

**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

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CATEGORY: HIPAA Policies

CONTENT: Minimum Necessary Standard for Use and Disclosure of Protected Health Information

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**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION**

Minimum Necessary Standard for Use and Disclosure of Protected Health Information

I. SCOPE

This policy is applicable to all workforce members of the LSU Health Care Services Division facilities, including employees, physician/practitioner practices, vendors, agencies, business associates and affiliates.

I. PURPOSE

To provide guidance to the Hospital and providers affiliated with the LSU HCSD regarding the minimum necessary standard and related requirements in the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations).

II. POLICY

All LSU HCSD facilities and providers should comply with the Minimum Necessary standard and related requirements of the HIPAA Privacy Regulations when using or disclosing Protected Health Information or requesting Protected Health Information from another entity.

All LSU HCSD facilities and providers are referred to in this policy as “Facility or Clinic.”

IV. PROCEDURE:

A. When Minimum Necessary Does Not Apply

1. Covered entities must make reasonable efforts to limit the use or disclosure of, and requests for, PHI to the smallest amount reasonably needed to accomplish the purpose of the use, request or disclosure.
2. The minimum necessary standard does not apply in the following situations:
 - a. Disclosures to or requests by a health care provider for treatment purposes.
 - b. Uses or disclosures to the patient who is the subject of the PHI.

- c. Disclosures to the Secretary of the U.S. Department of Health and Human Services when the disclosure of information is required under HIPAA for enforcement purposes.
- d. Uses or disclosures made pursuant to a valid authorization as described in Policy 7501-09– (Use or Disclosure of PHI that Require an Individual’s Authorization), as long as the disclosure stays within the scope of the patient’s authorization.
- e. Uses or disclosures required by law.
- f. Uses or disclosures required for compliance with the HIPAA privacy regulations.

B. Workforce Use of /or Access to PHI

- 1. The facility must identify the persons or groups in its workforce who need access to PHI to carry out their duties. These persons or groups may include, but are not limited to, the following categories of the facility’s workforce:
 - a. Physicians (including medical students and resident physicians in training):
 - i. Employed by the facility
 - ii. Under contract and designated as members of the facility’s workforce (such as radiologists, pathologists, emergency department physicians)
 - b. Nursing staff (including trainees, students and contract workers):
 - i. Inpatient care areas
 - ii. Outpatient care areas
 - iii. Emergency department
 - iv. Nursing administration
 - c. Allied health department staff (including trainees, students and contract workers):
 - i. Radiology
 - ii. Laboratory
 - iii. Pharmacy
 - iv. Physical therapy
 - v. Occupational and speech therapy
 - vi. Invasive and non-invasive cardiology
 - vii. Respiratory therapy
 - viii. Dieticians
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- ix. Wound care
- d. Support department staff (including trainees, students and contract workers):
 - i. Health information management
 - ii. Business office or patient accounting
 - iii. Patient access – registration and admissions
 - iv. Social services
 - v. Utilization management
 - vi. Risk management
 - vii. Compliance
 - viii. Purchasing and materials management
 - ix. Security
 - x. Housekeeping
 - xi. Plant operations, engineering and maintenance
 - xii. Finance
 - xiii. Administration
 - xiv. Communications
 - xv. Information systems
 - xvi. Transportation
 - xvii. Food service
 - xviii. Human resources
 - xix. Medical staff services
 - xx. Quality Improvement
- e. Volunteers
- f. Research affiliates
- g. Business Associates

Note: The list above is not meant to be all-inclusive and should be modified to fit each facility's environment.

- 2. Department directors are responsible for identifying the persons or groups of department workforce members who need access to carry out their duties, and for designating the types of PHI needed by each person or group to carry out their work duties. This designation should:
 - a. List the job duties of each person or group of workforce members identified;

- b. Identify access granted using a role-based approach delineating the category or categories of PHI each person or group of workforce members needs access and when such access is needed. This analysis should cover both open and closed records;
- c. Limit the access of each person or groups of workforce members to the minimum necessary PHI;
- d. Be consistent with any related security policies; and
- e. Be documented and permanently maintained. Use Attachment A – Uses of Minimum Necessary PHI, or other similar form, to document the minimum necessary designations for members of the workforce.

Note: Where the entire medical record is necessary, the designation must state so explicitly and include a documented justification.

