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## NOTICE OF PRIVACY PRACTICE

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION

The Health Insurance Portability & Accountability Act of 1996 (“HIPAA”) is a Federal program that requests that all medical records and other individually identifiable health information used or disclosed by us in any form, whether electronically, on paper, or orally are kept properly confidential. This Act gives you, the patient, the right to understand and control how your protected health information (“PHI”) is used. HIPAA provides penalties for covered entities that misuse personal health information.

As required by HIPAA, we prepared this explanation of how we are to maintain the privacy of your health information and how we may disclose your personal information.

We may use and disclose your medical records only for each of the following purposes: treatment, payment and health care operation. Treatment means providing, coordinating, or managing health care and related services by one or more healthcare providers. An example of this is a primary care doctor referring you to a specialist doctor.

Payment means such activities as obtaining reimbursement for services, confirming coverage, billing or collections activities, and utilization review. An example of this would include sending your insurance company a bill for your visit and/or verifying coverage prior to a surgery.

Health Care Operations include business aspects of running our practice, such as conducting quality assessments and improving activities, auditing functions, cost management analysis, and customer service.

The practice may also be required or permitted to disclose your PHI for law enforcement and other legitimate reasons. In all situations, we shall do our best to assure its continued confidentiality to the extent possible. We may also create and distribute de-identified health information by removing all reference to individually identifiable information. We may contact you, by phone or in writing, to provide appointment reminders or information about treatment alternatives or other health-related benefits and services, in addition to other fundraising communications, that may be of interest to you. You do have the right to “opt out” with respect to receiving fundraising communications from us.

The following use and disclosures of PHI will only be made pursuant to us receiving a written authorization from you: Most uses and disclosure of psychotherapy notes; Uses and disclosure of your PHI for marketing purposes, including subsidized treatment and health care operations; Disclosures that constitute a sale of PHI under HIPAA; and other uses and disclosures not describes in this notice.

You may revoke such authorization in writing and we are required to honor and abide by that written request, except to the extent that we have already taken actions relying on your prior authorization.

You may have the following rights with respect to your PHI:

The right to request restrictions on certain uses and disclosures of PHI, including those related to disclosures of family members, other relatives, close personal friends, or any other person identified by you. We are, however, not required to honor a request restriction except in limited circumstances which we shall explain if you ask. If we do agree to the restriction, we must abide by it unless you agree in writing to remove it.

The right to reasonable requests to receive confidential communications of Protected Health Information, by alternative means or at alternative locations.

The right to inspect and copy your PHI. The right to amend your PHI. The right to receive an accounting of disclosures of your PHI. The right to obtain a paper copy of this notice from us upon request. The right to be advised if your unprotected PHI is intentionally or unintentionally disclosed.

Since you have paid for services in full and in advance, and you request that we not disclose PHI related solely to those services to a health plan, we will accommodate your request, except where we are required by law to make a disclosure. We are required by law to maintain the privacy of your PHI and to provide you the notice of our legal duties and our privacy practice with respect to PHI.

This notice is effective as of August 25, 2013 and it is our intention to abide by the terms of the Notice of Privacy Practices and HIPAA Regulations currently in effect. We Reserve the right to change the terms of our Notice of Privacy Practice and to make the new notice provision effective for all PHI that we maintain. We will post a copy and you may request a written copy of the revised Notice of Privacy from our office. You have recourse if you feel that your protections have been violated by our office. You have the right to file a formal, written complaint with the practice and with the Department of Health and Human Services, Office of Civil Rights. We will not retaliate against you for filing a complaint. Feel free to contact the Practice Compliance Officer (Susan Jones 239-325-4804) for more information, in person or in writing.

### Authorizations

“Authorizations” are basically patient consent forms that contain certain specific provisions required by HIPAA. Typical situations where authorizations are needed are:

Release of medical records to qualify for life insurance coverage; Release of school physical results to the school, for purposes of qualifying for team sports, etc., unless the disclosure involves only immunizations and the parent or guardian has indicated their consent to the release through some other written agreement or through oral assent which has been documented. (You can also simply give the PHI directly to the parent/guardian or patient and direct them to give the information to the school); Clinical trial participation (release of information to pharmaceutical company is not for treatment; it's for research, which is not a HIPAA exception); Completion of Family Medical Leave Act forms for employers (release of information to employer is not “treatment”-easiest course again is to give the patient the information, and instruct them to give the information to the employer); or Psychotherapy notes in the chart (psychotherapy notes are notes by a mental health professional regarding the contents of counseling conversations and do not include such items as medication information, results of clinical tests, summary of diagnosis or symptoms or prognosis or progress to date).

