

Use & Disclosure of Health Information

This facility respects the importance of its residents' personal privacy, and understands the sensitive nature of its residents' health information. The Facility also recognizes that Federal and State laws require that individually identifiable health information must be safeguarded against improper use or disclosure. It is this Facility's policy not to use or disclose a resident's health information except as permitted by law, and to adopt safeguards to protect the confidentiality of its residents' health information.

DEFINITIONS

- (A) **Health Information.** As used in this policy, "health information" shall mean information that is created or received by this Facility that (1) relates to the past, present, or future physical or mental health or condition of a resident; the provision of health care to a resident; or the past, present, or future payment for the provision of health care to a resident; and (2) that identifies the resident, or with respect to which there is a reasonable basis to believe that information can be used to identify the resident.
- (B) **Disclosure.** The release, transfer, provision of access to, or divulging in any other manner of health information outside of the Facility.
- (C) **Use.** The sharing, employment, application, utilization, examination, or analysis of resident health information within the Facility.
- (D) **Treatment.** The provision, coordination, or management of health care and related services by the Facility, including the coordination or management of health care by the Facility with a third party; consultation with other health care providers relating to a resident; or the referral of a resident for health care between the Facility and another health care provider.
- (E) **Payment.** The activities undertaken by the Facility to obtain reimbursement for the provision of health care.
- (F) **Health Care Operations.** Any of the following activities of the Facility:
 - (1) Conducting quality assessment and improvement activities, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.
 - (2) Reviewing the competence or qualifications of health care professionals, evaluating employee and Facility performance, conducting training programs under supervision to practice or improve skills, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
 - (3) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
 - (4) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Facility; and
 - (5) Business management and general administrative activities of the Facility, including, but not limited to:
 - (i) Customer service.
 - (ii) Resolution of internal grievances;

- (iii) Due diligence in connection with the sale or transfer of assets to a potential successor in interest; and
- (iv) Creating de-identified health information, fundraising for the benefit of the Facility, and marketing for which an individual authorization is not required.

(G) Workforce. The Facility's workforce includes its employees, agents and volunteers.

(H) Business Associate. A "business associate" is a person or entity who on behalf of the Facility performs, or assists in the performance of, a function or activity involving the use of a resident's health information, or who provides services to the Facility that require the disclosure of a resident's health information. Members of the Facility's workforce are not business associates. Examples of business associates are persons or entities that perform the following services to or on behalf of the Facility: claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

PROCEDURE

(A) General.

- (1) Verification. When implementing the procedures noted in this policy, the Facility shall take reasonable steps to verify the identity and authority of the person or entity requesting access to a resident's health information. Reasonable verification procedures include, but are not limited to: reviewing an identification badge or license; a written statement on letterhead; personal knowledge of the requestor; or knowledge of the place of business, address, telephone number, etc. For purposes of notification of family or friends, the Facility shall assume a person's involvement in the resident's care based on the circumstances, such as the fact that they visit the resident or sign necessary paperwork during the admission process.
- (2) Minimum Necessary. When implementing the procedures noted in this policy, the Facility shall make reasonable efforts to ensure that only the minimum amount of information necessary to satisfy the particular purpose of the use or disclosure is provided. Unless the circumstances indicate otherwise, the Facility shall presume that requests from public officials, health care providers, plans and clearinghouses, professional members of the Facility's workforce, business associates, requests for research, requests from the resident, and requests pursuant to a valid authorization are for the minimum amount of information necessary for the stated purpose.
- (3) Release of Entire Medical Record. In general, the Facility will not release a resident's entire medical record unless the release of the whole record is justified as reasonably necessary to accomplish the purpose of the requested use or disclosure. Unless the circumstances indicate otherwise, the Facility shall presume that requests from public officials, health care providers, plans and clearinghouses, professional members of the Facility's workforce, business associates, requests for research, requests from the resident, and requests pursuant to a valid authorization for the entire medical record are reasonable.

-

(B) Consent for Treatment, Payment or Health Care Operations.

