

County
Privacy Policies
and Procedures
for
Health Insurance
Portability and Accountability
Act of 1996
“HIPAA”
(as amended in August 2002)

April 2003

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INTRODUCTION

STATUTORY BACKGROUND

Congress recognized the importance of protecting the privacy and health information given the rapid evolution of health information systems in the Health and Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA's Administrative Simplification provisions of the statute were designed to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to certain financial and administrative transactions carried out by health plans, health care clearinghouses and health care providers who transmit information electronically in connection with such transactions. To implement these provisions the statute directed HHS to adopt uniform, national standards for transaction, unique health identifiers, code sets for the data elements of the transactions, security of health information and electronic signature.

At the same time, Congress recognized the challenges to the confidentiality of health information presented by the increasing complexity of the health care industry, and by advances in the health information systems technology and communications. Thus, the Administrative Simplification provisions of HIPAA authorized the Secretary to promulgate standards for the privacy of individually identifiable health information if Congress did not enact health care privacy legislation by August 21, 1999. HIPAA also required the Secretary of HHS to provide Congress with recommendations for legislating to protect the confidentiality of health care information. The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress did not pass such legislation within its self-imposed deadline.

With respect to these regulations, HIPAA provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections. Additionally, Congress required that HHS consult with the National Committee on Vital and Health Statistics, a Federal advisory committee established pursuant to section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and the Attorney General in the development of HIPAA privacy standards.

After a set of HIPAA Administrative Simplification standards were adopted by the Department, HIPAA provided HHS with authority to modify the standards as deemed appropriate, but not more frequently than once every 12 months. However, modifications are permitted during the first year after adoption of the standards if the changes are necessary to permit compliance with the standards. HIPAA also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which may not be earlier than 180 days after the adoption of the modification.

The Privacy Rule establishes, for the first time, a foundation of Federal protections for the privacy of protected health information. The Rule does not replace Federal, State, or other law that grants individuals even greater privacy protections, and covered entities are free to retain or adopt more protective policies or practices.

PREEMPTION OF STATE LAW

The HIPAA privacy provisions govern the use and disclosure of an individual's personal health information, also known as "protected health information" (PHI). In the event state law or County policy is more restrictive than the HIPAA privacy regulations, the more restrictive law or policy will apply.

**POLICY AND PROCEDURE:
Use and Disclosure of Individual
Protected Health Information**

“What The County Can Disclose”

POLICY

To preserve the confidentiality of protected health information (PHI), the County shall only disclose PHI for reasons identified and in the format developed in the Health Insurance Portability and Accountability Act of 1996. The County shall only disclose PHI for the following reasons.

PERMITTED USES AND DISCLOSURES

The County is permitted to use and disclose (PHI):

- 1) To the individual §164.502(a);
- 2) For treatment, payment or health care operations §164.502(a);
- 3) Incident to a use or disclosure permitted or required by HIPAA privacy provisions §164.502(a);
- 4) Pursuant to and in compliance with a valid authorization §164.502(a)
- 5) When required by the Secretary to investigate and determine County compliance §164.502(a);
- 6) To a family member or individual identified by the individual §164.510(b);
- 7) For disaster relief purposes §164.510(b)(4);
- 8) For public health activities §164.512(b);
- 9) For disclosures about victims of abuse, neglect or domestic violence §164.512(c);
- 10) For disclosures for health oversight activities §164.512(d);
- 11) For disclosures for judicial and administrative proceedings §164.512(e);
- 12) For disclosures for law enforcement purposes §164.512(f);
- 13) About decedents §164.512(g);
- 14) For cadaveric organ, eye or tissue donation purposes §164.512(h);
- 15) For research purpose §164.512(i);
- 16) To avert a serious threat to health or safety §164.512(j);
- 17) For specialized government functions §164.512(k);
- 18) For workers compensation §164.512(l);
- 19) For a limited data set §164.514(e);
- 20) For fundraising §164.514(f); and
- 21) For underwriting and related purposes §164.514(g).

MINIMUM NECESSARY STANDARD §164.502(b) See Minimum Necessary Policy

When using or disclosing PHI or when requesting PHI from another covered entity, the County must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

The minimum necessary standard does not apply to the following:

- 1) Disclosures to or requests by a health care provider for treatment;
- 2) Uses and disclosures made to the individual;
- 3) Uses or disclosures made pursuant to an authorization;
- 4) Disclosures made to the Secretary to determine County compliance, or

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- 5) Uses or disclosures that are required by law, including, compliance with HIPAA privacy provisions.

PHI SUBJECT TO AN AGREED UPON RESTRICTION §164.502(c) See Request for Privacy Policy

If the County agrees to a restriction pursuant to §164.522, the County may not use or disclose PHI in violation of that restriction.

DE-IDENTIFIED INFORMATION §§164.502(d) & 514

The County may use PHI to create information that is not identifiable health information or disclose PHI only to a business associate for such purpose. The County can disclose PHI in its “de-identified form,” as long as it can only be re-identified by the County. PHI is considered “de-identified” when the following items are eliminated:

Names	Electronic Mail Addresses
Address, City, County, Precinct	Social Security Numbers
Zipcode (other than first three digits)	Medical Records Numbers
Dates (other than year)	Health Plan Beneficiary Numbers
Telephone Numbers	Account Numbers
Fax Numbers	Certificate/License Numbers
Vehicle Identifiers	Device Identifiers and Serial Numbers
Web Universal Resource Locators (URLs)	Internet Protocol Address Numbers
Biometric Identifiers	Photographic images
Other identifying number, characteristic or code	

The County may assign a code or other means of record identification to allow de-identified information to be re-identified by the County, provided that the code is not easily translated so as to identify the individual. In addition, the County cannot disclose the code or mechanism for re-identification.

PROCEDURE

- 1) Determine if the County is permitted to disclose the PHI.
- 2) Determine if the use or disclosure of the PHI meets the minimum necessary standard.
- 3) Determine if there are any restrictions on the use or disclosure of the PHI.
- 4) Determine if the PHI can be de-identified.

**POLICY AND PROCEDURE:
Use and Disclosure of Individual
Protected Health Information**

“To Whom The County May Use And Disclose”

POLICY

To ensure protected health information (PHI) is used and disclosed only to those individuals who are allowed access, the County will only disclose PHI in accordance to the Health Insurance Portability and Accountability Act of 1996. The County will disclose information only to those identified below.

REQUIRED TO DISCLOSURES §164.502(a)(2)

The County is required to disclose protected health information to:

- 1) The individual, when requested and
- 2) Secretary of Health and Human Services to determine County compliance.

DISCLOSURES TO BUSINESS ASSOCIATES §164.502(e) See Business Associate Policy

The County may disclose PHI to a Business Associate and may allow a Business Associate to create and receive PHI on its behalf, if the County obtains satisfactory assurance that the Business Associate will appropriately safeguard the information. These satisfactory assurances must be documented in the form of a Business Associate Agreement. This standard does not apply to disclosures:

- 1) By the County to a health care provider concerning treatment of the individual;
- 2) With respect to disclosures by a group health plan to a plan sponsor; or
- 3) With respect to uses and disclosures by a County (health plan), if the eligibility for, or enrollment in, the health plan is determined by an agency other than the County.

