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DISCLOSURES FOR JUDICIAL AND ADMINISTRATIVE PROCEEDINGS

Policy Number: [Enter]

Effective Date: [Enter]

The HIPAA Privacy Rule allows, but does not require, Covered Entities to disclose PHI without the patient’s consent in response to certain judicial and administrative processes. See 45 C.F.R. § 164.512(e). However, the Minnesota Health Records Act allows disclosure of health records without the patient’s consent only pursuant to “specific authorization in law.” Minn. Stat. § 144.293, subd. 2(2).

I. Disclosures for Judicial and Administrative Proceedings Policy:

A. Purpose

This policy establishes guidelines for [Organization] to follow regarding the disclosure of PHI in response to a subpoena, court order, or other lawful process originating from a judicial or administrative proceeding.

B. In General

In accordance with the requirements and restrictions outlined in this policy, [Organization] may use or disclose PHI, without the written authorization of the individual or giving the individual the opportunity to agree or object, in response to an order of a court or administrative tribunal or some other mandate in applicable state or federal law, provided that [Organization] discloses only the PHI expressly authorized by such order or mandate.

Alternatively, [Organization] may disclose PHI in the context of judicial and administrative proceedings if this occurs pursuant to the written authorization of the patient. For information regarding the content of the authorization and other information about authorization forms, refer to policy number [Enter], Authorization for Use and Disclosure of PHI.

C. Minimum Necessary

[Organization] must limit its use and disclosure of PHI pursuant to this policy to the minimum necessary to accomplish the intended purpose of the use or disclosure. For information regarding the requirements of the minimum necessary rule, refer to policy number [Enter], Minimum Necessary Requests for, or Uses or Disclosures of, PHI.

D. Minnesota Law

[Organization] may disclose PHI in the context of judicial and administrative proceedings pursuant to a request accompanied by a court order. Examples of court orders include: (a) Minnesota state court order; (b) Minnesota federal court order; (c) order signed by a Minnesota judge or administrative law judge; (d) subpoena accompanied by a Minnesota court order, etc.

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[*Organization*] may also disclose PHI in this context pursuant to another “specific authorization in law.” For example, Minnesota Statutes section 256B.27 provides that the Minnesota Commissioner of Human Services shall be allowed access to all personal medical records of medical assistance recipients for the purposes of investigating vendors of medical care or whether the medical care was medically necessary.

E. Other Disclosures Permitted by HIPAA

1. Satisfactory Assurance

Although the Minnesota Health Records Act may only permit disclosure of health records based on “specific authorization in law”—which is generally interpreted as requiring an order of a court or an administrative tribunal or some other mandate of federal or state law—HIPAA does not prohibit [*Organization*]’s use or disclosure of PHI, without the written authorization of the individual or giving the individual the opportunity to agree or object, in the course of any judicial or administrative proceeding as follows:

- a. In response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, if [*Organization*] receives “satisfactory assurance” from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request. Such “satisfactory assurance” shall require a written statement and accompanying documentation demonstrating that:
 - i. The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual’s location is unknown, to mail a notice to the individual’s last known address);
 - ii. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 - iii. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: (A) No objections were filed; or (B) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- b. In response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, if [*Organization*] receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a “qualified protective order” that meets the requirements of this policy. Such “satisfactory assurance” shall require a written statement and accompanying documentation demonstrating that:

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- i. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
- ii. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.

2. A Qualified Protective Order

For the purposes of this policy a “qualified protective order” with respect to PHI means an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

- a. 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
- b. Requires the return or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

3. Disclosure without Satisfactory Assurance

HIPAA permits [*Organization*] to disclose PHI in response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, without receiving satisfactory assurance, if:

- a. [*Organization*] makes reasonable efforts to provide notice to the individual, including sufficient information about the litigation or proceeding in which the PHI is requested, to permit the individual to raise an objection to the court or administrative tribunal; or
- b. [*Organization*] makes reasonable efforts to provide notice to the individual, including sufficient information about the litigation or proceeding in which the PHI is requested, to permit the individual to seek a qualified protective order.

Substance Use Disorder Patient Records. [*Organization*] may disclose substance use disorder patient records in response to a subpoena if the patient signs a consent permitting a release of the information requested in the subpoena. However, if the patient does not provide consent, [*Organization*] cannot release substance use disorder patient records unless a court also issued an order that complies with 42 C.F.R. Part 2. *See* 42 C.F.R. § 2.61.

Witness Testimony. Physicians, surgeons, dentists, chiropractors, registered nurses, psychologists, consulting psychologists, licensed social workers, and chemical dependency counselors, among others, must comply with Minnesota Statutes section 595.02 when testifying as a witness or when involved in discussions pursuant to an action for malpractice, error, mistake, or failure to cure against [*Organization*].

4. Documenting Disclosures of PHI under this Policy

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[*Organization*] will document any disclosures under this policy and will retain the documentation associated with the disclosure for at least six (6) years from the date of the disclosure.

II. Disclosures for Judicial and Administrative Proceedings Procedure:

- A. [*Organization*]'s Privacy Official or designee will comply with the above stated policy and ensure the compliance of other Workforce members.
- B. In the event [*Organization*]'s Workforce have questions about whether specific authorization in law exists for a disclosure, or whether a document styled as a "court order" is sufficient to meet the obligations of this policy, HIPAA, the Minnesota Records Act or other applicable provisions of federal or state law, they will consult with [*Organization*]'s Privacy Official.
- C. [*Organization*]'s Privacy Official or designee will document any such releases in a manner that will allow [*Organization*] to provide an accounting of disclosures to patients.
- D. [*Organization*]'s Privacy Official or designee will document related information in the patient's chart.