- 3. The department director, with the approval of the Privacy Officer/Security Officer and/or the HIPAA Security Team, are responsible for reviewing and approving the minimum necessary designation of workforce members. This will, in part, assure consistent application of the minimum necessary standard across the facility.
- 4. Minimum necessary designations should be documented. This includes:
 - a. The initial designation for a person or group of workforce members
 - b. Changes or updates to the designation for a person or group of workforce members due to:
 - i. Changes in the role or responsibilities of the person or group;
 - ii. Changes in employment; or
 - iii. Changes in technology used or methods in place for limiting access to protected health information, including changes in computer systems and the physical environment where PHI is stored.
 - c. Designations for new persons or groups of workforce members of the facility.

C. Disclosures of PHI

- 1. The HIM Director/Record Custodian or designee is responsible for applying the minimum necessary requirement or standard to disclosures of PHI. These standards pertain to two types of disclosures:
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- a. Routine and recurring disclosures of PHI; and
 - b. Non-routine disclosures of PHI.
2. The facility may not disclose an entire medical record:
- a. Unless authorized in writing by the patient or personal representative, or
 - b. Unless the entire medical record is specifically justified as the amount of information that is reasonably necessary to accomplish the purpose of the disclosure, and such justification must be documented.
3. Routine and recurring disclosures of PHI. The HIM Director/Record Custodian, with input from the Privacy Officer, is responsible for:
- a. Determining the categories or types of disclosures of PHI that are considered to be routine and recurring. The list of routine disclosures must be documented. Use Attachment B – Routine Disclosure of Minimum Necessary PHI to document the minimum necessary PHI for routine and recurring disclosures. Examples of routine and recurring disclosures include, but are not limited to:
 - i. Business associates providing services such as:
 - a) Transcription of medical reports
 - b) Coding of medical records
 - c) Billing or claims management
 - d) Collection agencies
 - ii. Indirect treatment providers such as:
 - a) Radiologists
 - b) Pathologists
 - c) Reference labs
 - iii. Third-party payers for payment for health care services
 - iv. Research studies approved by the IRB or Privacy Board
 - v. Workers' compensation
 - b. Establishing criteria or protocols regarding information to be included in each type of routine disclosure to assist in limiting the amount of

PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure. Consideration should be given to defining:

- i. The pages of the records to be disclosed;
 - ii. The data elements or record sets to be disclosed; and
 - iii. The frequency and timeframe of the records to be disclosed.
 - c. Supervising designated staff members who receive, process, and document routine disclosures of PHI.
 - d. Documenting the PHI disclosed if applicable.
 4. Non-routine disclosures of PHI. The Record Custodian, or its designee, is responsible for:
 - a. Approving and processing non-routine requests for disclosures of protected health information, and
 - b. Establishing criteria regarding information to be included in each type of non-routine disclosure of PHI in order to limit the amount of PHI disclosed to the minimum necessary amount. Consideration should be given to defining:
 - i. The pages of the records to be disclosed, and
 - ii. The data elements or record sets to be disclosed.
 - c. On an individual basis, and using criteria designed to limit the amount of PHI disclosed, determining the minimum amount of information necessary to achieve the purpose of the disclosure, and limiting the disclosure to this minimum necessary amount.
 - d. Documenting the PHI disclosed.
 5. The HIM Director/Record Custodian may rely on the judgment of the party requesting the disclosure to be the minimum amount of information needed when the request is made by:
 - a. Another HIPAA covered entity
 - b. A public official or agency for a disclosure permitted without authorization if the official represents that the information is the minimum necessary for the stated purpose.
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- c. A professional who is a workforce member or business associate of the facility, and who represents that the requested information is the minimum necessary to provide professional services for the facility.
- d. A researcher with appropriate documentation from the facility's or an external Institutional Review Board (IRB) or Privacy Board, or a request from a researcher that PHI is necessary to prepare a research protocol, or for research on decedents. The research request must describe with sufficient specificity the PHI necessary for the research.

If the facility has knowledge that the documentation of IRB or Privacy Board approval was fraudulent with respect to the PHI needed for a research study, the facility is not permitted to rely on the IRB or Privacy Board's documentation as fulfilling the minimum necessary requirement.

The facility shall have the discretion to make its own minimum necessary determination for all disclosures of PHI if it chooses not to rely on the judgment of the party requesting the disclosure.

D. Inappropriate Disclosures of PHI

Use or disclosures that impermissibly involve more than the minimum necessary PHI may qualify as a HIPAA breach. Such incidents should be evaluated as any other impermissible use or disclosure to determine whether or not a breach occurred, and if so, if the breach is reportable.

