LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA

POLICY NUMBER:	7530-20
CATEGORY:	HIPAA Policies
CONTENT:	Patient's Right to Request Restriction of Use and Disclosure of Protected Health Information for Payment Purposes
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INQUIRIES TO:	**LSU HCSD** **Compliance Section** **P.O. Box 91308** **Baton Rouge, LA 70821** **Telephone 225-354-4840**

Note: Approval signatures/titles are on the last page

LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION

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.

II. PURPOSE

To provide guidance to the LSU HCSD on a patient's right to request restriction of the uses and disclosures of their Protected Health Information to their insurance carrier. Under the HIPAA Omnibus regulations, a patient may chose to pay for an item or service out of pocket, and require the hospital to restrict PHI related to that item or service from disclosure to the patient's insurance carrier, unless the disclosure is required by law. The Facility must agree to the requested restriction unless the disclosure is otherwise required by law, if the request for restriction in on disclosures of PHI to a health plan for the purpose of carrying out payment or health care operations, and if the restriction applies to PHI that pertains solely to a health care item or service for which the health care provider has been paid out of pocket in full.

It is important to note that while this right is primarily directed to instances that involve an insurance carrier, the rule and restriction to release information also applies to situations in which another person typically pays for the item/service on behalf of the patient. For example, if a parent typically pays out of pocket for health care services for a young adult, that young adult has the right to pay for the service on his or her own behalf, and restrict information to the parent.

For the purposes of this policy, the description of the procedures will focus on cases in which payment is typically made by an insurance carrier. However, the same principles will apply if the payment is made by a person on the patient's behalf.

III. POLICY

All LSU HCSD facilities and providers must provide patients with a right to request a restriction of the uses and disclosures of their Protected Health Information to their insurance carrier, and the business associates of the insurance carrier, as outlined in this policy.

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

IV. DEFINITIONS

1. **Protected Health Information (PHI)** – for purposes of this policy means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. It includes demographic data that relates to that relates to:
   a) The individual's past, present, or future physical or mental health or condition;
   b) The provision of health care to the individual; or
   c) The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. PHI includes many common identifiers such as name, address, birth date, social security number, etc.

V. PROCEDURE

1. A patient will most likely notify the treatment provider ordering an item, test, or service of the desire to restrict disclosure of PHI related to that item, test, or service to the patient's insurance carrier. If the patient indicates the desire to restrict such a disclosure, the Financial Services Manager or his designee at the Facility shall be notified to discuss the restriction with the patient. The Financial Services Manager shall inform the patient of the approximate cost of the service so that the patient will know his or her financial responsibility prior to a final decision about the restriction. Consideration of each service that may be impacted by the restriction must be given when determining such a cost. For example, if the patient chooses to restrict the billing of a radiology diagnostic test, the charge related to the actual test and the radiologist's reading of the test must be given to the patient.

2. After such a discussion, should a patient choose to evoke the right to restrict the disclosure of a particular item or service to his or her insurance company, the Financial Services Manager or his designee shall have the patient sign the "Request to Restrict Use and Disclosure of PHI for Payment Purposes" form (see Exhibit A).

3. The Financial Services Manager will collect the full charge amount due for the item, test, or service, or make arrangements to do so, and note the receipt of the payment in the financial notes of the account.

4. The Facility must take the necessary steps to ensure that the following departments are aware of the restriction. Those departments must flag the account so that PHI related to the requested restriction may be carried out.
   a. Billing Office for both technical (hospital) and professional billing, as

applicable.

b. Medical Records will flag the paper record, CLIQ, and EPIC, as applicable.
c. Utilization Management if the case involves an inpatient stay, or is pre-authorized by utilization management for services related to the restriction.
d. Any independent physician/ provider's billing company that may be involved in the billing of care related to the restriction. Such providers may include, but are not limited to
   - A radiology billing company bills for a contracted radiologist for a condition related to the restriction;
   - A pathologist should there be a lab specimen collected;
   - An independent infectious disease physician who is consulted to address a condition related to the restriction;
   - The professional billing service of any practitioner involved in the case; and
   - An emergency physician company that bills for an emergency room physician who treats a condition related to the restriction.
e. Any other department that might otherwise communicate with the insurance carrier of the patient.
f. The patient is responsible for notifying any downstream providers of the request to restrict information from his/her payer. However, the patient must be notified of this fact by the Facility.

