
Department: UW Medicine Compliance

Subject: PP-16g Use & Disclosure of Protected Health Information (PHI)
Permitted for Judicial and Administrative Proceedings

Policy Number: 16g

Established Date: March 10, 2003

Revised Date: April 10, 2003, January 23, 2009

Review Date: December 14, 2006, March 27, 2008, May 13, 2008

Policy:

In certain circumstances UW Medicine¹ may use or disclose protected health information (PHI) for Judicial and Administrative Proceedings.

I. Judicial and Administrative Proceedings

UW Medicine may release only the information expressly authorized by a federal or Washington state court order, warrant, subpoena, grand jury subpoena, administrative order; or signed out-of-state court orders. When information is entitled to heightened confidentiality, all requirements must be met². In the case of an administrative order (such as an administrative subpoena or a civil investigative demand), the requested information may be released only if the request is: relevant and material to a legitimate law enforcement inquiry; specific and limited in scope based on the purpose for the request; and unable to be fulfilled with de-identified information. See Procedure (I.) (B): "*Process Flowchart: Release of Protected Health Information (PHI) For Judicial and Administrative Proceedings.*"

A) UW Medicine may disclose only the PHI expressly authorized in the course of any federal or Washington state judicial or administrative proceeding in the following manner:

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 In addition to HIPAA, this includes: Records of Alcoholics and Intoxicated Persons (RCW 70.96A.150); Mental Health Records (RCW 71.05.390), (RCW 71.05. 120), (RCW 71.05. 445), (RCW 71.05.620); Disclosure of HIV/STD/AIDS Test or Treatment – Exchange of Medical Information (RCW 70.24.105); Treatment records — Confidential — Release (RCW 71.05.630).

- 1) In response to a federal or Washington state order of a court or administrative tribunal, provided that UW Medicine only discloses PHI expressly authorized by such order;
- 2) Where the patient signs a written authorization for disclosure; **OR**
- 3) In response to a federal or Washington state subpoena, discovery request, or other lawful process **IF**:
 - a) UW Medicine receives satisfactory assurances from the party seeking the records that reasonable efforts have been made to ensure that the patient has been given notice and an opportunity to raise an objection with the appropriate tribunal. For purposes of this section, satisfactory assurances mean the following:
 - i. Requestor provides advance notice (often called a Notice of Intent) to the health care provider and the patient or the patient's attorney, indicating what health care information is sought, the date by which a protective order must be obtained to prevent the health care provider from complying, and sufficient information about the litigation or administrative proceeding to permit the individual to raise an objection;
 - ii. The advance notice must give the patient and health care provider adequate time to seek a protective order (no less than 14 days);
 - iii. The subpoena, discovery request or other lawful process must be served after the expiration of the notice period; and
 - iv. The patient must not have objected or acquired a protective order during the notice period.

Or

- b) UW Medicine receives a written statement and accompanying documentation (reasonable assurances) that the parties to the dispute giving rise to the request for information have agreed to a qualified protective order³ that prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and requires the return or destruction of the protected health information at the end of the litigation or proceeding.
- c) UW Medicine may disclose without proof of the satisfactory assurances above only if UW Medicine makes reasonable efforts to provide notice to the individual that informs the patient of his or her right to seek a qualified protective order that prohibits the parties

³ A qualified protective order may take the form of a stipulation between the parties that has been presented to the court or administrative tribunal or an order from the court or administrative tribunal.

form using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and requires the return or destruction at the conclusion of the litigation.

- B) If a federal or Washington state subpoena, discovery request, or other lawful process does not meet the criteria under Section (A) above; a letter will be mailed to the requestor denying disclosure. See “Rejection Letter, Subpoena Unenforceable” (Attachment A). If the subpoena is from out of state, see “Rejection Letter, Out of State Subpoena” (Attachment C).
- C) If information is disclosed pursuant to a federal or Washington state subpoena, discovery request, or other lawful process, the disclosure shall be documented in the patient’s designated record set.
- D) Information of heightened confidentiality (STD/HIV/AIDS, mental health records, drug and alcohol treatment records, sexual assault counseling) requires a federal or Washington state court order and will not be released pursuant to a subpoena. If the records sought contain information of heightened confidentiality, a letter will be sent to the requestor informing them of the need for a court order. See “Subpoena Rejection” (Attachment B).
- E) USA PATRIOT Act Court Orders: See UW Medicine Privacy Policy: *PP-16f Use & Disclosure of Protected Health Information (PHI) Permitted for Specialized Government Functions*.
- F) Treatment records of a person may be released without authorization to the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or a patient's rights under RCW [71.05](#) – Mental Illness.

