



Exchanging PHI under HIPAA: A Guidance Document for Providers & Care Coordinators

Cook County Health and Hospitals System (CCHHS), through its health plan, CountyCare, has contracted with various organizations to perform care coordination services for a certain portions of its member population. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule allows covered entities, such as physicians, health plans and other health care providers, to use or share a patient's Protected Health Information (PHI) without having to get patient authorization, in certain situations. For example, a doctor's office may share a patient's PHI with a health plan in order to support patient care coordination, care management, and quality of care efforts without obtaining the patient's authorization. Below are some frequently asked questions (FAQs) about HIPAA and the types of information that can be shared that may be helpful when communicating with providers regarding care coordination activities.

Q1: What is the HIPAA Privacy Rule?

A1: HIPAA stands for the Health Insurance Portability and Accountability Act, a law that was passed by Congress in 1996. The HIPAA Privacy Rule applies to providers and health plans and establishes national standards to protect patient's protected health information (PHI). The Rule requires that providers take appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of this type of information without patient authorization. The Privacy Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records and to request corrections.

Q2: What is Protected Health Information (PHI)?

A2: PHI is any information in a medical record that can be used to identify an individual and that was created, used, or shared in the course of providing a health care service, such as a diagnosis or treatment. PHI includes any personally identifiable information in medical records and even refers to conversations between doctors and nurses about treatment. PHI also includes billing information and any patient-identifiable information in a health insurance company's computer system.

Q3: When is health plan member authorization not required for sharing PHI?

A3: Under HIPAA, health plan member authorization is usually not required when sharing PHI for three types of reasons: for treatment, payment, or health care operations. Additionally, where any law requires disclosure of specific types of PHI, health plan member authorization is not required. For all other disclosures of PHI, written authorization must be obtained from the health plan member before any PHI is disclosed. For example, where a law firm requests PHI regarding a health plan member, a written authorization from the member must be obtained before the PHI may be provided to the requestor. Please refer to the *CountyCare Authorization to Disclose Health Information* form for more information needed for written authorization by



the health plan member. If you find yourself in a situation where you are not sure whether you can disclose certain PHI, please contact your manager or the CountyCare Compliance Officer.

Q4: What activities are considered “health care operations?”

A4: “Health care operations” are certain administrative, financial, legal, and quality improvement activities of a provider or health plan that are necessary to run its business and support core treatment or payment functions. Care coordination activities are included within the definition of health care operations.

Q5: What does “care coordination”/ “care coordinator” mean?

A5: Care coordination is the organization of patient care activities to assist in the delivery of health care services. Organizing care involves using personnel and other resources needed to carry out all required patient care activities and is often managed by exchanging information among participants responsible for different aspects of care.

Care coordinators help patients by organizing treatment across multiple health care providers. CountyCare Care Coordinators act on behalf of CountyCare (and other providers serving CountyCare enrollees assigned to the entity) to organize treatment for patients.

Q6: When does a care coordinator’s use and disclosure of PHI fit under “health care operations?”

A6: Care coordinators may use or disclose a member’s PHI to other CountyCare employees or business associates, without getting member authorization, in order to carry out the following types of health care operations:

- Quality assessment and improvement activities;
- Population-based activities for improving health or reducing health care costs; and
- Case management and care coordination. This would include the coordination of health care services on behalf of members enrolled in its care management programs.

For all other uses and/or disclosures of PHI that do not fall under the activities described above, written authorization must be obtained from health plan member.

Q7: When I contact other provider offices for referrals or consults, how much PHI may I share?

A7: When contacting other providers for referrals or consults, care coordinators should be careful to only share information that is general in nature and does not qualify as PHI. This includes any information shared over the phone and by email/fax/mail. Where absolutely necessary, care coordinators are permitted to share a member’s PHI with another provider for care coordination and case management purposes if all three requirements below are met:

1. The provider must have, or have had, a relationship with the member (can be a past or present patient); and
2. The PHI shared must pertain to the relationship; and
3. Only the minimum information necessary is shared with the provider in relation to the referral or consult in question (*see FAQ 10 for more information*).



Where you are contacting a non-treating provider in order to set up a referral or for consultation purposes, member PHI may not be disclosed without obtaining their authorization.

Q8: What if I need to disclose PHI to contractors or subcontractors outside of CountyCare?