- (1) Obtaining a consent. The Facility shall only use or disclose a resident's health information for treatment, payment or health care operations when it has a valid

written consent from the resident or his/her legally authorized representative. See the policy "Consent for the Use or Disclosure of a Resident's Health Information."

- (2) Workforce access to medical record. The following classes of the Facility's workforce shall have access to a resident's entire medical record, as needed, in order to accomplish their job duties: administration, nursing, dietary, social service, admission, therapy, and business office. In addition, the following classes of business associates and health care professionals covered by a consent for treatment, and their employees and agents, shall have access to the entire medical record, as needed, to accomplish their duties: ambulances, laboratories, pharmacies, radiology providers, physicians, podiatrists, dentists, therapists, oxygen suppliers, audiologists, dialysis providers, hospice providers, optometrists, ophthalmologists, psychiatrists, and psychologists. The Administrator, in conjunction with the Privacy Officer, may grant permission for other persons or classes of persons/entities to access a resident's medical record for the purposes of treatment. All persons, classes of persons, or entities that are not listed above in this policy and who do not have specific permission from the Administrator shall not access a resident's medical record.
- (3) Accounting of disclosures. The Facility does not need to, nor will it, keep an accounting of any disclosures made for treatment, payment or health care operations.

(C) Notice with Opportunity to Agree/Object.

- (1) General. The Facility may use or disclose health information without the written consent or authorization of the resident for use in a facility directory or for notification purposes to family members or friends provided that the resident is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the disclosure or use.
- (2) Family and friends. Subject to the conditions below, the Facility may disclose to a family member, other relative, close personal friend, or any other person identified by the resident, health information (i) that is directly relevant to that person's involvement with the resident's care or payment for that care; and (ii) to notify such person of the resident's location, general condition, or death.
 - (a) Conditions if the resident is present. If the resident is present for, or otherwise available prior to, a permitted disclosure, then the Facility may use or disclose the health information if it: (i) obtains the resident's agreement; (ii) provides the resident with an opportunity to object to the disclosure, and the resident does not express an objection; or (iii) reasonably infers from the circumstances, based on the exercise of professional judgment, that the resident does not object to the disclosure.
 - (b) Conditions if the resident is not present or is incapacitated. If the resident is not present, in an emergency, or the opportunity to agree/object to the use or disclosure cannot practicably be provided because of the resident's incapacity, the Facility may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the resident, and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the resident's health care.
 - (c) Verification. The Facility does not need to verify the identity of relatives or other individuals involved in the resident's care. The Facility may rely on the circumstances as verification of involvement in care. For example, the fact that a person admits a resident to the Facility and visits regularly is verification of involvement in the resident's care.

(3) Facility directory.

(a) Permissible use. Except when an objection is expressed, the Facility may use the following information to maintain a directory of residents in the facility.

- (i) The resident's name.
- (ii) The resident's location in the facility.
- (iii) The resident's condition described in general terms that does not communicate specific medical information about the resident, e.g., fair, critical, stable, etc.
- (iv) The resident's religious affiliation.

(b) Release upon request. The Facility may disclose any of the previous four elements to clergy, and may release all of the information except for religious affiliation to anyone else who inquires about the resident by name. Note that the information in the facility directory may only be released upon request, thus the directory may not be posted in a publicly viewed area.

(c) Resident incapacity or emergency. If the opportunity to agree or object cannot practicably be provided because of the resident's incapacity or in an emergency, then the Facility may use some or all of the information permitted above in a facility directory, if such disclosure is: (i) consistent with a prior expressed desire of the resident, if any, that is known to the Facility; or (ii) in the resident's best interests as determined by the Facility in the exercise of professional judgment. The Facility must inform the resident and provide an opportunity to object to any uses or disclosures when it becomes practicable to do so.

(d) Notice. The Facility shall notify residents that it will use a resident's health information for the Facility's directory, and their right to object to such use, in the Notice of Information Practices.

(4) Accounting of disclosures. The Facility does not need to keep an accounting of disclosures made to a facility directory or for notification purposes as noted above.

