
Department: UW Medicine Compliance

Subject: PP-16h Use & Disclosure of Protected Health Information (PHI)
Permitted for Law Enforcement Purposes

Policy Number: 16h

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Policy:

In certain circumstances UW Medicine¹ may use or disclose protected health information (PHI) for Law Enforcement Purposes.

I. Law Enforcement Purposes

UW Medicine may disclose PHI to law enforcement officials² In compliance with the requirements of:

A) Legal process.

- 1) A court order or court ordered warrant, a subpoena or summons issued by a judicial officer³ or a grand jury subpoena. (See UW Medicine Privacy Policy: *PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings*)
- 2) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand or similar process authorized by law provided that:
 - a) The information sought is relevant and material to a legitimate law enforcement inquiry;

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 Law enforcement officials is an officer or employee of any federal, state or local agency (including an Indian Tribe) who is empowered by law to investigate or conduct an official inquiry into a potential violation of law OR prosecute or otherwise conduct a criminal, civil or administrative proceeding arising from an alleged violation of law.

³ This section only applies to Washington State and Federal Court requests. Out-of-state law enforcement requests require further review by the UW Medicine entity's health information management service area.

- b) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; **and**
- c) De-identified information could not reasonably be used **or**

3) Requests not accompanied by court order or issued by court. For a subpoena, summons, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal or has not been otherwise issued directly from a court, see UW Medicine Privacy Policy: *PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings* for the process.

B) Minimizing an imminent danger.

In instances where release of PHI may reasonably avoid or minimize an imminent danger to the health or safety of a patient or other individual, a provider may release PHI to law enforcement without a patient's authorization.⁴

The provider must believe in good faith⁵ that disclosure of PHI is necessary to prevent or lessen a **serious** and **imminent** threat to health or safety. The disclosure must be to a person who is reasonably able to prevent or lessen the threat. Under this exception to authorization requirements, providers may decide to release PHI without a direct request from law enforcement. If the anticipated disclosure is due to a request from law enforcement, law enforcement should provide sufficient detail to the provider about the anticipated harm to justify the release. Law enforcement must demonstrate that the anticipated harm is serious and imminent. "Imminent" means ready to take place or about to occur, hanging threateningly over one's head, or menacingly near.⁶ If law enforcement credibly demonstrates to a health care provider that in the opinion of the law enforcement officer the harm is serious and imminent and that the information requested is needed to lessen that threatened harm, providers may reasonably rely upon such representations and release the minimum necessary information to lessen the threatened harm.

In the event the individual at issue is a current inpatient or outpatient, providers and law enforcement may cooperate in stationing law enforcement personnel in the facility in order to protect patients, staff, or the public.

C) Providing health care services in response to a medical emergency.

⁴ RCW 70.02.050(1)(d) and 45 CFR 164.512(j)(1)

⁵ Under HIPAA a "good faith" belief is presumed if it is based on actual knowledge or reliance on a "credible representation by a person with apparent knowledge or authority." 45 CFR 164.512(j) (4).

⁶ *Tarasoff v. Regents of Univ. of Cal.*, 17 Cal.3d 425, 551 P.2d 334, 340, 343, 131 Cal.Rptr. 14 (1976).

When providing emergency health care services, only the minimum amount of PHI in order to assist law enforcement officers with their official duties may be disclosed to law enforcement if it is necessary to avoid an imminent danger (see Section I B)⁷ and the disclosure appears necessary to alert law enforcement to the commission and nature of a crime, the location of such crime or the victims, and the identity, description, and location of the perpetrator⁸

D) Follow-up to patients brought to the hospital by authorities.

- 1) For patients brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority, hospitals may provide the following:
 - name,
 - address,
 - age,
 - gender and
 - type of injury.
- 2) Law enforcement may not access substance abuse treatment program records without a court order, warrant, or subpoena, even if the officers reported the case to the hospital. See Section VIII for more on release of substance abuse treatment information. It is important to make a distinction between substance abuse treatment records and records related to emergency department testing of individuals for drugs or alcohol. Records of tests for drug or alcohol use are treated in the same manner as any other protected health information.