A8: If PHI is going to be shared with contractors or subcontractors outside of the CountyCare administrative staff, a Business Associate Agreement (*see FAQ 9 for more information*) must be in place to ensure that the information shared is properly protected. These disclosures of PHI must also meet the minimum necessary standard (*see FAQ 10 for more information*). If you find yourself in this situation, please contact your manager or the CountyCare Compliance Officer to ensure that a proper Business Associate Agreement is in place before disclosing the PHI in question.

Q9: What are “Business Associate Agreements?”

A9: A business associate is a person or organization that creates, receives, maintains, or transmits PHI to perform a function or activity on behalf of a health plan or provider. For example, business associates may be responsible for billing, claims processing or administration, data analysis, utilization review, quality assurance, legal or patient safety activities.

Under HIPAA, providers and health plans must enter into agreements with their business associates in order to (1) ensure that the business associate appropriately protects PHI; and (2) specifically define and limit the uses and disclosures of PHI that the business associate is allowed to make.

Q10: What is the “minimum necessary” standard under HIPAA?

A10: Generally, any use or disclosure of PHI for payment or health care operations must meet the minimum necessary standard. This means that providers, health plans and business associates that use, share, or request PHI must make reasonable efforts to *limit* PHI to the minimum amount of PHI that is reasonably necessary to achieve the purpose of the use, sharing, or request. This also means that individuals should not share or access information regarding health plan members unless they need this information to do their job. For example, when sharing a member’s information with a provider for care management purposes, only information pertinent to the specific care management issue may be shared, not the entire the patient record. The minimum necessary standard does not apply to disclosures to or requests between providers for treatment purposes.

Q11: What does member information concerning “sensitive health services” include, and what types of information can I share?

A11: “Sensitive health services” are generally those that include mental health, developmental disabilities and behavioral health services, or other services that involve the treatment of highly stigmatized conditions (e.g., AIDS/HIV, STDs, etc.). Federal and state privacy laws allow for the



sharing of PHI related to sensitive health services for care coordination purposes without member consent, except for psychotherapy notes, which are personal notes recorded by a provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are maintained separate from the rest of the patient’s medical record. In order to disclose psychotherapy notes for care coordination purposes, health plan member authorization must be obtained.

However, psychotherapy notes do not include any information about mental health services rendered, providers rendering the services, pharmaceuticals prescribed or dispensed, and diagnoses (e.g., summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date). This information may be shared for care coordination purposes without member authorization. (See FAQ 13 for more information).

Federal law also prohibits sharing certain substance abuse diagnosis and treatment information for care coordination purposes (see FAQ 12 for more information).

Q12: Can I disclose PHI related to substance abuse diagnosis and treatment for care coordination purposes without member consent?

A12: Maybe. Certain PHI related to substance abuse diagnosis and treatment is prohibited from being used for care coordination purposes.

While HIPAA may allow for the disclosure of PHI for care coordination purposes, the federal 42 CFR Part 2 Program (“Part 2”) law and regulations do not permit the use and disclosure of substance abuse diagnosis and treatment records, maintained in connection with the performance of any federally assisted alcohol and drug abuse program (“covered program”), for care coordination purposes.

A Part 2 covered program is any program that receives Federal dollars and holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment. Part 2 requirements apply to any information disclosed by a covered program that identifies an individual, directly or indirectly, as having a current or past drug or alcohol problem, or as a participant in a covered program. This includes information related to the identity, diagnosis, prognosis, or treatment of a member in a substance abuse program. Where Part 2 information has been disclosed to a provider or health plan, that provider or health plan is not permitted to disclose the information further without the member or patient consent.

However, if the substance abuse information is learned from the member directly, such as disclosed on a Health Risk Assessment, or identified through a non-Part 2 provider, such as an emergency room or detox unit, then it can be used for care coordination purposes without member consent.



It can be confusing and difficult to navigate the requirements related to disclosure of substance abuse PHI. As such, care coordinators should check with the CountyCare Compliance officer if they should have any questions.

Q13: What other health plans or providers can I share member information with concerning sensitive health services (including those related to mental and behavioral health)?

