Applicability: UW Medicine

Policy Title: Use & Disclosure of Protected Health Information Permitted for Law Enforcement Purposes

Policy Number: PP-16h

Superseded Policy(ies) or Entity Policy: N/A

Date Established: April 10, 2003

Date Effective: July 1, 2014

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Next Review Date: July 1, 2017

PURPOSE AND SCOPE
This policy describes the circumstances in which UW Medicine may use or disclose protected health information (PHI) for law enforcement purposes, except for reporting violent injuries, when the purpose of the use or disclosure is not for treatment, payment, healthcare operations nor authorized by the patient. For other allowable disclosures of PHI to law enforcement, see UW Medicine Compliance Policy: PP-16i Disclosure of Protected Health Information for the Reporting of Violent Injuries.

This policy is applicable to all UW Medicine entities.

POLICY PRINCIPLES/STATEMENT
See POLICY.

DEFINITIONS
“Imminent” means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

See UW Medicine Compliance Policy: PP.00 Glossary of Terms
POLICY

I. Law Enforcement Purposes

UW Medicine workforce may disclose PHI to law enforcement officials after verifying the requestor’s credentials by following steps outlined in UW Medicine Compliance Policy: PP-11 Verifying the Identity & Authority of Individuals Requesting Access to and Disclosure of Protected Health Information and 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 officer or a grand jury subpoena. (See UW Medicine Compliance Policy: PP-16g Use & Disclosure of Protected Health Information 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;
   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 Compliance Policy: PP-16g Use & Disclosure of Protected Health Information 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 healthcare professional may release PHI to law enforcement without a patient’s authorization.

1 Please see PP-16h Attachment A: Law Enforcement Requests Disclosure of Patient Information, a flow diagram to assist in determining if the patient information may be disclosed.
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.
4 RCW 70.02.050(1)(d) and 45 CFR 164.512(j)(1)
The healthcare professional must believe in good faith\(^5\) 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, healthcare professionals 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 healthcare professional about the anticipated harm to justify the release. Law enforcement must demonstrate that the anticipated harm is serious and imminent. If law enforcement credibly demonstrates to a healthcare professional 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, healthcare professionals may reasonably rely upon such representations and release the minimum necessary information to lessen the threatened harm.

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

C. Providing healthcare services in response to a medical emergency.

When providing emergency healthcare services, only the minimum amount of PHI may be disclosed to law enforcement if it is necessary to avoid an imminent danger (see Section I.B.)\(^6\) 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 perpetrator.\(^7\)

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, if known:
   a. Name;
   b. Address;
   c. Age;
   d. Gender;
   e. Condition, diagnosis, or extent and location of injuries as determined by a healthcare provider;
   f. Whether the patient was conscious when admitted;
   g. Name of the healthcare provider;

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\(^5\) 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(4).

\(^6\) 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(6).

\(^7\) 45 CFR 164.512(6).
h. Whether the patient has been transferred to another facility; and
i. Discharge time and date.

2. For patients who are in the custody of law enforcement, see UW Medicine Compliance Policy: PP-16i Disclosure of Protected Health Information for the Reporting of Violent Injuries Section I.E. ‘Other Correctional Institutions.’

3. 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 I.K below 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 PHI.

E. Photographing patients and obtaining evidence.

When patients arrive from accidents or incidents where law enforcement has an interest, and the patients are not in the custody of law enforcement, the patients’ privacy is protected by state and federal law. In order for law enforcement to photograph patients or obtain evidence, law enforcement must:

1. Contact the manager/administrator prior to entering the patient care area.

2. The manager/administrator must obtain the patient’s permission in order for law enforcement to enter an individual exam room.

When the patient is not able to provide permission, UW Medicine manager/administrator, using their professional judgment, when appropriate, may allow law enforcement to photograph and/or obtain evidence.

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;\(^8\) (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;\(^9\) or

\(^8\) RCW 70.02.050(1) (d).
\(^9\) RCW 70.02.050(1) (j).
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.\textsuperscript{10}

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.

UW Medicine coordinates the Health Information Portability and Accountability Act (HIPAA) and state law to understand how UW Medicine workforce members may disclose PHI relating to identification or apprehension of an individual.

If the healthcare professional 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.\textsuperscript{11} This type of disclosure is limited to the circumstances and the information listed in Section I.F 1–3 above.

Additionally, if the disclosure is permitted under the exception for imminent danger (in Section I.B above), then the disclosure is limited to the minimum necessary information listed below:\textsuperscript{12}

   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.

\textsuperscript{10} RCW 70.02.050(1)(k) and 45 CFR 512(d). 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.

\textsuperscript{11} 45 CFR 164.512(j)(1)(ii).

\textsuperscript{12} 45 CFR 164.512(j)(3).
If the disclosure is permitted for patients brought or caused to be brought to the hospital by certain authorities (under item I.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 Compliance Policy: PP.16j Use & Disclosure of Protected Health Information Permitted for Victims of Abuse, Neglect or Domestic Violence), no disclosure of PHI may be made based upon a statement made to the healthcare professional by the patient, during the course of treatment.\(^{13}\)

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.