E. Requests for PHI

- 1. The minimum necessary requirement or standard applies to requests for PHI issued by the facility and presented to another covered entity.
- 2. The facility HIM Director/Record Custodian or designee and other personnel designated by the facility may request PHI from another hospital, other health care provider or health plan.
- 3. Any request for PHI issued by the facility to another covered entity shall:
 - a. Limit the amount of PHI to that which is reasonably necessary to accomplish the purpose for which the request is made.

- b. Request an entire medical record, only when the entire medical record is specifically justified as the amount of information that is reasonably necessary to accomplish the purpose of the request. The facility must document the specific justification for the request of the entire record.
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- 4. Routine and recurring requests for PHI. The HIM Director/Record Custodians and other personnel designated by the facility requesting PHI from another covered entity should:
 - a. Determine the categories or types of requests of PHI that are considered to be routine. The list of routine requests must be documented. Use Attachment C – Routine Request for Minimum Necessary PHI to document the minimum necessary PHI for routine requests. These types of routine requests may include, but are not limited to, the following examples:
 - i. Requests for PHI for registry purposes, such as Tumor/Cancer or Trauma Registries
 - ii. Requests for PHI for payment purposes
 - b. Establish criteria regarding the information to be included in each type of routine request. The criteria assist in limiting the amount of PHI requested to the amount reasonably necessary to achieve the purpose of the request. Consideration should be given to defining:
 - i. The pages of the records to be requested;
 - ii. The data elements or record sets to be disclosed; and
 - iii. The frequency and timeframe of the records to be requested.
- 5. **Non-routine requests for PHI.** The HIM Director/Record Custodians and other personnel designated by the facility may request PHI from another covered entity.
 - a. Each request should be individualized based upon the minimum amount of information reasonably needed to accomplish the purpose for which the request was made.
 - b. Criteria must be established regarding the information to be included in each type of non-routine request of PHI in order to limit the amount of PHI requested to the minimum necessary amount. Consideration should be given to defining:
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- i. The pages of the records to be requested;
 - ii. The data elements or record sets to be requested; and
 - iii. The timeframe of the records being requested.
- c. On an individual basis, and using the criteria designed to limit the amount of PHI requested, the HIM Director/Record Custodian or designee and personnel designated by the facility review the request to ensure the minimum amount of information necessary to achieve the purpose of the request is being requested.
- d. Documentation of the request for PHI should be maintained.

F. Special Considerations

1. Uses, Disclosures, and Requests for PHI for Payment and Health Care Operations – The minimum necessary standard applies to uses, disclosures, and requests for PHI for purposes of payment and health care operations.
2. Disclosures to Relatives and Friends – The minimum necessary standard applies to disclosures of PHI to relatives, friends, or others involved in the patient’s care. The facility may make disclosures of PHI that is directly relevant to the person’s involvement with the patient’s health care or payment for the care to friends and relatives of the patient if (a) the patient agrees that PHI may be disclosed; (b) the patient has an opportunity to object and does not; or (c) it is reasonable to infer that the patient does not object, such as when a patient brings a spouse into the room when treatment is being discussed, or a friend brings a patient to the emergency room.

In situations where agreement of the patient cannot practically be obtained, the facility may exercise professional judgment to determine whether the disclosure is in the best interest of the patient. If disclosure of PHI is in the patient’s best interest, the facility will only disclose the PHI directly relevant to the person’s involvement in the patient’s care.

3. Members of the Medical Staff – Minimum necessary applies to administrative uses that support health care operations.
4. Disclosures of and Requests for PHI for Treatment Purposes –

The minimum necessary standard does not apply to disclosures of PHI by the facility to another health care provider for treatment or consultation purposes under HIPAA. A facility may, however, develop and implement criteria or

protocols for routine disclosures of PHI constituting less than all of the full medical record in some situations. Such criteria or protocols for routine disclosure of PHI constituting less than all of the full medical record should identify the specific portions of the medical record to be disclosed in connection with certain categories of disclosures (such as, for example, transfers of patients to nursing homes).

5. Incidental Uses or Disclosures. An incidental use or disclosure is permitted only to the extent that the facility has applied reasonable safeguards to prevent disclosures of PHI and has implemented the minimum necessary standard.