E) Release of PHI for specific types of injuries.⁹

UW Medicine is required to disclose specific PHI to federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a:

- bullet wound,
- gunshot wound,
- powder burn,
- other injury arising from or caused by the discharge of a firearm,
- an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person,
- A blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act.

⁷ The Washington state imminent danger analysis criteria set forth in Section III must be met because Washington state lacks an equivalent to 45 CFR 164.512(f)(6).

⁸ 45 CFR 164.512(f) (6).

⁹ RCW 70.02.050 (2) (c)

Where a request is properly made, the following information must be disclosed, if known, to the federal, state or local law enforcement authorities making the request:

- name of the patient;
- patient's residence;
- patient's sex;
- patient's age;
- patient's condition;
- patient's diagnosis, or extent and location of injuries as determined by a health care provider;
- whether the patient was conscious when admitted;
- name of the health care provider making the determination in; the patient's condition, diagnosis or extent and location of injuries, and whether the patient was conscious when admitted;
- whether the patient has been transferred to another facility; and
- patient's discharge time and date.

F) Disclosure of PHI to law enforcement to identify or locate a suspect, fugitive, material witness or missing person is allowed when it is:

1. Based on a reasonable belief that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;¹⁰ (See Section I B above) **or**
2. Limited to directory information, including a one word condition and patient location, if the patient is asked for by name, and the patient has not opted out of the directory;¹¹ **or**
3. Regarding a patient who was brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority and the information disclosed is limited to the name, address, age, gender, and type of injury.¹²
4. Exception. In the absence of compulsory legal process, such as a search warrant, the following PHI may not be disclosed for the purpose of identifying or locating a suspect, fugitive, material witness or missing person:
 - a. DNA/DNA analysis,
 - b. Dental records,
 - c. Typing sample or analysis of body tissues or fluids;

G) Violent criminals or escape from correctional institution.

¹⁰ RCW 70.02.050(1) (d).

¹¹ RCW 70.02.050(1) (j).

¹² RCW 70.02.050(1) (k) and 45 CFR 512(f). For a complete description of how these provisions must be read together to yield the list of information that may be provided see Section V regarding follow-up to cases initially reported by authorities.

UW Medicine coordinates HIPAA and state law to understand how UW Medicine workforce members may disclose protected health information relating to identification or apprehension of an individual.

If the provider believes in good faith that the disclosure is necessary for law enforcement authorities to identify or apprehend an individual either because of a statement made by the patient admitting to participating in a violent crime or where it appears the patient has escaped from a correctional institution, disclosure is allowed.¹³ This type of disclosure is limited to the circumstances and the information listed in section I C) 1. through 3. above. Additionally, if the disclosure is permitted under the exception for imminent danger (item F 1. in the section above), then the disclosure is limited to the minimum necessary information listed below:¹⁴

1. Name and address;
2. Date and place of birth;
3. Social security number;
4. ABO blood type and rh factor;
5. Type of injury;
6. Date and time of treatment;
7. Date and time of death, if applicable; and
8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

If the disclosure is permitted for patients brought or caused to be brought to the hospital by certain authorities (under item F 3 above), then the information disclosed is limited to name, address, age, gender, and type of injury.

Except when required by law, such as mandatory reporting of child or vulnerable adult abuse (See UW Medicine Privacy Policy: *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*), no disclosure of PHI may be made based upon a statement made to the provider by the patient, during the course of treatment.¹⁵

¹³ 45 CFR 164.512(j)(1)(ii).

¹⁴ 45 CFR 164.512(j)(3).

¹⁵ 45 CFR 164.512(j) (2). This prohibition on disclosure is limited to disclosures to identify or apprehend an individual. A provider may make disclosures required by law, such as mandatory reporting of child or vulnerable adult abuse, even if the information is obtained in the course of treatment to affect a patient's propensity to commit similar criminal conduct.