DECEASED INDIVIDUALS §164.502(f)&(g)

The County must comply with HIPAA privacy provisions with respect to PHI of deceased individuals.

PERSONAL REPRESENTATIVE'S ACCESS TO PHI §164.502(g)

The County must treat a personal representative as the individual for purposes of the HIPAA privacy provisions. A personal representative must have legal authority to act on behalf of an individual who is an adult or a minor child in making decisions related to health care. The County may elect not to treat a person as a personal representative of an individual if the County reasonably believes, in its professional judgment, that the individual has been or may be subjected to domestic violence, abuse or neglect by such person or if treating the person as a personal representative could endanger the individual.

In addition, the County must treat an executor or administrator of a deceased individual's estate as a personal representative with respect to relevant PHI.

USES AND DISCLOSURES TO FAMILY MEMBERS §164.510(b) See Opportunity to Object Policy

In the event of an emergency or an individual's incapacity, the County may disclose PHI to a family member, close friend or any other person identified by the individual if the PHI is relevant to such person's involvement with the individual's care or payment related to the individuals' health care. If the individual is present, the County must obtain the individual's agreement to release PHI to a family member or close friend.

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MINIMUM NECESSARY FOR USES OF PHI §164.514(d)(2) See Workforce Designation

The County must identify those persons or classes of persons, as appropriate, in its workforce who need access to PHI to carry out their duties. For each person or class of persons the County must identify the category or categories of PHI to which access is needed and the conditions appropriate for such access. The County must make reasonable efforts to limit the access of each person or class of persons.

VERIFICATION §164.514(h) See Verification Policy

The County shall verify the identity of a person requesting PHI and the authority of such person to have access to PHI, if the identity or authority of the person is not known to the County. This can include oral or written verification.

PROCEDURE

- 1) Determine if the information to be used or disclosed is to an individual or entity that has a right to access the information.
- 2) Determine if there is any other policy that prohibits use or disclosure. (verify that an agreement is in place or no objection has been made to the use or disclosure)

POLICY AND PROCEDURE: Authorizations

POLICY

To ensure the integrity of individual protected health information (PHI), the County will only disclose information pursuant to an authorization unless otherwise directed by the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

AUTHORIZATION REQUIRED §164.508(a)(1) **See Authorization Form**

The county requires authorizations for any use and disclosure of:

- 1) psychotherapy notes, except to carry out treatment, payment or health care operations or for the County to defend itself in a legal action, and
- 2) marketing.

INVALID AUTHORIZATIONS §164.508(b)

An authorization will not be valid if it passes the expiration date; if it has not been filled out completely; if revoked or if any material information is known by the County to be false. In addition, the County will not combine authorization for psychotherapy notes with any other document to create a compound authorization.

CONDITIONING AUTHORIZATIONS §164.508(b)(4)

The County may condition enrollment or eligibility for benefits on provision of an authorization requested by the County prior to the individual's enrollment:

- 1) If the authorization is sought for the health plan's eligibility or enrollment determinations relating to the individual; or
- 2) For its underwriting or risk rating determinations, and
- 3) The authorization is not for a use or disclosure of psychotherapy notes.

REVOCACTION §164.508(b)(5)

An individual may revoke an authorization at any time, provided that the revocation is in writing, except, to the extent that:

- 1) The County has taken action in reliance on the authorization, or
- 2) The authorization was a condition of obtaining insurance coverage.

DOCUMENTATION §164.508(b)(6)

The County will document and retain any signed authorization for a period of six (6) years.

VALID AUTHORIZATIONS §164.508(c)

- 1) Specific and meaningful description of the information to be used or disclosed;
- 2) Name or other specific identification of the person(s) or class of persons, authorized to make the requested use or disclosure;
- 3) Name or other specific identification of the person(s), or class of persons, to whom the County may make the requested use or disclosure;
- 4) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;

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- 5) An expiration date or expiration event that relates to the individual for the purpose of the use or disclosure;
- 6) Signature of the individual and date. If the authorization is signed by the individual's personal representative, a description of the representative's authority to act for the individual must be provided.

In addition to the above core elements, the authorization must also contain the following statements that adequately put the individual on notice:

- 1) The individual's right to revoke the authorization in writing;
- 2) The exceptions to the right to revoke or a reference to the County's privacy notice if the exceptions to revocation are listed in it;
- 3) The ability of the County to condition treatment, payment, enrollment and/or eligibility for benefits on the authorization by stating the consequences to the individual of a refusal to sign the authorization; and
- 4) The potential for information disclosed to be subject to re-disclosure by the recipient.

Further, the authorization will be written in plain language and a copy of the signed authorization will be given to the individual.

PROCEDURE

- 1) Determine if an authorization is required to disclose the PHI.
- 2) Review the purpose of the authorization with the individual.
- 3) Ask the individual to read, complete, sign and date the authorization.
- 4) Explain to the individual that the authorization can be revoked, in writing, at any time, the exceptions to revocation and the consequence of the revocation.
- 5) Explain to the individual that they have the right to not sign the authorization and the consequences of not signing the authorization.
- 6) Give a signed copy of the authorization to the individual.
- 7) Give the individual a copy of the County's Notice of Privacy Practices.
- 8) Place the completed authorization in the individual's designated record set.

**POLICY AND PROCEDURE:
Uses And Disclosures That Require
An Opportunity To Object**

POLICY

To ensure the confidentiality of individual protected health information (PHI), the County will only disclose information in certain situations only after the individual has had an opportunity to agree or object to the disclosure pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

INDIVIDUAL'S RIGHT TO AGREE OR OBJECT §164.510

The County may use or disclose PHI, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the following uses or disclosures:

- 1) The County may disclose to a member of the individual's family, a relative, a close friend or any other person identified by the individual, the individual's PHI that directly relates to that person's involvement in the individual's health care.
- 2) The County may use or disclose PHI to notify or assist in notifying a family member, personal representative or any other person that is responsible for the individual's care of the individual's location, general condition or death.
- 3) If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the County may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual, if so, disclose only the PHI that is directly relevant to the person's involvement in the individual's care.
- 4) The County may use or disclose PHI to an authorized public or private entity to assist in disaster relief efforts and to coordinate uses and disclosures to family or other individuals involved in individual's health care.

FORM OF AGREEMENT OR OBJECTION

The County may orally inform the individual and receive oral agreement or objection to the use or disclosure.

PROCEDURE

- 1) Determine whether the use or disclosure requires an opportunity for the individual to agree or object.
- 2) Disclose only that PHI which is relevant to the persons role in the individual's healthcare.
- 3) Document the individual's oral agreement or objection in the individual's designated record set.