II. Documentation of Disclosures

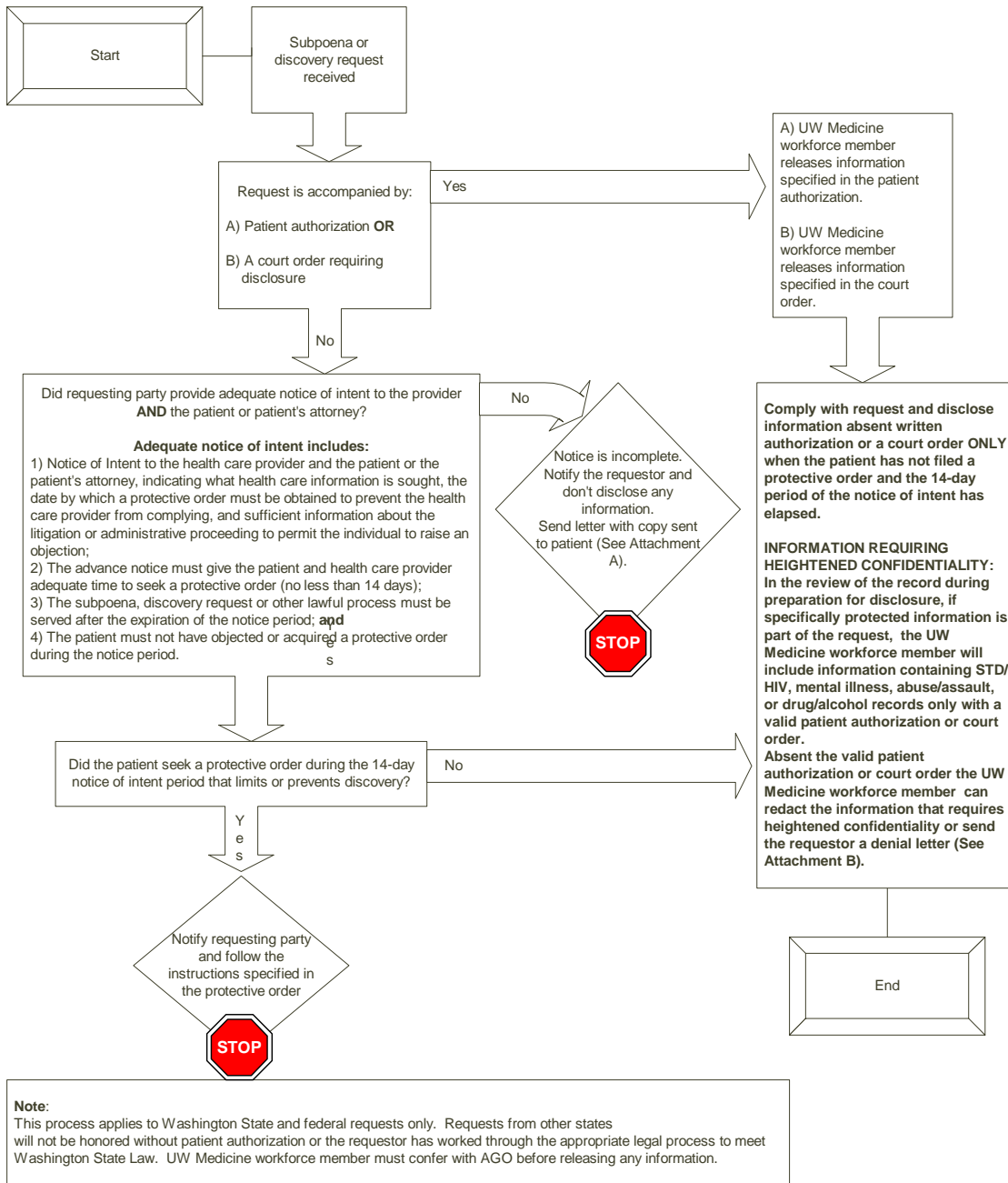
UW Medicine will document and retain in electronic or written format a record of all disclosures in accordance with the entity’s record retention policies and procedures. See UW Medicine Privacy Policy: *PP-25 Accounting of Disclosures of Protected Health Information*).

Procedures:

I. Process Flowchart: Disclosure of Protected Health Information (PHI) For Federal or Washington State Judicial and Administrative Proceedings (Policy Section VII)

- A) All Notices of Intent and Subpoenas seeking records of PHI from the Designated Record Set must be forwarded to the UW Medicine entity's Release of Information Service Area.

B) Process Flowchart: Release of Protected Health Information (PHI) For Judicial and Administrative Proceedings



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>PP25 - 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 70.02.060 – Discovery Request or Compulsory Process
- V. RCW 71.05.390, .120, .445. – 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
- IX. RCW 71.05.630 - Treatment records — Confidential — Release.

UW Privacy Officer: _____ Date: _____
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