- H) UW Medicine may disclose PHI to federal, state or local law enforcement authorities when UW Medicine believes in good faith that the PHI constitutes evidence of criminal conduct that occurred on UW Medicine's premises.

Very rarely would PHI be required to report a crime against a member of the workforce. Prior to releasing any PHI to law enforcement to report a crime against a workforce member, UW Medicine should carefully consider whether disclosure of PHI is necessary. However, UW Medicine does not violate the privacy regulations if a member of its workforce, who is a victim of a crime, discloses the minimum necessary PHI about the suspected perpetrator to a law enforcement official and the information disclosed does not exceed the following information:

- Name and address,
 - Date and place of birth,
 - Social security number,
 - ABO blood type and RH factor,
 - Type of injury,
 - Date/time of treatment,
 - Date/time of death (if applicable) **and**
 - Distinguishing physical characteristics (e.g., wt., ht. gender, race, hair/eye color, facial hair, scars/tattoos),
- I) Release of information on crime victims.
Disclosures regarding crime victims generally may be made in the instances listed below. Washington law does not expressly permit disclosures in response to a law enforcement officer's request for information about an individual who is the victim of a crime. HIPAA does allow this type of disclosure.¹⁶ Because state law is stricter, UW Medicine generally may not give information about a crime victim directly to law enforcement unless another basis for disclosing the information applies. Disclosure of protected health information of a crime victim is permitted where:

1. The victim/patient or legally authorized surrogate has authorized the release by signing a valid authorization.¹⁷
2. The victim/patient poses an imminent danger and the release of the information will avoid or minimize the imminent threat posed by the patient.¹⁸ See also Section I B, disclosing to minimize an imminent threat.
3. The victim/patient is subject to an imminent threat or danger and the release of the information will avoid or minimize the threat to the patient. See Section I B, disclosing to minimize an imminent threat.

¹⁶ 45 CFR 164.512(f) (3).

¹⁷ RCW 70.02.030.

¹⁸ RCW 70.02.050(1) (d).

4. An admitted victim/patient is listed in the facility directory and is asked for by name. In this case unless the patient has opted out of the directory a one-word condition and general location may be released.¹⁹
5. The patient was brought or caused to be brought to the hospital by fire, police, sheriff or other public authority. See Section V for the information that may be disclosed in this circumstance.
6. If the victim/patient is the subject of suspected child or vulnerable adult abuse, a report must be made. (See UW Medicine Privacy Policy: *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*)

A law enforcement officer may accompany a victim while the victim receives treatment in the hospital if the patient consents and hospital staff determine that patient care will not be compromised. If the patient verbally consents, the provider may respond to questions from the law enforcement officer regarding the patient. If the officer wants any written materials or substances, the patient must authorize the disclosure or another exception, such as those discussed above, must apply.

Finally, all of the above applies even if the victim is a hospital employee, patient or visitor.

J) Suspicious Death

Law Enforcement must be alerted of a death of an individual if UW Medicine has a reasonable belief that such death may have resulted from criminal conduct and UW Medicine is required by law to make the report.

K) Release of mental health, substance abuse treatment, or HIV information.

Records relating to treatment for mental illness, substance abuse and records relating to testing or treatment for HIV/AIDS or other sexually transmitted diseases generally cannot be accessed by law enforcement without the patient's authorization or a court order.

However, the following disclosures to police officers are allowed without patient authorization:

1. *Alcohol or drug test results:* According to Washington statutes, every person who operates a motor vehicle in Washington has given "implied consent" to an alcohol test of the person's breath or blood, if the arresting officer has reasonable grounds to believe that the person was driving or in physical control of a vehicle while intoxicated.²⁰ Therefore, blood alcohol or drug levels may be tested and disclosed to the police in any of the following situations:

¹⁹ 45 CFR 164.510, RCW 70.02.050(1) (k). See Frequently Used Terms for a description of 'directory information.'

²⁰ RCW 46.20.308.