**POLICY AND PROCEDURE:
Uses And Disclosures That Do Not Require
Authorization Or Opportunity To Object**

POLICY

To ensure the confidentiality of individual protected health information (PHI), the County will only disclose information as required by the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below. PHI pursuant to these provisions can be disclosed without an authorization or an opportunity to agree or object.

REQUIRED BY LAW §164.512(a)

The County may use or disclose PHI to the extent that the use or disclosure is required by law. The County will notify an individual, as required by law, of any such uses or disclosures.

PUBLIC HEALTH §164.512(b)

The County may disclose PHI for public health activities and purposes that may include:

- 1) Collecting and receiving information, by a public health authority, for the purpose of preventing or controlling disease, injury or disability;
- 2) Disclosures to a public health authority authorized to receive child abuse or neglect reports;
- 3) Activities related to the quality, safety or effectiveness of FDA-related products;
- 4) Contacting individuals, if authorized by law, who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading the disease; or
- 5) Disclosing information to an employer, if the County provides healthcare to the individual at the request of the employer to conduct drug testing or to evaluate whether the individual has a work-related illness or injury.

ABUSE OR NEGLECT §164.512(c)

The County may disclose PHI to a public health authority that is authorized by law to receive reports of child abuse or neglect. In addition, the County may disclose PHI, to the governmental entity or agency authorized to receive such information, if it believes an individual has been a victim of abuse, neglect or domestic violence. The disclosure will be made consistent with the requirements of federal and state laws. The County will notify the individual of the disclosure unless, in the exercise of professional judgment, the County believes informing the individual would place them at risk of serious harm.

HEALTH OVERSIGHT §164.512(d)

The County may disclose PHI to a health oversight agency for activities authorized by law, such as audits, investigations and inspections.

LEGAL PROCEEDINGS §164.512(e)

The County may disclose PHI in the course of any judicial or administrative proceeding, in response to an order of a court or administrative tribunal (to the extent such disclosure is expressly authorized), in certain conditions in response to a subpoena, discovery request or other lawful process.

LAW ENFORCEMENT §164.512(f)

The County may disclose PHI for law enforcement purposes, in the following situations:

- 1) If required by law (ex. reporting wounds or pursuant to a subpoena);
- 2) Limited information requests for identification and location purposes;
- 3) Pertaining to victims of a crime;

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- 4) Suspicion that death has occurred as a result of criminal conduct;
- 5) In the event that a crime occurs on county premises, and
- 6) Medical emergency if it is likely that a crime has occurred.

USES AND DISCLOSURES ABOUT DECEDENTS §164.512(g)

1) *Coroners and Medical Examiners*

The County may disclose PHI to a coroner or medical examiner for identification purposes, determining cause of death or for the coroner or medical examiner to perform other duties authorized by law.

2) *Funeral Directors*

The County may disclose PHI to a funeral director, as authorized by law, in order to permit the funeral director to carry out their duties. The County may disclose PHI in reasonable anticipation of death.

CADAVERIC ORGAN, EYE OR TISSUE DONATION §164.512(h)

The County may disclose PHI to organ procurement, banking or transplantation organizations for cadaveric organ, eye or tissue donation purposes.

RESEARCH §164.512(i)

The County may disclose PHI to researchers when their research has been approved by an Institutional Review Board or a Privacy Board that has reviewed the research proposal and established protocols to ensure the privacy of the PHI.

AVERTING SERIOUS THREAT TO HEALTH OR SAFETY §164.512(j)

Consistent with applicable federal and state laws, the County may disclose PHI, if in good faith, it believes that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The County may also disclose PHI if it is necessary for law enforcement authorities to identify or apprehend an individual.

SPECIALIZED GOVERNMENT FUNCTIONS §164.512(k)

1) *Military and Veterans Activities*

The County may disclose PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities. The County, as a component of the Department of Veterans Affairs, may disclose PHI for the purpose of determining eligibility for benefits. The County may disclose PHI of an individual who is foreign military personnel to foreign military authority.

2) *National Security and Intelligence Activities*

The County may disclose PHI to authorized federal officials for conducting national security and intelligence activities, including for the provision of protective services to the President or others legally authorized.

3) *Correctional Institutions and Other Law Enforcement Custodial Situations*

The County may disclose to a correctional institution or law enforcement official PHI for the purposes of providing health care; for the purpose of health and safety of an individual, other inmates or correctional employees; for the purpose of law enforcement on the premises of the correctional institution or for the administration and maintenance of safety, security and other good order of the correctional institution.

4) *Government Entities Providing Public Benefits*

A County that is a health plan may disclose PHI relating to eligibility for enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such agencies or the maintenance of such information in a single combined data system accessible to all such agencies is required. In addition, a County that is a health plan may disclose PHI relating to the program to another covered entity that is a government program providing public benefits if the programs serve the

Sample

same or similar populations and the disclosure of PHI is necessary to coordinate functions of the programs or improve administration and management.

WORKERS' COMPENSATION §164.512(l)

PHI may be disclosed by the County as authorized to comply with workers' compensation laws and other similar legally-established programs.

INMATES

The County may use or disclose PHI about an inmate of a correctional facility if the County created or received the PHI in the course of providing care to the inmate.

REQUIRED USES AND DISCLOSURES

The County must make disclosures to the individual to whom the PHI pertains when requested by the individual and when required by the Secretary of the Department of Health and Human Services to investigate or determine County compliance with the HIPAA privacy provisions.

PROCEDURE

- 1) Determine if the use or disclosure falls into one of the categories that does not require an authorization or an opportunity to agree or object.
- 2) Notify the individual of the use or disclosure.

**POLICY AND PROCEDURE:
Minimum Necessary Uses And Disclosures
Of Protected Health Information**

POLICY

To ensure the confidentiality of individual protected health information (PHI), the County will only disclose the minimum necessary to meet the purpose of the requested use or disclosure pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

MINIMUM NECESSARY STANDARD §164.502(b)

When using or disclosing PHI or when requesting PHI from another covered entity, the County must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

The minimum necessary standard does not apply to the following:

- 1) Disclosures to or requests by a health care provider for treatment;
- 2) Uses and disclosures made to the individual;
- 3) Uses or disclosures made pursuant to an authorization;
- 4) Disclosures made to the Secretary to determine County compliance, or
- 5) Uses or disclosures that are required by law, including, compliance with HIPAA privacy provisions.

ROUTINE AND RECURRING DISCLOSURES §164.514(d)

For any type of disclosure that the County makes on a routine and recurring basis, the County must implement procedures to limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure.

OTHER DISCLOSURES

For all other disclosures, the County has developed criteria designated to limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure and review requests for disclosure on an individual basis. The County may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

- 1) Making disclosures to public officials pursuant to §164.512, if the public official represents that the requested information is the minimum necessary;
- 2) The information is requested by another covered entity;
- 3) The information is requested by a professional who is a member of the workforce or is a business associate of the County for purposes of providing professional services to the County, if the professional represents that the information requested is the minimum necessary for the stated purpose.
- 4) Documentation or representations comply with §164.512(l) for purposes of research.