I. Release of information on crime victims.

Disclosures regarding crime victims may be made in the instances listed below. Washington State 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.\(^{14}\) Because state law is stricter, UW Medicine may not give information about a crime victim directly to law enforcement unless another basis for disclosing the information applies.

Disclosure of PHI of a crime victim is permitted where:

1. The victim/patient or legally authorized surrogate has authorized the release by signing a valid authorization.\(^{15}\)

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.\(^{16}\) 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.

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.\(^{17}\)

\(^{13}\) 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.

\(^{14}\) 45 CFR 164.512(f) (3).

\(^{15}\) RCW 70.02.030.

\(^{16}\) RCW 70.02.050(1) (d).
5. The patient was brought or caused to be brought to the hospital by fire, police, sheriff or other public authority. See Section D above 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 Policy: PP-16j Use & Disclosure of Protected Health Information 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’s care will not be compromised. If the patient verbally consents, the healthcare professional 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 an exception, such as those discussed above, must apply.

J. Suspicious death.

If UW Medicine has a reasonable belief that a death may have resulted from criminal conduct and UW Medicine is required by law to make the report, then law enforcement must be alerted.

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

Without patient authorization or a court order, 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.

However, the following disclosures to law enforcement are allowed without patient authorization:

1. Alcohol or drug test results: According to State of 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. Therefore, blood alcohol or drug levels may be tested and disclosed to the police in any of the following situations:

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17 45 CFR 164.510, RCW 70.02.050(1) (k). See Frequently Used Terms for a description of ‘directory information.’
18 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.19

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 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 Compliance Policy: PP.16j Use & Disclosure of Protected Health Information Permitted for Victims of Abuse, Neglect or Domestic Violence); or
   d. When a patient commits a crime on UW Medicine premises or against a UW Medicine workforce member or threatens to do so.20

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, law enforcement must be notified upon that patient’s release, final discharge, transfer, authorized leave, or escape from involuntary treatment.21 Healthcare professionals may also notify law enforcement of information necessary to prevent or lessen a serious and imminent threat to health or safety.22 See Section I.B for further details.

19 RCW 46.20.308, RCW 46.61.506
20 RCW 70.96a.150
21 RCW 71.05.425, 45 CFR 164.512(a).
22 RCW 71.05.120, 71.05.330, 71.05.340, 71.05.390(10), (11), 71.05.410, 71.05.630, 42 CFR 164.512(i).
Note that the above access to mental health treatment records does not include access to “psychotherapy notes.” Psychotherapy notes are a very limited set of records documenting or analyzing the contents of conversations or therapy sessions. These records are kept separate from the patient’s medical record and are only for the individual healthcare professional’s use.

4. Human immunodeficiency virus (HIV)/sexually transmitted diseases (STDs):
   A law enforcement officer, fire fighter, healthcare professional, healthcare 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. Persons who have been placed at risk for acquisition of an STD because of their behavioral interaction with the infected individual may also request the results of the test.

II. Documentation of Disclosures

UW Medicine workforce documents and retains a record of all disclosures. See UW Medicine Compliance Policy: PP-25 Accounting of Disclosures of Protected Health Information.

REGULATORY/LEGISLATION/REFERENCES
- 42 CFR, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records
- 45 CFR Parts 160 and 164; Section 164.512 – Uses & Disclosures for Which Consent, Authorization or Opportunity to Agree or Object Is Not Required
- RCW 46.20.308 – Implied consent – Test refusal – Procedures
- RCW 70.96A.150 – Records of Alcoholics and Intoxicated Persons
- RCW 70.02 – Medical Records – Healthcare Information Access and Disclosure
- RCW 71.05.120 – Mental Health Records

PROCEDURE ADDENDUM(s) REFERENCES/LINKS
- UW Medicine Compliance Policy: PP-00: Glossary of Terms
- UW Medicine Compliance Policy: PP-11: Verifying the Identity & Authority Of Individuals Requesting Access to and Disclosure of Protected Health Information
- UW Medicine Compliance Policy: PP-16g: Use & Disclosure of Protected Health Information Permitted for Judicial and Administrative Proceedings
- UW Medicine Compliance Policy: PP-16i: Disclosure of Protected Health Information for the Reporting of Violent Injuries

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21 45 CFR 164.524(a) (1).
24 RCW 71.05.610(2)
25 RCW 70.24.105, RCW 70.24.340
• UW Medicine Compliance Policy: PP-16j: Use & Disclosure of Protected Health Information Permitted for Victims of Abuse, Neglect or Domestic Violence
• UW Medicine Compliance Policy: PP-25: Accounting of Disclosures of Protected Health Information

ROLEs AND RESPONSIBILITIES
Defined within POLICY.

AUTHORITIES

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APPROVALS

__________________________________________________________
UW Privacy Official
Johnese M. Spisso, Chief Health System Officer,
UW Medicine & Vice President for Medical Affairs, UW

__________________________________________________________
Date