When you fill out the authorization form, note the required “expiration date” or “expiration event.” This may be any date or event desired by the patient relating to him or her or the purpose of the disclosure. For instance, for authorization to provide the patient’s employer with reports for Family and Medical Leave Act purposes, you could specify the expiration date as “termination of employment.” For research disclosures only, “none” may be as the expiration.

Sometimes you may receive an Authorization form signed by the patient is on “somebody else’s form.” For instance, frequently life insurance companies have their medical technicians obtain the patient’s signature on a format the time when all the other paperwork is filled out and the patient gives a blood sample. The life insurance company then sends the form to you, asking for the medical records. Can you accept this form, or do you need to have the patient execute the Practice’s own authorization form?

You may accept an outside party’s authorization form provided it has all the elements required by HIPAA. These are: A specific description of information to be used or disclosed; The identification of specific individuals authorized to make the requested use or disclosure of the information; The identification of specific individuals to whom the practice may make the requested use or disclosure of the information; A description of each purpose of the requested use or disclosure; The expiration date of the use or disclosure; A statement of the patient’s right to revoke the Authorization at any time in writing along with the procedure for revocation; A statement that the provider may not withhold treatment if the patient refuses to sign the authorization (except as noted below for research, school physicals and other situations where treatment would not normally be provided unless the patient authorized disclosure of his or her PHI); A statement that the PHI used or disclosed may be subject to re-disclosure by the party receiving the information and may no longer be protected; Patient’s signature and date. If the form you are sent does not have these elements, have the patient execute the Practice’s Authorization Form. Please be sure to give the patient a copy of the authorization, when it is signed, for their records. This is required by HIPAA.

### Minors and Incompetent Patients

As noted, minors and incompetent patients generally cannot sign the written acknowledgment for m for themselves. Typically, they do not have the legal authority to do this. Only the person(s) who have the ability to give informed consent for the minor or incompetent patient, under state law, can exercise these rights.

Normally, in the care of a minor, it is the parent who has such right to give informed consent for the child. Therefore it is the parent who signs the Written Acknowledgment of the Authorization or other forms and who exercises the child’s HIPAA rights as a patient. Exceptions to this policy may occur depending upon state law and are noted here.

### Friends and Family

“Friends and Family” pose a special challenge. These are the people who come with the patient to the doctor’s office, or who pick up the phone when you call the patient’s home. Under HIPAA, friends and family, even spouses, are not entitled to the patient’s PHI. Only the patient himself or herself has an absolute right to the PHI. The exception is parents of minor or other legal guardians, who are generally to be treated for HIPAA purposes as if they were the patient, as noted above.

Having said this, HIPAA does permit some sharing of the information with friends and family. HIPAA specifies that the practice may, without written authorization, disclose to a “family member, other relative, or a close personal friend of the (patient), or any other person identified by the (patient), the PHI directly relevant to such person’s involvement with the (patient’s) care or payment related to the (patient’s care).”

However, there are some “strings attached.” To disclose to these people (referred to in this manual as “friends and family”), one of the following must apply:

The practice obtained the patient’s oral or written to disclosing information to the person in question; The practice provided the patient with the opportunity to object to the disclosure, and the patient did not object; The practice could “reasonably infer from the circumstances, based on the exercise of professional judgment, that the (patient) does not object to the disclosure, “such as when the friend or family member accompanies the patient into the exam room, or when a child arrives at the doctor’s office in the care of a babysitter (presumably the parent wants the babysitter to receive all resulting diagnoses and care instructions), or where a patient arrives from the nursing home in the care of a nurse’s aide:

It is an emergency situation or the patient is incapacitated, so that there is no chance to provide the patient with the opportunity to agree or object; The friend or family member has been sent to pick up filled prescriptions, medical supplies, x-rays, or other PHI, in which case the practice is permitted to make a reasonable inference as to the patient’s best interest, in accordance with common medical practice.

If a patient wished to identify a family member or other person with whom their medical information may be shared, the patient should be given the opportunity to designate individuals to whom it is acceptable to make disclosure of PHI. This determination should be kept inside the patient’s chart and updated as designated acceptable PHI recipients are added or dropped. It is not necessary that the patient indicate this in writing, including adding or dropping individuals from the list, since oral agreement suffices. Also, the friends and family who are named by the patient do not represent the only individuals authorized to receive the patient’s PHI. As noted, there may be situations where the Practice is entitled to infer that the patient does not object to the release of information, such as in the case when the friend of family member accompanies the patient into the exam room, or a child arrives at the doctor’s office in the care of a babysitter.

Simple appointment reminders can generally be left with the family members even if the family member is not explicitly designated as a PHI recipient by the patient. However, check the patient’s file to see if the patient has requested an alternative means of communication, and if so, honor it. In any event, do not indicate to the family member the reasons for the patient’s doctor visit.