REQUEST FOR PHI

The County must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made, when requesting such information from other covered entities. For information requested on a routine or recurring basis the County must limit the amount reasonably necessary to achieve the purpose for which the request was made. For all other requests, the County must develop criteria designated to limit the PHI requested to the amount reasonably necessary to achieve the purpose of the request and review requests for disclosure on an individual basis.

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OTHER CONTENT REQUIREMENTS

For all uses, disclosures and requests, the County may not use, disclose or request an entire medical record unless the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure or request.

PROCEDURE

- 1) Each request for disclosure shall be evaluated on an individual basis.
- 2) Determine if the information meets the purpose of the request.
- 3) Determine the minimum necessary to meet the purpose of the request.

POLICY AND PROCEDURE: Verification

POLICY

To ensure the confidentiality of individual protected health information (PHI), the County will only disclose PHI after verifying the individual or the entity the PHI is disclosed to pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

REQUIREMENTS §164.514(h)

The County shall verify the identity of a person requesting PHI and the authority of such person to have access to PHI, if the identity or authority of the person is not known to the County. This can include oral or written verification.

If the County conditions disclosure on particular documentation for verification, the County may rely, if such reliance is reasonable under the circumstances, on documentation that, on its face, meet the requirements. Verification may be satisfied by, for example, an administrative subpoena or a written statement that demonstrates that the requirement has been satisfied. Documentation must be signed and dated.

PUBLIC OFFICIALS

The County may rely on any of the following to verify identity when the disclosure for PHI is requested by a public official:

- 1) If the request is made in person, presentation of an agency identification badge or other official credentials;
- 2) If the request is in writing, the request is on appropriate government letterhead or a written statement of legal authority if a written statement is impracticable. A written statement of legal authority can include a subpoena or warrant.
- 3) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority.

PROCEDURE

- 1) Obtain written documentation of the verification.
- 2) If written documentation is not available, document the oral communication verifying the identity of the individual requesting the disclosure.
- 3) Documentation that the County knows the individual requesting the disclosure if no other verification is required.

POLICY AND PROCEDURE: Individual Privacy Rights

POLICY

The County acknowledges individual's right to privacy and to that end will ensure those rights pursuant to guidelines established by the Health Insurance Portability and Accountability Act of 1996. The County will provide the following rights to individuals with regard to their protected health information (PHI):

Right to Receive a County's Notice of Privacy Practices

Notice of privacy practices is a document that the County must provide that explains to individuals how the County routinely manages its confidential data. If the County uses or discloses information, other than for purposes of treatment, payment or operations, the notice of privacy practices must include how the information is being used or disclosed.

Right to Access and Copy Protected Health Information

Individuals can request access to and copy certain medical records containing PHI. The County and the individual may either come to an agreement on how this information is to be shared or a copy of the records can be mailed to the individual. There are certain circumstances under which access can be denied. The County is permitted to charge a reasonable fee for this service.

Right to Request Restriction of the Uses and Disclosures of Protected Health Information

An individual can request that the County not disclose PHI to others. The County can stipulate that this request be in writing. If, for example, Sara, who is an 18-year old dependent covered under her father's health coverage, seeks medical attention from a provider or facility, Sara has the right to request that any information related to that service not be disclosed to specific persons.

Right to Receive Confidential Communications

This gives an individual the right to receive communications of PHI by alternate means or at alternate locations. For instance, in the previous example, if Sara still lives with her parents and does not want communications sent to her home, she may request that a health care provider send the communications to an alternate location. The County must also accommodate a request for confidential communications, provided the individual clearly states that disclosure of all or part of the information could endanger the individual. The County may require that these requests be made in writing.

Right to Request Amendment and Correction of Protected Health Information

An individual has the right to request revisions or corrections to any part of the record that the individual believes to be incorrect. The County has a specific time limit to act upon this request, but is not always obligated to revise the records. There are several valid reasons allowed for denying such a request. One reason for denying the request is that the records was not created by the County.

Right to an Accounting of the Disclosures of Protected Health Information

If the County discloses PHI outside of what is considered treatment, payment and health care operations, an individual has the right to receive an accounting of those disclosures. The County is not required to provide this accounting if the disclosures were either made directly to the individual or were authorized by the individual, whose PHI was disclosed.

POLICY AND PROCEDURE: Right To Notice Of County Privacy Practices

POLICY

The County acknowledges the individual's right to notice of the County's privacy practices regarding PHI and will inform individual's of the County's privacy practices pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

INDIVIDUAL'S RIGHT TO NOTICE §164.520 See Right to Notice of Privacy Practices Form

The County shall provide individuals with a notice of the uses and disclosures of PHI that may be made by the County and of the individual's rights and the County's legal duties with respect to PHI.

INMATES

An inmate does not have a right to notice.

NOTICE REQUIREMENTS

- 1) Written in plain language.
- 2) Header: "This Notice Describes How Medical Information About You May Be Used and Disclosed and How You Can Get Access to This Information. Please Review It Carefully."
- 3) A description, including at least one example, of the types of uses and disclosures that the County is permitted to make for treatment, payment and health care operations.
- 4) A description of each of the other purposes for which the County is permitted to use or disclose PHI without the individual's written authorization.
- 5) A statement that the other uses or disclosures will only be made with the individual's written authorization and that the individual may revoke such authorization.
- 6) If a use or disclosure is prohibited or materially limited by other applicable law, the description of the use or disclosure must reflect the more stringent law.
- 7) If the County contacts individuals to remind them of appointments or to provide them with other information, the County must describe that on the notice.
- 8) A statement of the individual's rights with respect to PHI and a brief description of how the individual may exercise these rights.
 - a) the right to request restrictions on certain uses and disclosures and that the County is not required to agree to a requested restriction.
 - b) the right to receive confidential communications of PHI.
 - c) the right to inspect and copy PHI.
 - d) the right to amend PHI.
 - e) the right to receive an accounting of PHI disclosures.
 - f) the right to obtain a paper copy of the notice from the County.
- 9) A statement that the County is required to maintain the privacy of PHI and to provide the individual with notice of its legal duties and privacy practices with respect to PHI.
- 10) A statement that the County is required to abide by terms of the notice currently in effect.
- 11) A statement that the County reserves the right to change the terms of its notice and to make the new notice provisions effective for all PHI that it maintains. The statement must also describe how it will provide individuals with the revised notice.
- 12) A statement that the individual may complain to the County and to the Secretary if they believe their privacy rights have been violated, a brief description of how the individual may file

Sample

a complaint and a statement that the individual will not be retaliated against for filing a complaint.

- 13) The name or title and telephone number of the person or office to contact for further information.
- 14) A date on which the notice is first in effect.

OPTIONAL ELEMENTS

If the County, elects to limit the uses or disclosures that it is permitted to make, the County may describe its more limited uses or disclosures in its notice. The County, however, cannot limit the individual's rights under this notice.

REVISIONS TO THE NOTICE §164.520(b)(3)

The County must promptly revise and distribute its notice whenever there is a material change to the uses and disclosures, the individual's rights, the County's legal duties or other privacy practices.

