar days of receipt of the request. If some or all of the requested records are not available within that time frame, UW Medicine must contact the Department of Corrections and mutually agree to a time period. Only records completed or received within the twenty-four month period prior to the date of the request need to be released.

⁸ 50 USC 1861(d).

⁹ "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW [71.05.020](#) and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW [71.05.020](#), community mental health service delivery systems, or community mental health programs as defined in RCW [71.24.025](#), and facilities conducting competency evaluations and restoration under chapter [10.77](#) RCW.

¹⁰ "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter [71.05](#) or [10.77](#) RCW, or somatic health care information.

¹¹ RCW 9.95 and RCW 9.94A

- 3) For all other purposes, UW Medicine must provide the records within thirty calendar days of receipt of the request. If some or all of the requested records are not available within that time frame, UW Medicine must contact the Department of Corrections and mutually agree to a time period. Only the records completed or received within the ten-year period prior to the date of the request need to be released.
- 4) The release of the information may be restricted as necessary to comply with state and federal law and regulations that restrict the release of drug or alcohol treatment records and sexually transmitted diseases.

(See Procedure I for meaning of “relevant records” and “reports”.)

- E) Other Correctional Institutions. A correctional institution is any penal or correctional facility, jail, reformatory, detention center, work farm, half-way house, or residential community program center operated by a federal, state, or local government agency or Indian Tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody.¹²
- 1) UW Medicine may use or disclose the minimum necessary PHI about an inmate¹³ or person in lawful custody to a correctional institution or a law enforcement officer having lawful custody of an inmate or individual if the correctional institution or law enforcement officer represents that PHI is necessary for:
 - a) Health and safety of the individual or others,
 - b) Provision of health care to the individual,
 - c) Health and safety of the officers, employees, or others at the correctional institution,
 - d) Health and safety of individuals and officers or other persons responsible for the transport of inmates,
 - e) Law enforcement on the premises of the correctional institution,
and
 - f) The administration and maintenance of the safety, security, and good order of the correctional institution.
 - 2) In the case of mental health records, PHI may be disclosed to personnel of the department of corrections or the indeterminate sentence review board

¹² Other persons held in lawful custody include juvenile offenders adjudicated delinquent, aliens awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trials.

¹³ The definition of inmate does not include an individual released on parole, probation, supervised release, and/or otherwise no longer in lawful custody.

- a) for persons who are committed to the custody of the department of corrections or the indeterminate sentence review board **and**
 - b) when the information is necessary to carry out the responsibilities of their offices.
- 3) Unless the information is being released pursuant to RCW 71.05.425¹⁴ and 4.24.550,¹⁵ only the following PHI may be disclosed:
- a) The fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; **and**
 - b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential; **and**
 - c) Additional information shall be disclosed only after giving notice to the individual and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the individual has escaped from custody, notice prior to disclosure is not necessary and the facility from which the individual escaped shall include an evaluation as to whether the individual is of danger to persons or property and has a propensity toward violence.

II. Documentation of Disclosures

UW Medicine will document and retain in electronic or written format a record of all disclosures in accordance with the entity's record retention policies and procedures. (See UW Medicine Privacy Policy: *PP-25 Accounting of Disclosures of Protected Health Information (PHI)*).

Procedures:

I. Washington Department of Corrections Guidelines

Step	Action
1	The written request must include: 1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections

¹⁴ This statute addresses persons involuntarily committed following dismissal of sex, violent, or felony harassment offenses and the written notice that the superintendent is required to give to certain categories of people.

¹⁵ This statute addresses the release of information by public agencies about sexual predators.

	<p>and the expiration date of that authority.</p> <ol style="list-style-type: none">2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data.3) Specification as to which records and reports are being requested and the purpose for the request.4) Specification as to what relevant information is requested and the purpose for the request.5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address.6) Name, title and signature of the requestor and date of the request.
2	<p>Relevant records and reports means:</p> <ol style="list-style-type: none">1) Records and reports of inpatient treatment:<ol style="list-style-type: none">a) Inpatient psychosocial assessment - Any initial, interval, or interim assessment usually completed by a person with a master's degree in social work (or equivalent) or equivalent document as established by the holders of the records and reports;b) Inpatient intake assessment - The first assessment completed for an admission, usually completed by a psychiatrist or other physician or equivalent document as established by the holders of the records and reports;c) Inpatient psychiatric assessment - Any initial, interim, or interval assessment usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;d) Inpatient discharge/release summary - Summary of a hospital stay usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;e) Inpatient treatment plan - A document designed to guide multi-disciplinary inpatient treatment or equivalent document as established by the holders of the records and reports;f) Inpatient discharge and aftercare plan data base - A document designed to establish a plan of treatment and support following discharge from the inpatient setting or equivalent document as established by the holders of the records and reports.

