Policy Title: HIPAA Compliance – Patient/Client/Resident Rights Regarding Protected Health Information

TITLE: HIPAA COMPLIANCE: PATIENT/CLIENT/RESIDENT RIGHTS REGARDING PROTECTED HEALTH INFORMATION

POLICY

It is the policy of the San Francisco Department of Public Health (DPH) to comply with patient/client/resident rights regarding Protected Health Information (PHI) as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

PURPOSE

To set forth the rights that DPH patients/clients/residents and clients have regarding their Protected Health Information (PHI).

SCOPE

This policy pertains to all individuals in the DPH who have access to, use, or disclose PHI, regardless of the DPH division or unit. The policy is administered by the DPH Compliance Office through the DPH Privacy Officer with the procedural assistance of Health Information Services units at DPH facilities. DPH divisions or units may enforce stricter authorization requirements for the use or disclosure of PHI than those set forth in this policy.

BACKGROUND

Expanded consumer control and privacy protections were important concerns for the drafters of the HIPAA Privacy Rule. To this end, individuals have certain rights set forth in the HIPAA Privacy Rule as follows:

1. The right to obtain a written notice explaining how PHI will be used and disclosed.
2. The right to access and obtain a copy of their medical records.
3. The right to request an amendment of their PHI.
4. The right to obtain an accounting of disclosures of their PHI (with limited exceptions).
5. The right to request that certain information be restricted from use or disclosure for purposes of treatment, payment or health care operations (although HIPAA allows DPH to use its discretion in agreeing to such requests).
6. The right to request restrictions on the manner and method of confidential communications.

Please note that minors who seek and consent to “sensitive services” in programs of the Department of Public Health are also accorded these rights with respect to the PHI generated during the provision of the services.

PROCEDURE

I. RIGHT TO NOTICE OF PRIVACY PRACTICES
A. DPH shall provide patients/clients/residents with detailed information that describes, in plain language, its privacy practices and an individual’s rights related to his/her PHI. (Jail Health Services may, but is not required to, provide the Notice of Privacy Practices).

B. This Notice of Privacy Practices shall be provided to all current patients/clients/residents on or after April 14, 2003. New patients/clients/residents will receive a copy of the Notice at the time of their first visit for treatment at a DPH site. Patients/clients/residents may receive additional copies of the Notice upon request.

C. DPH shall make a good faith effort to obtain a written acknowledgement from the patient that he/she received the notice.

D. The Notice shall also be posted in clear and prominent locations where it is reasonable to expect patients/clients/residents to be able to read it. Additionally, the Notice will be posted and available electronically on the “InsideDPH” web site that contains information about the DPH and its services.

E. DPH shall revise and distribute its notice whenever there is a material change to the use or disclosures of PHI, individual’s rights, the provider’s legal duties or other privacy practices stated in the notice.

II. RIGHT TO ACCESS AND TO OBTAIN A COPY OF PHI

A. DPH shall provide individuals with the right to access and obtain a copy of medical information that is used to make decisions about their care. This may include medical and billing information, but may not include some mental health information.

B. Access to mental health information can be denied if a licensed mental health care professional (physician, psychologist, or master-prepared social worker) has determined, in the exercise of professional judgment, that the access requested is reasonably likely to compromise the mental health or physical treatment of the patient or, if the request involves psychotherapy notes, or will endanger the life or physical safety of the patient.

C. DPH sites shall provide access to information even if the information wasn’t created at that site. Thus, if a clinic has copies of medical records created by another clinic, these records shall be provided to the individual upon his/her request. If a DPH site does not maintain the requested PHI but knows where the requested information is maintained, it shall inform the individual where to direct his/her request.

D. DPH shall provide access only to non-duplicative information. If the same information is kept in more than one designated record set or at more than one location, DPH shall produce the information only once per request.

E. DPH may charge a reasonable, cost-based fee for providing copies of PHI, including the costs of copying (supplies and labor), postage (if the individual has requested that the PHI be mailed) and preparation of any summary or explanation (if agreed to in advance).

III. RIGHT TO REQUEST AN AMENDMENT OF PHI

A. DPH shall provide patients/clients/residents with the right to request an amendment to their PHI for as long as such PHI is maintained by the division/unit.
B. Requests for amendments must be submitted in writing and provide a reason that supports the request.