PROVISIONS FOR HEALTH PLANS §164.520(c)

A health plan must provide notice no later than the compliance date for the health plan, to the individuals then covered by the plan, thereafter at the time of enrollment, to the individuals who are new enrollees and within 60 days of a material revision to the notice. In addition, the health plan must notify individuals covered at least every three years on the availability of the notice and how to obtain the notice.

PROVISIONS FOR PROVIDERS §164.520(c)

A health provider that has a direct treatment relationship with individual must provide notice no later than the first date of service. The provider shall make a good faith effort to obtain a written acknowledgment of receipt of the notice. If the acknowledgment is not obtained the provider must describe the good faith effort to obtain it and the reason why it was not obtained. If the provider maintains a physical service location the notice shall be available at the service delivery site and posted in a prominent location. In an emergency treatment situation, the provider must make available the notice as soon as reasonably practicable after the emergency.

METHODS FOR PROVIDING NOTICE §164.520(c)(3)

A County that maintains a website about its customer services or benefits must prominently post its notice on the website. The County can provide the notice via email if the individual agrees to electronic transmission. An individual who is a recipient of an electronic notice maintains the right to request and obtain a paper copy from the County

DOCUMENT RETENTION §164.520(c)(e) **See Acknowledgement of Receipt and Good Faith Effort**

The County must document compliance with the notice requirements by retaining copies of the notices issued by the County and any written acknowledgments of receipt or the good faith efforts to obtain the acknowledgment of receipt.

PROCEDURE

- 1) Given individual copy of Notice of Privacy rights.
- 2) Retain copy and place in individual's designated record set.

POLICY AND PROCEDURE: Accessing Protected Health Information

POLICY

The County acknowledges the individual's right to access confidential information about themselves. To this end the County will disclose PHI, to the individual, pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

RIGHT TO ACCESS §164.524(a) See Individual Request for Disclosure

Individuals have a right of access to inspect and obtain protected health information (PHI) about the individual in a designated record set, for as long as the information is maintained by the County, except for:

- 1) Psychotherapy notes;
- 2) Information compiled in reasonable anticipation of a legal proceeding; or
- 3) PHI maintained by the County that is subject to or exempted from the Clinical Laboratory Improvements Amendments of 1988 (CLIA).

UNREVIEWABLE GROUNDS FOR DENIAL §164.524(a)(2)

The County may deny an individual access to PHI, without providing the individual an opportunity for review, for the following reasons:

1. The information requested is psychotherapy notes;
2. The County that is a correctional institution or a covered health care provider acting under the direction of a correctional institution has determined that the requested information would jeopardize the health, safety, security, custody or rehabilitation of the individual or other inmates, or the safety of a correctional employee or other person responsible for transporting the individual;
3. The information requested was obtained under a promise of confidentiality from someone other than the County and the inspection or copying will likely reveal the source of the information;
4. The requested information was compiled in reasonable anticipation of, or for use in, a legal proceeding;
5. If the PHI is obtained by the County in the course of research that includes treatment of the research participants, while such research is in progress. For this exception to apply, the individual must have agreed to the denial of access in conjunction with the individual's consent to participate in the research and the covered provider must have informed the individual that the right of access will be reinstated upon completion of the research;
6. The PHI requested is also subject to the Privacy Act.

REVIEWABLE GROUNDS FOR DENIAL

The County must provide the individual with a right to review the following reasons for denial.

- 1) If a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
- 2) The PHI requested makes reference to someone other than the individual (and other than a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause serious harm to that other person; or

The request is made by an individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of

Sample

access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

REVIEW OF DENIAL OF ACCESS

If access is denied and the individual has grounds for review, the individual has the right to have a denial reviewed by a licensed health care professional who is designated by the County to act as a reviewing official and who did not participate in the original decision to deny.

REQUEST FOR ACCESS AND TIMELY ACTION §164.524(b) See Notice of Decision

The County will permit an individual to request access to inspect or to obtain a copy of the PHI about the individual that is maintained in a designated record set, by the County. The request for access must be in writing.

The County must act on a request for access within 30 days of receiving the request if the information is maintained or accessible on-site. The County must act on a request for access within 60 days of receiving the request if the information is not maintained or accessible on-site. If the County is unable to act on a request within the applicable deadline, it may extend the deadline by no more than 30 days by providing the individual with a written statement of the reasons for the delay and the date by which the County will complete its action on the request. This written statement describing the extension must be provided within the standard deadline. The County may only extend the deadline once per request for access. The requirements for the County to comply with or deny a request for access, in whole or in part, are described below:

PROVISION OF ACCESS §164.524 (c)

The County, upon accepting a request for access, will notify the individual of the decision and of any steps necessary to fulfill the request; to provide the information requested in the form or format requested, if readily producible in such form or format; and to facilitate the process of inspection and copying. If the same PHI is maintained in more than one designated record set or at more than one location, the County is required to produce the information only once per request for access.

The County must provide the information requested in the form or format requested if it is readily producible in such form or format. Additionally, if the information is not available in the form or format requested, the County must provide the information in a readable hard copy or another form or format to which the individual and the County can agree. If the individual agrees, including agreeing to any associated fees, the County may provide access to a summary of information rather than all PHI in a designated record set.

The County must provide the access requested in a timely manner, including arranging for a mutually convenient time and place for the individual to inspect the PHI or obtain a copy. If the individual requests that the County mail a copy of the information, the County must do so, and may charge certain fees for copying and mailing.

If the individual requests a copy of PHI, the County may charge a reasonable, cost-based fee for the copying, including the labor and supply costs of copying. The County may not charge any fees for retrieving or handling the information or for processing the request. If the individual requests the information to be mailed, the fee may include the cost of postage. If the individual requests an explanation or summary of the information provided, and agrees in advance to any associated fees, the County may charge for preparing the explanation or summary.

DENIAL OF ACCESS §164.524(d) See Notice of Decision

If the County denies access, in whole or in part, the County must, to the extent possible, give the individual access to any other PHI requested after excluding the PHI to which the County has a ground to deny access. The County, upon denying a request for access in whole or in part, will

Sample

provide the individual with a written statement in plain language of the basis for the denial; how the individual may exercise the right of review and how the individual could make a complaint to the County or the Secretary of Health and Human Services.

If the County denies the request because it does not maintain the requested information, and the County knows where the requested information is maintained, the County must inform the individual where to direct the request for access.

REVIEW OF DENIAL REQUESTED

If the individual requests a review of a denial made, the County must designate a licensed health care professional to act as the reviewing official. This reviewing official must not have been involved in the original decision to deny access. The County must promptly refer a request for review to the designated reviewing official. The reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested. The County must promptly provide the individual with written notice of the reviewing official's decision and otherwise carry out the decision in accordance with the requirements of this section.

DOCUMENTATION

The County must retain documentation of the designated record sets that are subject to access by the individual and the titles of the person(s) or offices responsible for receiving and processing requests for access by individuals.