(D) Authorization. All releases of a resident's health information not permitted pursuant to a consent for treatment, payment and health care operations, or allowed when notice to agree or object is provided, shall require the resident's authorization. The following protocol shall be followed with regard to resident authorizations:

(1) Authority to release health information. Only the Administrator or Privacy Officer may give permission for the release of a resident's health information pursuant to an authorization by the resident and/or his/her legal representative.

(2) Authorization form the preferred method of request. Under the requirements of participation for Medicare and Medicaid, a resident may make a request for access to their records either orally or in writing. Facility will honor all requests made by a resident whether made orally or in writing. However, in order to better respond to residents' requests, Facility will ask that all requests be put into writing and use the facility's approved "Authorization for the Release of Health Information" (hereinafter, "Authorization"). The Notice of Privacy Practices will make it clear that a resident may make requests for health information orally, but that the facility prefers to receive such requests in writing.

- (3) Notify the Privacy Officer. The Privacy Officer is to be notified of the receipt of any completed Authorization.
- (4) Review the Authorization for completeness. Upon the receipt of an Authorization, the Facility shall review it to ensure that all sections of the form have been filled out completely and accurately. Note that the spaces on the Authorization must be initialed by the requester; check marks or other indicators are not acceptable. If the form is incomplete, then the Facility shall return it to the requestor noting the areas that need to be completed in order to process the records request.
- (5) Verify the legal right of the requestor to the records. Health information regarding a resident who is still living will only be released to the following persons:
- (a) The resident.
 - (b) The resident's attorney-in-fact under a Power of Attorney (POA). The Facility shall verify this assertion by reviewing a copy of the power of attorney. The Facility will not assume that the mere existence of a power of attorney grants a person the right to obtain medical information from the resident's record. The power of attorney must grant the attorney-in-fact the power to obtain copies of the resident's health information.
 - (c) The resident's attorney-in-fact under a Durable Power of Attorney for Health Care (DPAHC). The Facility shall verify this assertion by reviewing a copy of an executed "State of Ohio Durable Power of Attorney for Health Care" form. Section 3(c) of that form states that the attorney-in-fact has the right to review facility medical records for the resident named on the form.
 - (d) The resident's legal guardian. The Facility shall verify this assertion by reviewing a copy of the designation of guardianship from the probate court of the county in which the facility is located.
 - (e) A person who has been specifically authorized by the resident or his/her legally authorized representative to obtain the health information. A resident may grant a person access to their health information by signing and dating a document that specifically grants a person the right to access his/her health information. When reviewing such a document, the Facility will make sure that there is no time limit to the authorization and that it was dated prior to any incompetency of the resident. If a legal representative of the resident has executed this form, then in addition the Facility shall review the underlying document providing the legal representative the legal right to the resident's health information.
 - (f) The ombudsman under certain circumstances. Under Ohio law, a representative of the state long-term care ombudsman program may have access to a resident's records that is reasonably necessary for the investigation of a complaint if consent has been given. Consent may be given in the following ways:
 - (i) In writing by the resident;
 - (ii) Orally by the resident, witnessed in writing at the time consent is given by one other person plus an employee of the facility;
 - (iii) In writing by the guardian;
 - (iv) In writing by the attorney-in-fact (if the resident has authorized the attorney-in-fact to give such consent); and
 - (v) In writing by the executor or administrator of the estate of a deceased resident.

If the representative from the ombudsman's office insists on reviewing records in the absence of an open investigation or without consent, then he/she is to be referred to the Administrator.

- (6) Release of a deceased resident's health information. All of the legal rights to the resident's health information noted above cease on the resident's death, and the facility may only release such information to the resident's estate. Thus, the Facility shall only release the health information of a deceased resident to the executor or administrator of the resident's estate after receiving a copy of a valid probate court appointment.
- (7) Timeliness of access. The resident or his/her legal representative is to be given access to the resident's health information within twenty-four (24) hours (excluding weekends and holidays) of making such a request.

The resident or his/her legal representative shall be provided a private room where he/she can review the health information in confidence. The Facility shall take appropriate measures to ensure the integrity of the health information during the review, such as having a staff person in the room with the reviewer.