C. Amendments may be denied under the following circumstances:
   1. The PHI was not created by DPH (unless the individual provides a reasonable basis to believe that an originator of the PHI external to the DPH is no longer available to act on the request);
   2. The information at issue is not part of the medical information kept by DPH;
   3. The information is not part of the PHI that the patient would be permitted to access and obtain a copy; or
   4. The information is accurate and complete.

D. If a request to amend PHI is denied, the patient shall have the right to submit a written addendum, not to exceed 250 words, with respect to any item or statement that the patient believes is incomplete or incorrect.

E. Upon the patient’s clear written indication, the addendum shall be attached to his/her records and included whenever DPH makes a disclosure of the item or the statement that the patient believes to be incomplete or incorrect.

IV. RIGHT TO AN ACCOUNTING OF DISCLOSURES

A. DPH shall provide individuals with the right to an accounting of how their PHI has been disclosed (see section IV. C for exceptions).

B. DPH shall respond in writing to any requests and include the following in the accounting:
   1. Disclosures for the six years prior to the request, unless the individual wants information for a shorter time period;
   2. Disclosures made to or by business associates;
   3. The date of each disclosure;
   4. The name of the person or entity who received the PHI, including an address if possible;
   5. A brief description of the information disclosed; and
   6. A brief statement of the purpose of the disclosure.

C. Accountings do not need to include disclosures made for the following purposes:
   1. To carry out treatment, payment or health care operations or as part of a limited data set;
   2. To individuals regarding their own information;
   3. Incident to a use or disclosure otherwise permitted or required by HIPAA;
   4. Pursuant to an authorization;
   5. For use in the facility’s directory;
   6. To persons involved in the patient’s care;
   7. For notification purposes (e.g. to notify a family member, personal representative or other person of the individual’s location, general condition or death);
   8. For national security or intelligence purposes;
   9. To correctional facilities or law enforcement officials; or
   10. For disclosures made prior to April 14, 2003.

D. DPH shall provide the first accounting of disclosures to an individual free of charge. A reasonable, cost-based fee may be charged for each subsequent request for an accounting within the same 12-month period as long as the
individual has been informed in advance of the fee and the individual has had the opportunity to withdraw or modify the request.

V. RIGHT TO REQUEST RESTRICTIONS ON PHI

A. DPH shall provide individuals with the right to request that providers restrict their use or disclosure of PHI to carry out treatment, payment or healthcare operations; that is, an individual may request that a provider voluntarily agree not to use or disclose PHI in a way that the law would otherwise allow. DPH shall also provide individuals with the right to request restrictions on the information that may be released to family or friends.

B. Requests for restrictions must be made in writing and include the following:
1. What information to limit;
2. Whether the limitation is for use, disclosure, or both; and
3. To whom the limitation applies (e.g. disclosure to a spouse).

C. Although individuals shall be given the right to make such requests, DPH is not required to agree to such requests, and only the provider responsible for the individual’s care may make the decision as to whether to agree or not agree to such a request.

D. Upon agreement to a restriction, the agreement can only be broken during a medical emergency and only if the restricted information is needed to provide the emergency treatment.

E. An agreement to restrict information doesn’t prevent uses or disclosures made for the following purposes:
1. Inclusion in the facility directory;
2. For public health activities;
3. For reporting abuse, neglect, domestic violence or other crimes;
4. For health agency oversight activities or law enforcement investigations;
5. For judicial or administrative proceedings;
6. For identifying decedents to coroners and medical examiners or determining a cause of death;
7. For organ procurement;
8. For certain research activities;
9. For workers’ compensation programs; and
10. For uses or disclosures otherwise required by law.

F. An agreement to a special restriction may be terminated as follows:
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 provider informs the individual that it is terminating the agreement; however, the termination shall be effective only with respect to PHI created or received after the individual has been notified of the termination.

G. A provider that agrees to a special restriction must document the restriction. Such documentation must be retained for at least six years.

VI. RIGHT TO REQUEST RESTRICTIONS ON THE MANNER AND METHOD OF CONFIDENTIAL COMMUNICATIONS
A. DPH shall provide individuals with the right to request to receive communications of PHI by alternative means or at alternative locations. For example, some patients/clients/residents may not want their appointment notices, bills, or explanation of benefits to go to their home where a family member might see it.

B. DPH shall accommodate reasonable requests and shall not require an explanation from the individual as to why he/she is requesting an alternative means or location of communication.