PROCEDURE

- 1) Provide the individual with a Request to Access Protected Health Information Form.
- 2) Inform the individual that the County will notify the individual of its decision.
- 3) Inform the individual of the grounds on which the County can deny access.
- 4) Send the individual written notice of acceptance or denial.
- 5) If request is accepted, allow individual to obtain requested information.
- 6) Place all denials or acceptances in the individual's designated record set.

POLICY AND PROCEDURES: Amending Protected Health Information

POLICY

To ensure the accuracy and integrity of individual protected health information (PHI), the County will amend PHI pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

RIGHT TO AMEND §164.526(a) See Request to Amend Form

An individual has the right to have the County amend PHI or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record set.

DENIAL OF AMENDMENT

The County may deny an individual's request for amendment, if it determines that the PHI or record that is subject to the request:

- 1) Was not created by the County, unless the individual can provide a reasonable basis to believe that the originator of the PHI is no longer available to act on the requested amendment;
- 2) Is not available for inspection under §164.524, or
- 3) Is accurate and complete.

REQUEST FOR AMENDMENT AND TIMELY ACTION §164.526(b)

The County must permit an individual to request that the County amend the PHI maintained in the designated record set. The County may require the individual to make the request in writing and to provide a reason to support a requested amendment, provided that it informs the individual in advance of this requirement. The County must act on the individual's request for amendment within 60 days of receiving the request.

If the County is unable to act on the amendment within 60 days, the County may extend the time for such action by no more than 30 days provided the County notifies the individual in writing within the 60 day period and provides the reason for the delay and the date by which the County will complete the action. The County can only have one such extension.

ACCEPTING THE AMENDMENT

If the County grants the amendment, in part or whole, it must make the appropriate amendment to the PHI or record or provide a link to the location of the amendment. The County must also inform the individual that the amendment was accepted and have the individual identify and agree to have the County notify the relevant persons with which the amendment needs to be shared.

NOTIFYING OTHERS

The County must make reasonable efforts to inform and provide the amendment within a reasonable time to:

- 1) Persons identified by the individual as having received PHI about the individual and needing the amendment; and
- 2) Person(s) including business associated, that the County knows have the PHI that is subject to the amendment and that may have relied, or could foreseeably rely, on such information to the detriment to the individual.

Sample

DENYING THE AMENDMENT

If the County denies the requested amendment in part or whole, the County must provide the individual with a timely, written statement of:

- 1) The basis for the denial;
- 2) The individual's right to submit a written statement disagreeing with the denial and how the individual can file the denial;
- 3) If the individual does not file a written statement of disagreement, the individual has the right to request the County provide the individual's request for amendment and the denial with any future disclosures of PHI that is subject to the amendment; and
- 4) The description of how the individual may file a complaint to the County or to the Secretary. The description must include the name, or title, and telephone number of the County's HIPAA Contact.

STATEMENT OF DISAGREEMENT

The County must permit the individual to submit a written statement disagreeing with the denial of all or part of the requested amendment. The County may reasonably limit the length of the statement of disagreement.

REBUTTAL STATEMENT

The County may prepare a written rebuttal to the statement of disagreement. If the County rebuts the statement of disagreement a copy must be provided to the individual.

RECORDKEEPING

The County must, as appropriate, identify the record or PHI that is subject to the disputed amendment and append or otherwise link the individual's request, the individual's statement of disagreement, the County's denial and the County's rebuttal, if any, to the designated record set.

FUTURE DISCLOSURES §164.526(d)(5)

If a statement of disagreement has been submitted by the individual, the County must include material appended or at the election of the County, an accurate summary of any such information, with any subsequent disclosure of the PHI to which the disagreement relates.

If the individual has not submitted a written statement of disagreement, the County must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of the PHI, if the individual follows the appropriate procedures.

ACTIONS ON NOTICES OF AMENDMENT §164.526(e)

If the County is informed by another covered entity of an amendment to an individual's PHI, the County must amend the PHI in designated record sets.

DOCUMENTATION §164.526(f)

The County must document titles of the persons or offices responsible for receiving and processing requests for amendments.

PROCEDURE

- 1) Have the individual complete the Request for Amendment Form.
- 2) Explain to the individual that the information will be reviewed and a decision will be made on whether the correction is accepted or denied.
- 3) If the amendment is accepted the PHI or designated record set must be amended or appended with the requested amendment.

Sample

- 4) County must notify others affected by the amendment, including business partners.
- 5) Explain the individual's right to write a statement of disagreement for any denials and the County's right to rebut the statement of disagreement.
- 6) Place the completed form in the individual's designated record set and give a copy to the individual.
- 7) The County will retain the correction/amendment form for a period of 6 years.
- 8) Explain to the individual that this information will accompany the designated record set anytime a request is made to release information.
- 9) If a statement of disagreement is filed pursuant to a County denial, attach to the individual's designated record set.
- 10) If a rebuttal statement is provided by the County, attach to the individual's designated record set.

**POLICY AND PROCEDURE:
Request For Privacy
“Alternate Mean and Location”**

POLICY

To ensure the confidentiality of individual protected health information (PHI), the County will disclose PHI to an alternate location or through an alternate means pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

REQUESTING RESTRICTION §164.522 See Request for Confidential Communications Form

The County must permit an individual to request that the County restrict: §164.522

- 1) Uses and disclosures of PHI about the individual to carry out treatment, payment or health care operations; and
- 2) Disclosures made to family members pursuant to §164.510.

The County is not required to agree to the restriction. If the County does agree to restrict PHI it must not use or disclose PHI in violation of such restriction, except if the restricted information is needed in an emergency situation. If restricted information is disclosed during an emergency situation the County must request that the health care provider not further use or disclose the restricted information. The County may not agree to a restriction on disclosure of PHI if the HIPAA privacy provisions require the disclosure.

TERMINATING A RESTRICTION §164.522(a)(2)

The County may terminate its agreement to a restriction, if:

- 1) the individual agrees to or requests the termination in writing;
- 2) The individual orally agrees to the termination and the oral agreement is documented; or
- 3) The County informs the individual that it is terminating its agreement to a restriction, except that such termination is only effective with respect to PHI created or received after it has so informed the individual.

CONFIDENTIAL COMMUNICATIONS §164.522(b)

A County who is a health care provider must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of PHI from the County by alternate means or at alternate locations. The County cannot require an explanation from the individual as to the basis for the request as a condition of providing communications on the confidential basis.

A County who is a health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of PHI by alternate means and at alternate locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

CONDITIONS ON PROVIDING CONFIDENTIAL COMMUNICATIONS

The County may require an individual to make a request for a confidential communication in writing. The County may condition the provision of a reasonable accommodation on:

- 1) When appropriate, information on how payment, if any, will be handled; and
- 2) Specification of an alternate address or other method of contact.

PROCEDURE

Sample

- 1) Provide the individual with appropriate forms.
- 2) If reasonable change communications to alternate means or location.
- 3) Retain documentation to be included in the individual's designated record set.