- (8) Making copies of health information.
- (a) Requests for copies after inspection. The resident or his/her legal representative has the right after inspection of the records at the facility to purchase copies of medical records as long as he or she gives the facility two working (2) days advance notice.
- (b) Requests for copies with no prior inspection. The Facility requires at least two working (2) days notice of any requests for it to make copies of health information. The Facility will make a good faith attempt to copy records and have them available for the requestor in a reasonable amount of time.
- (c) Payment of copying costs. The Facility shall charge a reasonable fee for paper copies as set forth in Ohio law as follows: (a) one dollar per page for the first ten pages, (b) fifty cents per page for pages eleven through fifty and (c) twenty cents per page for pages fifty-one and higher, the actual cost of making the copy for information that is stored electronically, and the actual cost of any postage incurred. No fee will be charged for collection and preparation of the copies.

- (i) Copies are picked up. If a person picks up the copies of the health information that have been made at the facility, then he/she shall pay the copying costs at that time. The Facility shall obtain a signed receipt from the person as evidence that the records were delivered.
- (ii) Copies are sent. If a person requests copies of the health information be made and sent to him/her, then the Facility shall determine the number of pages of medical records requested, and the shipping costs associated with sending the records to the requestor. The Facility shall notify the requestor of the cost for such records. Upon receipt of payment in full of the costs of copying and shipping the requested records, the Facility shall send the records to the requestor by certified mail, return receipt requested.

- (9) Maintenance of a copy of all records that leave facility. The Facility shall keep an exact copy of all records provided to the requestor along with the Authorization requesting the records. The copies of the records shall be filed in a secure location accessible only to the Administrator and Privacy Officer.
- (10) Summary of information rather than access. Facility may provide the requestor with a summary of the health information requested, in lieu of providing access to the protected health information or may provide an explanation of the health information to which access has been granted if: (a) the requestor agrees in advance to such a summary or explanation; and (b) the requestor agrees in advance to the fees imposed, if any, by Facility for such summary or explanation.
- (11) Accounting of Disclosures. Facility does not need to keep an accounting of disclosures made pursuant to an Authorization
- (E) Business Associates. The Facility shall enter into a written agreement with a business associate prior to releasing any resident's health information to the business associate. At a minimum, the agreement must provide that the business associate will:
- (1) Not use or further disclose the information other than as permitted or required by the agreement or as required by law.
 - (2) Use appropriate safeguards to prevent the use or disclosure of information other than as provided for by the agreement.
 - (3) Report to the Facility any use or disclosure of the information of which it becomes aware that is not covered by the agreement.
 - (4) Ensure that any agents of the business associate agree to the same restrictions and conditions that apply to the business associate.
 - (5) Make protected health information available for access and amendment as required by the Facility.
 - (6) Make protected health information available as required to provide an accounting of disclosures.
 - (7) Make its internal practices, books and records related to the use and disclosure of protected health information received from or created by or received by the business associate on behalf of the Facility available to the Secretary of the Department of Health and Human Services for purposes of determining the Facility's compliance with the business associate agreement requirement of HIPAA.
 - (8) At termination of the agreement, if feasible, return or destroy all protected health information received from or created by or received by the business associate on behalf of the Facility that the business associate maintains in any form and retain no copies of such information; or if such return or destruction is not feasible, then extend the protections of the contract to the information and limit further uses or disclosures to those purposes that make the return or destruction of the information infeasible.
 - (9) The agreement must authorize the Facility to terminate the agreement if the Facility determines that the business associate has violated a material term of the agreement.

The Facility shall use a standard business associate agreement that has been approved by the Administrator. Any revisions to the standard business agreement must be approved by the Administrator prior to execution of the agreement.