A13: Under HIPAA and Illinois law, certain types of information concerning sensitive health services can be shared without member authorization between a health plan and:

- Providers caring for the health plan member/patient (with either a past or current relationship with the member);
- Care coordinators caring for the CountyCare health plan member/patient; and
- Employees of CountyCare, in the course of its internal health plan operations.

If the health plan or provider does not meet the criteria outlined above, the PHI containing sensitive health services may not be disclosed without health plan member authorization. But remember, you may not share psychotherapy notes or certain PHI concerning substance abuse diagnosis or treatment information without obtaining health plan member consent, even if the requirements above are met.

Q14: How do I make sure that I am sending PHI safely and securely under HIPAA?

A14: Always use appropriate protections to prevent an impermissible use or sharing of PHI:

- Make sure to encrypt and secure PHI in an email before sending.
- Ensure that any electronic device used to send PHI is password-protected.
- Ensure that any electronic device used to send PHI has up-to-date security software.
- Do not send PHI in paper form without written patient authorization (See the *CountyCare Authorization to Disclose Health Information* form) signed by the health plan member.

Q15: When can I share PHI with a health plan member's family or friends?

A15: HIPAA allows a health plan to share PHI with a health plan member's family or friends where the health plan member has signed the *CountyCare Authorization to Disclose Health Information* or *Authorized Representative Form*. The *Authorization to Disclose Health Information Form* instructs CountyCare to allow Customer Service to speak to another person the member designates or allows for a specific release of information. The *Authorized Representative Form* allows that family member or friend to act on behalf of the health plan member.

Where the health plan member is present in the conversation with the family or friend (e.g., on the phone), PHI can also be shared, as long as the health plan member orally agrees to the disclosure. If the health plan member is NOT present and HAS NOT signed an Authorized



Representative Form, the PHI cannot be shared with the family member or friend.

Q16: When can I share PHI about a health plan member with their family members or others if I believe that the health plan member presents a serious danger to themselves or others?

A16: It depends. The answer to this question varies depending upon the details of the situation. The HIPAA rules generally state that care coordinators may not release PHI to individuals other than the health plan member without either prior written consent from the member (e.g., *CountyCare Authorization to Disclose Health Information* or *Authorized Representative Form*) or oral consent, obtained from the member on the phone at the time of disclosure. (See *FAQ 15 for more information*). However, where a care coordinator feels there is reasonable belief that the member presents a serious or imminent danger to themselves or others, the HIPAA Privacy Rule allows for the disclosure of necessary PHI to relevant individuals, including family members, the target of the threat, or other individuals who are able to prevent or lessen the threat.

Before sharing PHI for these purposes, the care coordinator must first consult with their supervisor regarding the information that will be shared and whether disclosure will be appropriate, given the facts of the scenario. Once the decision to share information is approved by a supervisor, the care coordinator must carefully document the situation and supervisor approval in the member's case management system file. The following information must be included in the health plan member's file:

- The date and time of the disclosure
- The information disclosed about the health plan member
- The recipient of the information (e.g., the family member name)
- The reasoning for why serious danger was involved
- The reasoning for why disclosure to the individual (who is not the member) was necessary
- The name of the supervisor who approved the disclosure
- The date and time that supervisor approval was obtained

Where a Care Coordinator Supervisor has questions related to the potential disclosure, the CountyCare Compliance Department can be contacted for further guidance.

Q17: When do I need to get a parent's consent before sharing PHI concerning their minor child? When do I not need parental consent?

A17: The parent or guardian of a minor child is usually considered the child's "personal representative," according to HIPAA, which means they are someone who is authorized to act on behalf of the child in making health care-related decisions. A minor child is a person under the age of 18. When it comes to uses and disclosures of PHI, a personal representative of a minor should generally be treated the same way an adult health plan member is treated. This means that where an adult patient would need to provide consent or authorization for a release



of PHI, a personal representative will also have to provide authorization or consent on behalf of the minor child.

However, there is an exception to the general rule that a covered entity must treat a child minor's parent as a personal representative. Specifically, the Privacy Rule does not require a covered entity to treat a personal representative as the individual if, in the exercise of professional judgment, it believes doing so would not be in the best interest of the patient/health plan member because of a reasonable belief that the individual has been or may be subject to domestic violence, abuse or neglect by the personal representative, or that doing so would otherwise endanger the individual. This exception applies to child minors who may be subject to abuse or neglect by their personal representatives.