POLICY AND PROCEDURE: Accounting Of Disclosures

POLICY

The County acknowledges an individual's right to an accounting of disclosures made by the County. The County will provide this accounting pursuant to the Health Insurance Portability and Accountability Act of 1996. The County will follow the requirements as outlined below.

RIGHT TO AN ACCOUNTING OF PHI §164.528(a)(1)

An individual has the right to receive an accounting of disclosures of protected health information (PHI) made by the County in the 6 years prior to the date on which the accounting was requested, except for disclosures:

- 1) To carry out treatment, payment and health care operations;
- 2) To individuals of PHI about them;
- 3) Incident to a use or disclosure otherwise permitted;
- 4) Pursuant to an authorization;
- 5) For national security;
- 6) To correctional institutions or law enforcement officials;
- 7) As part of a limited data set; or
- 8) If it occurred prior to the compliance date for the County.

The County must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, at the request of a health oversight agency or law enforcement official, if they provide a written statement that such accounting would be reasonably likely to impede the agency's action. In addition, they must also state a time for which the suspension is required. If the statement is given orally the County must document the statement including the agency's or officials identity and the suspension cannot be longer than 30 days.

CONTENT OF THE ACCOUNTING §164.528(b)

The County must provide the individual with a written accounting that includes the disclosures of PHI that occurred during the past 6 years (or shorter period if requested by the individual) prior to the date of the request for accounting, including disclosures to or by business associates of the County. The accounting must include the following for each disclosure:

- 1) Date of the disclosure;
- 2) Name of the entity or person who received the PHI and, if known, the address of such entity or person;
- 3) Brief description of the PHI disclosed; and
- 4) Brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for the disclosure.

If, during the period covered by the accounting, the County has made multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may, with respect to such multiple disclosures, provide the information listed above for the first disclosure. In addition, the County shall provide the frequency, periodicity or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.

Sample

PROVISION OF THE ACCOUNTING §164.528(c)

The County must act on the individual's request for an accounting, no later than 60 days after the request is made, as follows:

- 1) Provide the individual with an accounting;
- 2) If the County is unable to provide the accounting within the time required, the County can extend the time to provide the accounting by no more than 30 days if the County provides the individual with a written statement with the reason for the delay and the date by which the County shall provide the accounting. The County may only have one extension.

The County must provide the first accounting to an individual for any 12 month period without charge. The County may impose a reasonable, cost-based, fee for subsequent requests for an accounting by the same individual within the 12 month period, provided that the County informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request.

DOCUMENTATION §164.528(d)

The County must document and retain the documentation which includes the written accounting provided to the individual and the titles of the person or offices responsible for receiving and processing requests for an accounting.

PROCEDURE

- 4) Provide the individual with a Request for Accounting Form.
- 5) Provide the necessary disclosures to the individual.
- 6) Retain documentation to be included in the individual's designated record set.

POLICY AN PROCEDURES: Business Associate Agreements

POLICY

In order to conduct business and perform health care operations while at the same time ensuring confidentiality of protected health information (PHI), the County will enter into agreements or memorandums of understanding with all Business Associates as defined under the Health Insurance Portability and Accountability Act of 1996. The County will follow the standards and requirements outlined below.

The County will obtain assurances that the Business Associate will safeguard PHI that the County discloses to it or it receives or creates on behalf of the County. An agreement between the County and a Business Associate will establish the permitted uses and disclosures of PHI. However, the agreement will not allow the Business Associate to use or further disclose PHI in violation of the HIPAA privacy provisions, except that the Business Associate may use and disclose PHI for the following purposes: §164.504(e)

- 1) Management and administration of the business associate,
- 2) Legal responsibilities, or
- 3) Data aggregation services relating to the health care component of the County.

**If the Business Associate, pursuant to the law or the agreement, uses or disclose PHI it receives, the Business Associate must obtain reasonable assurances from the person(s) to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law.*

The agreement between the County and the Business Associate will also provide that the Business Associate will:

- 1) Agree not to use or further disclose PHI other than as permitted or required by law;
- 2) Agree to use appropriate safeguards to prevent use or disclosure of the PHI;
- 3) Agree to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of an unlawful use or disclosure of PHI by Business Associate;
- 4) Agree to report to the County any use or disclosure of the PHI not provided for by the agreement;
- 5) Agree to ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of the County agrees to the same restrictions and conditions that apply to the Business Associate with respect to such information;
- 6) Agree to provide the County with access to PHI in a designated record set, in the time and manner designated by the County or, as directed by the County, to an individual; §164.524
- 7) Agree to make any amendment(s) to PHI in a designated record set at the request of the County or an individual, and in the time and manner designated by the County;
- 8) Agree to make internal practices, books and records relating to the use and disclosure of PHI received from the County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of determining County compliance;
- 9) Agree to document such disclosures of PHI as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI; §164.528
- 10) Agree to provide to the County or an individual, in time and manner designated by the County, information required for an accounting of disclosures of PHI. §164.528

TERMINATION OF AN AGREEMENT

In addition, the Business Associate shall agree to the following:

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- 1) At termination of the agreement, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the County that the Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible, the protections of the agreement shall be extended and further uses and disclosures limited.
- 2) Authorize termination of the agreement by the County, if the County determines that the Business Associate has violated a material term of the agreement.

OTHER ARRANGEMENTS

The County can enter into a Memorandum of Understanding, containing the preceding conditions, with the Business Associate, if both entities are governmental entities.

GROUP HEALTH PLANS

The County may disclose summary health information to a plan sponsor.

POLICY AND PROCEDURES: Workforce Confidentiality

POLICY

To ensure that personal health information (PHI) is protected, the County will educate and train all employees on the privacy provisions of the Health Insurance Portability and Accountability Act of 1996. The County will support and require the following items.

COUNTY PRINCIPLES

- 1) All County employees and persons associated with the County are responsible for protecting the confidentiality of all PHI that is obtained, handled, learned, heard or viewed in the course of their work or association with the County.
- 2) PHI shall be protected during its collection, use, storage and destruction within the County.
- 3) Use or disclosure of personal health information is acceptable only in the discharge of one's responsibilities and duties and based on the need to know. Discussion regarding PHI should not take place in the presence of persons not entitled to such information or in public places.
- 4) The execution of an employee confidentiality agreement (**see Employee Confidentiality Agreement**) is required as a condition of employment/contract/association/ appointment with the County. All County employees and persons associated with the County are to sign the confidentiality agreement at the commencement of their relationship with the County. County employees are to sign a confidentiality pledge on an annual basis.
- 5) Unauthorized use or disclosure of confidential information will result in a disciplinary action which may include termination of employment.
- 6) All individuals who become aware of a use or disclosure of PHI that violates the HIPAA privacy provisions are to follow the County's reporting procedures.