For example, use of a patient sign-in sheet requesting the patient's name and time of arrival would be an incidental disclosure that demonstrates minimum necessary standards of requesting only the amount of PHI that is needed to establish when the patient arrived for his or her appointment.

An incidental use or disclosure that occurs as a result of a failure to apply reasonable safeguards or the minimum necessary standard, is not a permissible use or disclosure.

6. Oral Communications – The facility prohibits its workforce members from discussing PHI unnecessarily among themselves and with others. The facility workforce members must make reasonable efforts to limit the amount of information announced about a patient in public areas of the facility including over public address systems.
 7. Visual Communications – The minimum necessary standard applies to whiteboards, bulletin boards and other visual postings used to communicate the location and or status of patients in treatment areas such as emergency rooms, operating rooms, and labor and delivery units.
 8. Standard Electronic Transactions – The minimum necessary standard does not apply to the required and situationally required data elements in the standard electronic transactions provided for in the HIPAA regulations. However, the minimum necessary standard does apply to the optional data elements. For example, the standard transactions adopted for the outpatient pharmacy sector use optional data elements. The payer currently specifies which of the optional data elements are needed for payment of its particular pharmacy claims. The minimum necessary standard applies to the payer's request for such information. A pharmacist is permitted to rely on the payer's request for information, if reasonable to do so, as the minimum necessary for the intended disclosure.
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9. Business Associates – The use or disclosure of PHI by a business associate shall be consistent with the minimum necessary policies and procedures of the facility. For example, where a financial institution is acting as a business associate of a facility and is requesting PHI from the facility, the disclosing facility may reasonably rely on a request from the financial institution, because in this situation, both the requesting and disclosing entity are subject to the minimum necessary standard. The facility that is disclosing PHI to a business associate must apply the minimum necessary standard to the disclosure, unless it is for purposes of treatment of the patient.

The Business Associate Agreement must state that when Business Associates use, disclose, or request PHI from any provider or entity that they must limit that PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. A Business Associate is directly liable for failing to make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose.

10. Limited Data Set – The minimum necessary standard applies to requests for Limited Data Set information.
11. Workers Compensation – The minimum necessary standard permits covered entities to disclose any PHI that is reasonably necessary for workers' compensation purposes and is intended to operate so as to permit information to be shared for such purposes to the full extent permitted by state or other law.
12. Public Officials – The Facility may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when making disclosures permitted under §164.512, if the public official represents that the information requested is the minimum necessary for stated purposes.

REFERENCES:

45 C.F.R. § 164.502(b)
45 C.F.R. § 164.514(d)(1)

Attachment A: Uses of Minimum Necessary Protected Health Information Worksheet

Department	
Job Title	
Department Director	

Work Duties and Responsibilities	Form of Access
1.	1.

Minimum Necessary PHI and Frequency of Access	Conditions on Use of PHI (if applicable)
1.	1.

Approved/Revised		
Name/Title/Department	Date	Privacy Task Force Member

Attachment A: Uses of Minimum Necessary Protected Health Information Worksheet – Sample

Department	Nursing Administration
Job Title	Evening/Night Nursing Supervisor
Department Director	Director of Nursing Administration (VP of Nursing Administration)

Work Duties and Responsibilities	Form of Access
<ol style="list-style-type: none"> Assure adequate staffing and provision of quality patient care in all patient care areas Communicate with healthcare professionals and patient's family/friends involved in the patient's care regarding the patient's condition and needs Report information required for public and patient safety to appropriate organizations Monitor [Name of Facility]'s census for staffing requirements 	<ol style="list-style-type: none"> Paper medical records Electronic medical records Census documents
Minimum Necessary PHI and Frequency of Access	Conditions on Use of PHI (if applicable)
<ol style="list-style-type: none"> Access to all medical records, including records of previous treatment - Daily Access to all census documents - Daily Access to all contact information for all patients - Daily Access to consent and authorization forms, designation of personal representatives information and any information on use of the patient's PHI in emergency situations - Daily 	<ol style="list-style-type: none">

Approved/Revised			
<i>Name/Title/Department</i>	<i>Date</i>	Privacy Task Force Member	Date

Attachment B: Routine Disclosure of Minimum Necessary Protected Health Information Worksheet

<i>Type or Description of Routine Disclosure</i>	
Purpose of Disclosure	
Frequency of Disclosure	
Departments or Parties Involved in the Routine Disclosure	
Who May Disclose the PHI	Who May Receive the PHI
1.	1.
Minimum Necessary Information	
Criteria or Protocol For Minimum Necessary	Method of Disclosure
<i>Approved / Revised By Name</i>	Date