- a) the person is incapable of providing a breath sample due to physical injury, physical incapacity, or other physical limitation;
- b) the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility;
- c) the officer has reasonable grounds to believe that the person is under the influence of a drug;
- d) the person is under arrest for:
 - i. vehicular homicide;
 - ii. vehicular assault; or
 - iii. DUI and the arrest results from an accident in which there was serious bodily injury to another person.

If a person is dead, unconscious, or otherwise incapable of refusal, the person is deemed to have consented to the test.²¹

2. *Substance abuse treatment records:* Under state and federal law, records of substance abuse treatment programs may only be released:
- a) in accordance with the prior authorization of the patient;
 - b) if authorized by an appropriate court order;
 - c) to comply with state laws mandating the reporting of suspected child abuse or neglect (See UW Medicine Privacy Policy: *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*); **or**
 - d) when a patient commits a crime on treatment program premises or against treatment program personnel or threatens to do so.²²

Any other disclosure must be authorized by the patient. This means that unless (a), (b), (c), or (d) above applies, substance abuse treatment records may not be disclosed to law enforcement without the patient's authorization even if one of the other exceptions described in this Policy apply.

3. *Mental health:* If a patient is committed under the involuntary treatment act (Chapter 71.05 RCW) after dismissal of a sex, violent or felony harassment offense, police agencies must be notified upon that patient's release, final discharge, transfer, authorized leave, or escape from involuntary treatment.²³ Providers may also notify the police of information necessary to prevent or lessen a serious and imminent threat to health or safety.²⁴ See Section I B for further details. Note that the above access to mental health treatment records does not include access to "psychotherapy notes."²⁵ Psychotherapy notes are a very limited set of records documenting or analyzing the contents of

²¹RCW 46.20.308, RCW 46.61.506

²²RCW 70.96a.150

²³RCW 71.05.425, 45 CFR 164.512(a).

²⁴RCW 71.05.120, 71.05.330, 71.05.340, 71.05.390(10), (11), 71.05.410, 71.05.630, 42 CFR 164.512(f).

²⁵45 CFR 164.524(a) (1).

conversations or therapy sessions. They are kept separate from the patient's medical record and are only for the individual provider's use.²⁶

4. *HIV/sexually transmitted diseases*: A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections staff person, jail staff person, or certain other persons who have been substantially exposed to an individual's bodily fluids may request that a public health officer test the individual for HIV and may receive the results of that test.²⁷ Persons who have been placed at risk for acquisition of a sexually transmitted disease because of their behavioral interaction with the infected individual may also request the results of the test.

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. Disclosure of Protected Health Information (PHI) to Law Enforcement Officials (See Policy Section I)

Step	Action
1	UW Medicine receives request from law enforcement official (examples: FBI, Seattle Police Department, and King County Sheriff's Office) in writing that documents the legal authority that authorizes disclosure.
2	UW Medicine representative verifies the requestor's credentials by following steps outlined in UW Medicine Privacy Program Policy: <i>Verifying the Identity & Authority Of Individuals Requesting Access to and Disclosure of Protected Health Information</i> .
3	UW Medicine representative locates information that can be disclosed (see policy section (I) above.)
4	UW Medicine representative copies information that can be disclosed and provides it to the law enforcement official.
5	UW Medicine representative makes record of the disclosure(s).

²⁶ RCW 71.05.610(2)

²⁷ RCW 70.24.105, RCW 70.24.340

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 Program Policy: <i>PP-25 Accounting of Disclosures of Protected Health Information</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 46.20.308. - Implied consent -- Test refusal -- Procedures.
- III. RCW 70.96A.150 – Records of Alcoholics and Intoxicated Persons.
- IV. RCW 70.02.050 – Disclosure Without Patient’s Authorization
- V. RCW 70.02.060 – Discovery Request or Compulsory Process
- VI. RCW 71.05.390, .120, .445. – Mental Health Records
- VII. RCW 71.05.620 – Mental Illness Treatment Records: Informed Consent for Disclosure of Information
- VIII. RCW 70.24.105 – Disclosure of HIV/STD/AIDS Test or Treatment – Exchange of Medical Information
- IX. 42 CFR, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records

UW Privacy Officer: _____ Date: _____

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