5. The account will be placed on bill hold as it goes through the revenue cycle process (i.e, charge capture, coding, billing edits). Once the account is ready to be billed, the Facility Privacy Officer will be notified to review the account to ensure that no PHI related to the restriction is available to the patient's insurance carrier upon billing.

6. The chart and its electronic counterparts will be flagged to warn providers and health information management professionals of the restriction.

Required By Law Exceptions

Under the Privacy Rule, "required by law" is defined at §164.103 as a mandate contained in law that compels a covered entity to make a use or disclosure of PHI and that is enforceable in a court of law.

- Medicare – When a provider furnishes a service that is covered by Medicare, then it is subject to the mandatory claim submission provisions of section 1848(g)(4) of the Social Security Act, which requires the provider to submit a claim to Medicare for any covered service. However, there is an exception to this rule. If a Medicare beneficiary refuses, under his or her free will, to authorize the submission of a bill to Medicare, the Medicare provider is not required to submit a claim to Medicare for the covered service and may accept

an out of pocket payment for the service from the beneficiary. **The limits on what the provider may collect from the beneficiary continue to apply to charges for the covered service, notwithstanding the absence of a claim to Medicare.**
  - Therefore, a patient may request a restriction of PHI disclosure to Medicare if the patient refuses to allow the provider to submit a claim to Medicare. In such a case, the Facility may only collect the Medicare allowed amount for the item or service.
- There are no other instances in which the State of Louisiana requires a use or disclosure of PHI as it relates to payers.

Contractual Obligations of Facility with Insurance Carriers
The HIPAA Omnibus rule does not consider a contractual requirement to submit a claim or otherwise disclose PHI to an HMO to exempt the facility restricting PHI from the HMO subsequent to such a request from a patient.

Unbundling Services
There may be some instances in which a patient wants only a particular item or service that is part of a larger encounter restricted from the insurance carrier. In such instances, the Facility shall make every effort to isolate that item or service from the remainder of the encounter. The isolated item or service shall be recorded in another account, with the guarantor being a self pay account.

Pricing for the restricted item or service shall be the full charge reflected the Facility chargemaster, with the exception of Medicare as noted above.

There may be instances in which the item or service that is being restricted is intractably related to other items or services. Such instances may include other items or services billed to the insurance carrier may still indicate what type of service the patient was trying to restrict, or the unbundling causes the restricted item or service to be more costly than if billed as an intact encounter. In such instances, the facility Financial services Manager shall counsel the patient about the ability of the Facility to unbundle services and the impact of doing so. If the Facility is unable to unbundle a group of items or services, the Facility will inform the patient and give the patient the opportunity to restrict and pay out of pocket for the entire bundle of items or services.

Lack of Payment by Patient
In most instances, the Facility shall make every effort to collect payment for a restricted item or service prior to the provision of the service. Should the Facility agree to a payment plan for the service, the Facility is only bound by an agreement to restrict the use or disclosure of PHI to the

insurance carrier if the patient honors his or her pledge to pay the full applicable charge.

Should the patient dishonor such a pledge, the Facility shall make a reasonable effort to contact the patient and obtain payment prior to considering billing the item or service to the insurance carrier. If all usual and customary efforts fail, and after notification of the patient, the Facility may chose to bill the insurance carrier for the service. The Facility may also choose to send the account to collections.

Subsequent Care
The patient is responsible for requesting a restriction of the use and disclosure of their PHI for each service encounter. The patient will be notified of this requirement at the time of their first request for restriction.

VI. RESPONSIBILITY

A. Treatment Provider

1. If the Treatment Provider is alerted by the patient for a restriction on the release of PHI to an insurance carrier, the treatment provider must immediately notify the Facility Financial Services Manager, or his designee of the request.