Attachment B: Routine Disclosure of Minimum Necessary Protected Health Information Worksheet - Sample

Type or Description of Routine Disclosure	Individual patient account information sent to collection agencies for payment follow-up		
Purpose of Disclosure	For collection agencies to obtain payment on outstanding balances on individual patient accounts – to improve revenue.		
Frequency of Disclosure	Electronically: Weekly – every Thursday Verbally: Daily, during normal business hours, Monday - Friday		
Departments or Parties Involved in the Routine Disclosure			
Who May Disclose the PHI	<ol style="list-style-type: none"> 1. Director of Patient Accounting 2. Supervisor of Collections, Patient Accounting 3. Collections Associates, Patient Accounting 4. Information Systems Department – through established operations procedure for sending data tapes to outside collection agencies 	Who May Receive the PHI	1.
Minimum Necessary Information			
Criteria or Protocol For Minimum Necessary	<p>Limit data to items listed in next column – demographic information for the collection agency to be able to contact the patient or guarantor, and discuss payments due for a specific encounter.</p> <p>Must have signed, current Business Associate Agreement on file.</p>	Data Types or Records Disclosed	Method of Disclosure
	<ul style="list-style-type: none"> • Patient demographic information (name, address, and telephone numbers) • Guarantor demographic information (name, address, and telephone numbers) • Account balance due (Totals only, not detailed charges) • Encounter information (dates of service, admission & discharge dates, or treatment date) 	<p>Records of patient accounting information for individual encounters. These tapes include:</p> <ul style="list-style-type: none"> • Patient demographic information (name, address, and telephone numbers) • Guarantor demographic information (name, address, and telephone numbers) • Account balance due (Totals only, not detailed charges) • Encounter information (dates of service, admission & discharge dates, or treatment date) 	<ol style="list-style-type: none"> 1. Electronic Disclosures: Weekly (Thursday) magnetic data tapes sent via Federal Express to approved collection agency offices. 2. Verbal Disclosures: Via telephone, during normal business hours, to staff members of approved collection agencies.
<i>Approved / Revised By Name</i>	Approved / Revised By Title		Date

Attachment C: Routine Request of Minimum Necessary Protected Health Information Worksheet

<i>Type or Description of Routine Request</i>	
Purpose of Request	
Frequency of Request	
Departments or Parties Involved in the Routine Request	
Who May Request the PHI	Who May Be Requested to Provide the PHI
1.	1.
2.	2.
Minimum Necessary Information	
Criteria or Protocol For Minimum Necessary	Data Types or Records Request
	1.
Approved / Revised By Name	Approved / Revised By Title
	Date

Attachment C: Routine Request of Minimum Necessary Protected Health Information Worksheet - Sample

Type or Description of Routine Request		Request of patient insurance information from another covered entity	
Purpose of Request		To obtain sufficient information about the patient in order to insurance eligibility for services, identify co-payments, deductible amounts and determine deposit amounts, if necessary.	
Frequency of Request		Daily	
Departments or Parties Involved in the Routine Request			
Who May Request the PHI		Who May Be Requested to Provide the PHI	
1. Director, Patient Access Department		1. Physician Offices	
2. Supervisor, Patient Access Department		2. Hospitals	
3. Registration Associates, Patient Access Department		3. Ambulance Services	
4. Scheduling Staff, Centralized Scheduling Department		4. Nursing Homes	
		5. Other health care providers	
Minimum Necessary Information			
Criteria or Protocol For Minimum Necessary	Data Types or Records Request	Method of Request	
Limit data to items listed in next column – demographic and insurance information required to obtain eligibility for payment by a third party, for identifying deductibles and co-payment amounts, or for self-pay pre-admission deposits	<ul style="list-style-type: none"> • Patient demographic information (name, address, and telephone numbers) • Guarantor demographic information (name, address, and telephone numbers) • Patient medical insurance information (company name, plan name, plan ID and number, member ID) 	<ol style="list-style-type: none"> 1. Verbal Request – Obtained from other health care provider at time of scheduling surgery, procedure or test. 2. Facsimile Request – Obtained from the other health care provider at the time of scheduling the surgery, procedure or test, or prior to the scheduled patient visit. 	
Approved / Revised By Name	Approved / Revised By Title	Date	

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