Of course, there are certain instances where consent or authorization is not required before you can share the individual's PHI – for example, for treatment, payment or health care operations (see FAQ 3). However, the following certain types of PHI always require parent consent or authorization before it can be shared, except as otherwise noted:

- Records for minors under age 12 who are part of a federally assisted substance abuse treatment program or state-assisted alcohol and drug abuse treatment program require parent or guardian consent before these records can be released. If the minor is 12 or older, the minor may authorize the release of the records.
- Information concerning the sexual assault of a minor under 13 years of age requires consent from the parent or guardian before it can be released as sexual assault evidence for testing.
- The social investigation, psychological, or medical records of a juvenile offender under 18 cannot not be disclosed without the consent of the child's parent (if the child is under 18), or the child (if 18 or older).

Q18: When do I need to get a minor child's consent to disclose their PHI to their parents?

A18: The consent requirements for PHI concerning minors depend on the identity of the "authorized individual" (the parent who is authorized to access this information). Generally, the parent of a minor can access medical records about his or her child without the child's consent, except in the following circumstances:

- When the minor child is authorized to consent to the care provided, is the one who actually does consent to the care provided, and the consent of the parent is not required for the care, the consent of the minor child must be obtained before sharing information with a parent;
- When someone other than the parent is authorized to consent to the care and provides such consent (for example, when a the minor obtains care at the direction of a court) the consent of the minor child must be obtained before sharing information with a parent; or



- When the parent previously agrees that the minor and the health care provider and or care coordinator may have a confidential relationship, the consent of the minor child must be obtained before sharing information with a parent.

The type of information at issue may also determine whether the child's consent is needed before the PHI can be disclosed to the parents. Such special circumstances include the following:

- Records and communications regarding mental health or developmental disabilities services can be disclosed to parents or guardians without the child's consent when the child is under age 12. However, if a child is between ages 12 and 17, the parent or guardian may only access the information with the child's consent, or if the child's therapist does not find any compelling reasons to deny access.
- When a child receives emergency medical care without the parent's consent, parents can access information about a child's treatment and condition. But the child's consent is required when: (1) parental rights have been terminated; (2) sharing the PHI would be expressly prohibited by State or other applicable law; or (3) providing such information would not be in the best interest of the child because the child may be subject to abuse or neglect by the parent, or doing so would otherwise endanger the child.
- When the PHI involves HIV-related information of a minor under 18 whose test result is positive, you are not required to notify the child's parent or guardian of the result, but you must ensure that the provider who ordered the test gave the minor a chance to disclose the results to his or her parents first.
- When the PHI involves a child under age 18 who undergoes a genetic test that would permit the child's identity to be revealed, you should share the information with the child's parent or guardian if notification would be in the best interest of the child and (1) you have tried to persuade the child to notify his or her parent or guardian; or (2) you believe that the child has not notified his or her parent or guardian after a reasonable amount of time. Again, you are not obligated to notify the child's parent or guardian of the test results.

Q19: What do I do when another treating provider will not share PHI with me because they believe it would not be allowed under HIPAA?

A19: HIPAA generally permits health care providers and health plans to use or disclose PHI, without patient authorization, for treatment, payment, and health care operations. This means that a health care provider is allowed to share PHI with CountyCare Care Coordinators, you as long as the purpose for the disclosure meets the definition of health care operations (*see FAQs 4 and 6*), including for care coordination purposes, the information is about a CountyCare member, and the information shared meets the minimum necessary criteria (*see FAQ 10*).

Further, in some cases, CountyCare has entered into a Business Associate Agreements (BAA) with certain providers that (1) allow CountyCare to access member PHI; (2) ensure that the information shared is properly protected; and (3) ensure that the information exchanged is limited to the minimum necessary for performing care coordination. If these requirements are



met, the provider in question is also allowed to share PHI with the CountyCare Care Coordination staff, without the health plan member's authorization.

Please contact CountyCare if you have any further concerns or questions.

Ryan Tyrrell Lipinski, JD, CHC
CountyCare Compliance Officer
Cook County Health and Hospitals System
1900 W. Polk, Suite 220
Chicago, IL 60612
Office: 312-864-0943
Email: rlipinski@cookcountyhhs.org