	<p>2) Records and reports of outpatient treatment:</p> <ul style="list-style-type: none">a) Outpatient intake evaluation - Any initial or intake evaluation or summary done by any mental health practitioner or case manager the purpose of which is to provide an initial clinical assessment in order to guide outpatient service delivery or equivalent document as established by the holders of the records and reports;b) Outpatient periodic review - Any periodic update, summary, or review of treatment done by any mental health practitioner or case manager. This includes, but is not limited to: Documents indicating diagnostic change or update; annual or periodic psychiatric assessment, evaluation, update, summary, or review; annual or periodic treatment summary; concurrent review; individual service plan as required by WAC 388-865-0425 through 388-865-0430, or equivalent document as established by the holders of the records and reports;c) Outpatient crisis plan - A document designed to guide intervention during a mental health crisis or decompensation or equivalent document as established by the holders of the records and reports;d) Outpatient discharge or release summary - Summary of outpatient treatment completed by a mental health professional or case manager at the time of termination of outpatient services or equivalent document as established by the holders of the records and reports;e) Outpatient treatment plan - A document designed to guide multi-disciplinary outpatient treatment and support or equivalent document as established by the holders of the records and reports. <p>3) Records and reports regarding providers and medications:</p> <ul style="list-style-type: none">a) Current medications and adverse reactions - A list of all known current medications prescribed by the licensed practitioner to the individual and a list of any known adverse reactions or allergies to medications or to environmental agents;b) Name, address and telephone number of the case manager or primary clinician. <p>4) Records and reports of other relevant treatment and evaluation:</p> <ul style="list-style-type: none">a) Psychological evaluation - A formal report, assessment, or evaluation based on psychological tests conducted by a psychologist;b) Neuropsychological evaluation - A formal neuropsychological report, assessment, or evaluation based on neuropsychological tests conducted by a psychologist;
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- c) Educational assessment - A formal report, assessment, or evaluation of educational needs or equivalent document as established by the holders of the records and reports;
 - d) Functional assessment - A formal report, assessment, or evaluation of degree of functional independence. This may include but is not limited to: occupational therapy evaluations, rehabilitative services data base activities assessment, residential level of care screening, problem severity scale, instruments used for functional assessment or equivalent document as established by the holders of the records and reports;
 - e) Forensic evaluation - An evaluation or report conducted pursuant to chapter 10.77 RCW;
 - f) Offender/violence alert - Any documents pertaining to statutory obligations regarding dangerous or criminal behavior or to dangerous or criminal propensities. This includes, but is not limited to, formal documents specifically designed to track the need to provide or past provision of: Duty to warn, duty to report child/elder abuse, victim/witness notification, violent offender notification, and sexual/kidnapping offender notification per RCW 4.24.550, 10.77.205, 13.40.215, 13.40.217, 26.44.330, 71.05.120, 71.05.330, 71.05.340, 71.05.425, 71.09.140, and 74.34.035;
 - g) Risk assessment - Any tests or formal evaluations administered or conducted as part of a formal violence or criminal risk assessment process that is not specifically addressed in any psychological evaluation or neuropsychological evaluation.
- 5) Records and reports of legal status - Legal documents are documents filed with the court or produced by the court indicating current legal status or legal obligations including, but not limited to:
- a) Legal documents pertaining to chapter 71.05 RCW;
 - b) Legal documents pertaining to chapter 71.34;
 - c) Legal documents containing court findings pertaining to chapter 10.77 RCW;
 - d) Legal documents regarding guardianship of the person;
 - e) Legal documents regarding durable power of attorney;
 - f) Legal or official documents regarding a protective payee;
 - g) Mental health advance directive.

"Relevant information" means descriptions of a consumer's participation in,

	and response to, mental health treatment and services not available in a relevant record or report, including all statutorily mandated reporting or duty to warn notifications as identified in WAC 388-865-610 (1)(d)(vi), Offender/Violence alert, and all requests for evaluations for involuntary civil commitments under chapter 71.05 RCW. The information may be provided in verbal or written form at the discretion of the mental health service provider.
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II. Documentation & Retention of Disclosures

Action
UW Medicine entities will retain a record of all disclosures in either a hard copy or electronic version in the designated record set. (See UW Medicine Privacy Policy: <i>PP-25 Accounting of Disclosures of Protected Health Information (PHI)</i>).

References:

- I. 45 CFR Parts 160 and 164; Section 164.512 – “Uses & Disclosures for Which Consent, Authorization or Opportunity to Agree or Object Is Not Required”.
- II. RCW 70.96A.150 – Records of Alcoholics and Intoxicated Persons.
- III. RCW 70.02.050 – Disclosure Without Patient’s Authorization
- IV. RCW 71.05.390, .120, .445. – Mental Health Records
- V. WAC 388-865-0565 – 0640 – Mental Health Records
- VI. RCW 71.05.620 – Mental Illness Treatment Records: Informed Consent for Disclosure of Information
- VII. RCW 70.24.105 – Disclosure of HIV/STD/AIDS Test or Treatment – Exchange of Medical Information
- VIII. 42 CFR, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records

UW Privacy Officer: _____ Date: _____
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