### **Patient Access to Chart**

Except for Psychotherapy notes, patients generally have the right to inspect and obtain a copy of their medical chart. Have the patient fill out the Practice’s “Request for Access to Medical Information” form. Generally, the Practice has 30 days to comply with a request for access, or 60 days if the information requested is not on-site.

The Practice must honor the Patient’s request to have the information delivered in a particular format, if this can be easily done. The practice may be entitled to demand a copying charge. If the patient merely wants to look at a file, not copy it, arrange a mutually convenient time and place for this to be done. The patient’s request for his or her PHI may be denied in very limited circumstances only. Access may be denied if: the file contains information obtained from a source other than a health care provider under a promise of confidentiality, and the access would reveal the source; The information requested has been compiled in a research trial that is still underway, and the patient previously agreed in writing that access would not be allowed until the study was completed; A licensed health care professional has made a judgment that access would likely endanger the life or physical safety of the patient or someone else; The file makes reference to another person, and the licensed health professional makes a judgment that access would likely result in substantial harm to the other person; The information is requested by the patient’s personal representative and the licensed health professional makes a judgment that access would likely result in substantial harm to the patient or another person. If access is denied, the patient has a right to review the decision to deny access, unless it is for either of the first two reasons noted above. This review must be done by a licensed health care professional who was not involved in the original decision to deny access. Be sure to document any denials.

### **Patient Amendment of Chart**

The patient has a right to request an amendment to their medical record (so long as the practice maintains it) if he or she believed it is incorrect or incomplete. To request an amendment, the patient must be dated and signed by the patient. The practice may deny the patient's request for an amendment if it is not in writing or does not include a reason to support the request. In addition, the Practice may deny a request to amend information that: Was not created by the practice, unless the person or entity that created the information is no longer available to make the amendment; is not part of the medical information kept by or for the practice; is not part of the information which the patient would be permitted to inspect and copy; or is accurate and complete. The practice must respond to the request to amend within 60 days.

### **Incidental or Inadvertent Disclosures**

Taken literally, HIPAA's prohibition against the disclosure of PHI would probably bring most medical practices to a standstill. For instance, the mere announcement of a patient's name in the waiting room is a disclosure of PHI- the patient's name. The same applies to sign-in sheets, overheard conversations with the check-in or check-out clerk regarding follow up appointments, or other common situations where one patient inadvertently learns information about another patient. Overheard conversations and other such inadvertent disclosures are called "incidental disclosures." Under HIPAA, incidental disclosures are not violations, provided that the Practice has taken reasonable steps to "safeguard" PHI and avoid incidental disclosures to the extent possible.

### **Faxes, Answering Machines, Messages, Email**

As noted, HIPAA requires "reasonable safeguards" to avoid the disclosure of PHI. Although some inadvertent disclosures will be excused as "incidental", the Practice has established the following procedures to minimize the likelihood of HIPAA violations:

Faxing is less secure than mailing. It could be faxed to the wrong number or it may be seen by an unintended person upon arrival at the destination. If practical, mail rather than fax.

If you fax information, be sure to double-check the fax number to minimize the chances of a fax going to the wrong number; if you have any doubts regarding the number, call the intended recipient to confirm the fax number. Ideally, you should also follow-up with the intended recipient to ensure the fax was received.

Faxes to hospitals, other physicians, labs, and other routine recipients are acceptable. However, double check the fax number before sending, and always use a cover sheet indicating that PHI may be attached and that if the fax has gone to the wrong persons, it should be returned or destroyed.

Leaving messages in answering machines for appointment reminders is acceptable. Do not indicate the reason for the visit. Do not leave messages regarding lab or diagnostic results (even negative results) or any kind of medical information on the answering machine. Just ask that the call be returned. Do not leave a message of any kind on the answering machine if the answering machine tape does not furnish some reasonable indication that you have reached the correct number. Leaving messages with family members at home is also acceptable for appointment reminders. Indicate only that an appointment is scheduled, not what the visit is for. Do not leave any other kind of information, unless the practice's records show that the person on the phone is a "friend or family" designated by the patient to be permitted recipient of PHI. Leaving messages at work is very sensitive. Avoid calling the work number, but if necessary ask for a return call and nothing more.

Appointment reminders by postcard are acceptable, so long as the appointment is of a routine nature.

Do not use email to communicate with the patients unless the Privacy Officer has developed a specific written policy to control the use of this form of communication. Do not share passwords for email, EHR software or other electronic sources of PHI with other staff.

Staff is expected to log off their individual workstation at the end of the day or any time they are away from their workstation for a prolonged period of time.