- (F) Other Uses or Disclosures. Any uses or disclosures of a resident's health information that are not addressed in section (A) through (D) of this policy shall only occur with the approval of the Privacy Officer. Such other uses and disclosures may include, but are not limited to, uses and disclosures for the following purposes:
- (1) As required by law
 - (2) For public health activities
 - (3) About victims of abuse, neglect or domestic violence, such as reports to ODH
 - (4) For health oversight activities, such as complaint surveys
 - (5) For judicial and administrative proceedings, such as in response to subpoenas
 - (6) For law enforcement purposes
 - (7) Notification of coroners
 - (8) Notification of funeral directors
 - (9) For cadaveric organ, eye or tissue donation purposes
 - (10) For research purposes
 - (11) To avert a serious threat to health or safety
 - (12) For specialized government functions, such as releases for military or veteran's activities, national security or intelligence activities, or use by a prison
 - (13) For workers' compensation
 - (14) Disclosures of de-identified information

For purposes of this policy, the Privacy Officer hereby authorizes the Facility to release needed information to funeral directors, abuse reports to ODH and to the Bureau of Workers' Compensation.

- (G) Denial of Access to Health Information. The Facility may restrict a resident's right to inspect and obtain a copy of his/her health information in the instances noted below. The Privacy Officer must authorize any denials of access to health information.
- (1) Denials without a right of review. The Facility may deny a resident access to records that contain his/her health information without providing the resident an opportunity for review, *i.e.*, without an appeal, when:
 - (a) The resident requests copies of psychotherapy notes.
 - (b) The resident requests information compiled in anticipation of use in a civil, criminal or administrative action or proceeding.
 - (c) The health information is subject to the Clinical Laboratory Improvement Amendments (CLIA) of 1988.
 - (d) The resident agreed to a temporary denial of access when consenting to participate in research that includes treatment, and the research is not complete
 - (e) The health information was obtained from someone other than a health care provider under the promise of confidentiality and access would likely reveal the source of the information.

(2) Denials with a right of review. The Facility may deny a resident access to records that contain his/her health information, but must provide the resident the right to have such denials reviewed, in the following circumstances:

- (a) The Facility has determined that the access is likely to endanger the life or physical safety of the resident or another person.
- (b) The health information makes reference to another person who is not a health care provider, such as another resident, and a licensed health care professional has determined that the access requested is likely to cause substantial harm to such other person.
- (c) The request for access is made by a resident's personal representative, and a licensed health care professional has determined that access is likely to cause substantial harm to the resident or another person.

(3) Requirements if access is denied. If access is denied, in whole or in part, for one of the reasons noted in section (E)(2) above, then the Facility shall do the following:

- (a) To the extent possible, give the resident access to any other health information requested, after excluding the health information as to which the Facility has a ground to deny access.
- (b) Provide a timely, written denial to the resident. The denial will be in plain language and contain: (i) the basis for the denial; (ii) if applicable, a statement of the resident's review rights, including a description of how the resident may exercise those rights; and (iii) a description of how the resident may complain to the Facility or to DHHS. The description will contain the name, or title, telephone number or office of the designated privacy contact person for the Facility.
- (c) If the Facility does not maintain the health information requested, and the Facility knows where the information is maintained, then inform the resident where to direct his/her request.
- (d) If the resident has requested a review of the denial, the Facility will designate a licensed health care professional, who did not participate in the original decision to deny, to act as a reviewing official. The Facility will promptly refer a request for review to the reviewing official. The designated reviewing official will determine, in a reasonable amount of time, whether or not to deny the access based on the standards noted in this section (G). The Facility will promptly provide written notice to the resident of the determination of the designated reviewing official, and take other action as is necessary to implement the designated reviewing official's determination.

(H) Privacy Officer Responsibility. The Privacy Officer shall be responsible for overseeing the implementation of the steps in this policy and procedure, including the following:

- (1) Ensuring that the Notice of Information Practices adequately discusses the Facility's use and disclosure policies.
- (2) Designing and updating, as appropriate, the Authorization form, as well as any standard forms developed to be used for the use and disclosure of health information.

- (3) Reviewing any requests for a resident's health information pursuant to an Authorization, determining whether to deny a resident access to health information, and responding in the required time frames.
- (4) Notifying the Administrator of any requests that he/she receives for a copy of the resident's health information, and informing the Administrator of decisions to grant or deny access to health information.

Approval: _____
Administrator

Date: _____