PROCEDURE

- 1) An allegation of a breach of confidentiality of PHI may be made to the HIPAA privacy officer of County. Any individual receiving an allegation of a breach of confidentiality or having knowledge or a reasonable belief that a breach of confidentiality of PHI may have occurred should immediately notify the County privacy officer.
- 2) The County privacy officer will decide whether to proceed with an investigation. It may be decided that a complaint does not require investigation if:
 - a) The length of time that has elapsed since the date of complaint makes an investigation no longer practicable or desirable.
 - b) The subject matter of the complaint is trivial or not made in good faith or is frivolous.
 - a) The circumstances of the complaint do not require investigation.
- 3) If the decision is made to proceed with an investigation, it is the responsibility of the County's privacy officer to investigate the allegation and consult appropriate resources to make a determination if a breach of confidentiality of PHI has been made.

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- 4) If a breach of confidentiality of PHI has occurred, the appropriate disciplinary action will be taken.
- 5) All incidents of a breach of confidentiality of PHI will be documented and filed with the County's privacy officer.

POLICY AND PROCEDURE: Compliance Violations

POLICY

The County believes that an effective system of communication is important in identifying compliance violations of the privacy standards adopted by the County to protect the health information (PHI). To encourage communication of compliance concerns by members of the workforce and other agents doing business with the County, the County has implemented a reporting system that permits the workforce and other agents to report concerns openly or anonymously, verbally or in writing, in accordance with established procedures.

The County will make every reasonable effort to protect the identity of a reporting employee, unless the employee permits the County to reveal their identity. No disciplinary action or retaliation will be taken against an employee who makes a good faith report of a compliance concern. Any individual who retaliates against an employee for reporting a compliance concern will be subject to disciplinary action.

PROCEDURE

REPORT OF CONCERN

A report of concern may be made by anyone having knowledge or information about a known or suspected violation of the County's privacy standards or the laws and regulations governing the County. Reports may be made verbally or in writing to the County privacy officer. All reports, whether verbal or written, will be documented on the *Confidential Report of Concern*.

REPORTING SYSTEM

Reports of compliance concerns can be made in any one of the following ways:

- 1) Verbal report by a named individual, in person or by telephone, made to the County privacy officer.
- 2) Written report by a named individual, by use of the *Confidential Report of Concern*, submitted to the County privacy officer.
- 3) Anonymous telephone report by an unidentified individual made to the County privacy officer or to the organization's anonymous reporting system.
- 4) Anonymous written report by an unidentified individual submitted by mailing a completed *Confidential Report of Concern* to the County privacy officer at the County's address.

INVESTIGATION OF REPORTS

The County privacy officer will investigate each report of concern. The findings of an investigation prompted by a report of concern will be recorded on the *Compliance Report Investigation Form* within five working days of the report.

POLICIES AND PROCEDURES: Administrative Requirements

POLICY

PERSONNEL DESIGNATIONS §164.530

The County has designate a privacy official who is responsible for the development and implementation of the policies and procedures of the County. In addition, the County must designate a contact person or office who is responsible or receiving complaints and who is able to provide further information about matters covered under notice.

DOCUMENTATION OF DESIGNATED PERSONNEL §164.530(2)

The County must document the personnel designation.

TRAINING §164.530(b)(1)(2)

The County must train all members of its workforce on the policies and procedures with respect to PHI, as necessary and appropriate for the members of the workforce to carry out their function within the County.

The County must provide training to each member of the County's workforce by no later than the compliance date for the County, thereafter, to each new employee within a reasonable period of time after the person joins the County's workforce. In addition, the County must train each employee whose functions are affected by a material change in the policies and procedures, within a reasonable time after the material change becomes effective. The County must document the training

SAFEGUARDS §164.530(c)(1)

The County must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI. These safeguards must reasonably protect PHI from intentional and unintentional use and disclosure that is in violation of HIPAA. In addition, the County must reasonably safeguard PHI to limit incidental uses and disclosures.

COMPLAINTS TO THE COUNTY §164.530(d)

The County must provide a process for individuals to make complaints concerning the County's policies and procedures or other requirements under HIPAA. The County must document all complaints received and their disposition, if any.

SANCTIONS §164.530(e)

The County must have and apply appropriate sanctions against employees who fail to comply with the privacy policies and procedures of the County or the other requirements under HIPAA. The County must document all sanctions applied. The County must mitigate, to the extent practicable, any harmful effect known to the County of a use or disclosure of PHI in violation of its policies and procedures by the County or its business associates.

REFRAINING FROM RETALIATION §164.530(g)

The County cannot intimidate, threaten, coerce, discriminate against or take any other retaliatory action against:

- 1) Individuals who exercise any right under HIPAA including filing a complaint, or
- 2) Individuals who file a complaint with the Secretary or assist, testify or participate in an investigation, compliance review, proceeding or hearing.

Sample

- 3) Individuals who opposes any act or practice, in which the person has a good faith belief the act or practice is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of PHI.

WAIVER OF RIGHTS §164.530(h)

The County may not require individuals to waive their right, including the right to file a complaint, as a condition of treatment, payment, enrollment in a health plan or eligibility of benefits.

POLICIES AND PROCEDURES §164.530(l)

The County must implement policies and procedures with respect to PHI that are designed to comply with HIPAA privacy provisions. The policies and procedures must be reasonably designated, taking into account the size and type of activities that relate to PHI undertaken by the County to ensure such compliance.

The County must change its policies and procedures as necessary and appropriate to comply with changes in the law.

DOCUMENTATION AND RETENTION PERIOD §164.530(j)(1)&(2)

The County must document and retain the following information for six years from the date of its creation or the date it was last in effect:

- 1) Policies and procedures
- 2) All writings required by the HIPAA privacy provisions
- 3) Any action, activity or designation required by any HIPAA provision.

COMPLIANCE DATE §164.534

April 14, 2003

WORKFORCE DESIGNATION

The County must identify: §164.514(d):

- 1) Those persons or classes of persons, as appropriate, in its workforce who need access to protected health information (PHI) to carry out their duties; and
- 2) For each such person or class of persons, the category or categories of protected health information to which access is needed and any conditions appropriate to such access.

The following designations have been made:

Position/Job Title	PHI Access Required for Job Functions? Yes/No	Category or Categories of PHI to be accessed	Method of access to PHI

The County must make reasonable efforts to limit the access of such persons or class of persons identified in this designation.

HYBRID ENTITY DESIGNATION

The County has been designated as a Hybrid Entity. The following county departments and offices have been designated as healthcare components of the County and thus are subject to the HIPAA privacy provisions:

- Central Point of Coordination Office
- Veterans Affairs
- Public Nursing
- Auditor's Office
- Supervisor's Office

The following county departments and offices have not been designated as healthcare components of the County and thus are not subject to the HIPAA privacy provisions:

- Recorder's Office
- Treasurer's Office
- Conservation Office
- Emergency Management Office

The County must ensure that if a member of its workforce performs duties for both a healthcare component and another office or department, that person may not use or disclose PHI created or received in the course of or incident to the member's work for the healthcare component.

Sample

COUNTY REQUEST FOR PHI §164.514(d)(3)

The County shall only request PHI that is reasonably necessary to accomplish the purpose for which the request is made, when requesting PHI from other covered entities.