2. If the patient decides to move forward with the request, the Treatment Provider shall contact the facility Financial Services Manager for further processing of the request for the restriction.

3. Counsels the patient about notifying down stream providers of the restriction, since such notification is the responsibility of the patient.

4. If prescriptions are needed that are related to the restriction, ensure that the prescriptions are written on a paper script, as opposed to e-prescribe to allow the patient time to notify the pharmacist of the restriction.

B. Financial Services Manager

1. Counsels the patient in relation to the request for the restriction, the cost of the service(s) being restricted, and the limitations of the request of the restriction.

2. Secures the “Request to Restrict Use and Disclosure of PHI for Payment Purposes” form from the patient or the patient’s Representative.

3. Notifies the Central Billing Office to put the account on bill hold.

4. Notifies the Health Information Management Director or her designee

to flag all forms of the patient medical record for disclosure restriction.

5. Notifies Utilization Management (if needed) to restrict disclosure when communicating clinicals to the insurance carrier.

6. Notifies any additional treatment providers (or their billing offices) who may bill for a service related to the restriction.

7. Routes the executed "Request to Restrict Use and Disclosure of PHI for Payment Purposes" to medical records.

8. If a split bill is needed because a particular item or service is being restricted as opposed to the entire encounter, the Financial Services Manager arranges for a new, additional account number to house the self pay portion of the restricted charges to the self pay account. The Financial Services Manager will arrange to have the restricted charge moved to the new account number.

9. If the entire encounter is restricted, the Financial Services Manager will ensure that the account guarantor is changed to the patient as a self pay account.

C. Health Information Management Director (or Designee)

1. Flags the paper medical record cover with a sticker or some other identifier that alerts HIM employees to not release any information to the insurance carrier or the insurance carrier's business associates related to the patient's expressed restriction.

2. Ensures the EPIC medical record (if applicable) is flagged to protect the restricted PHI from release to the patient's insurance carrier.

3. Ensures the CLIQ program (if applicable) is flagged to protect the the restricted PHI from release to the patient's insurance carrier. In addition, the HIM Manager will suppress the restricted PHI from any insurance carrier or their representative so that it is not visible to those persons who may have access to CLIQ.

4. Ensures that all HIM staff that might respond to a request for medical records by an insurance carrier are trained on the restrictions and requirements of this policy.

5. Personally reviews each request for information by insurance carriers, including requests for records for audit purposes, should there be a record requested that has a restriction of use or disclosure of PHI to the insurance carrier.

D. Central Billing Office

1. Places the account on bill hold. If the restriction is for the entire encounter, then the claim is not released unless it is to bill the patient as a self-pay account. If the bill is for a split bill, with one portion of the split bill to be billed to the insurance carrier, the CBO is responsible for steps 2-4 below.

2. Processes the account to the point of being ready to bill (e.g., process the claim through the bill scrubber edits; make the required changes to the claim as requested by the Facility Financial Services Manager.)

3. Notifies the Facility's Compliance Officer that the bill is ready to be processed so that it can be inspected to ensure no restricted PHI is on the bill.

4. Once approval is received, releases and bills the claim, if there is a split bill that may be released to the insurance carrier.

E. Compliance Officer

1. Provides training resources to the various departments responsible for this policy.

2. Reviews restricted claims after being notified by the Central Billing Office to ensure that restricted PHI is not being released to insurance carriers.

F. Utilization Management

1. Before releasing clinical information to insurance carriers, ensures that there are no disclosure restrictions. If there is a disclosure restriction, ensures that only permitted PHI is disclosed.

G. Nursing, Ancillary Staff, and Pre-certification Clerks

1. Before releasing clinical information to insurance carriers, ensures that there are no disclosure restrictions. If there is a disclosure restriction, ensures that only permitted PHI is disclosed by contacting the HIM Director or Compliance Officer before disclosing any PHI to the insurance carrier.

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