

The HIPAA Privacy Rule's Minimum Necessary Standard

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Part 1. Introduction

HIPAA's minimum necessary standard requires a covered entity to develop and implement policies and procedures to:

- Limit uses and disclosures of protected health information (PHI) to the minimum necessary amount of PHI to accomplish the purpose of the use or disclosure;
- Limit requests for PHI to the minimum necessary amount of PHI to accomplish the purpose of the request; and
- Limit who among the covered entity's workforce has access to PHI.

The standard does not apply to any of the following uses or disclosures:

- Disclosures to or requests by a health care provider for treatment
- Uses or disclosures made to the individual who is the subject of the PHI
- Uses or disclosures made pursuant to an authorization
- Disclosures made to the Secretary of the US Department of Health and Human Services for compliance enforcement purposes
- Uses or disclosures that are required by law
- Uses or disclosures that are required for compliance with the requirements of the privacy rule

45 CFR 164.502(b) and 164.514(d).

Part 2. Minimum necessary uses of PHI

To comply with the minimum necessary standard's limits on uses of PHI, a covered entity must:

1. Identify the persons, or classes of persons, in its workforce who need access to PHI to carry out their duties.
2. For each person or class of persons:
 - identify the category(ies) of PHI to which access is needed, and
 - identify any conditions appropriate to the person's or class of persons' access.

3. Make reasonable efforts to limit workforce members' access to PHI in accordance with the above determinations.

Part 3. Minimum necessary disclosures of PHI

Routine and recurring disclosures

A covered entity must implement policies and procedures (which may be standard protocols) regarding any disclosures of PHI that it makes on a routine and recurring basis. The policies and procedures must limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure.

All other disclosures

For all other disclosures, a covered entity must develop criteria designed to limit the PHI disclosed to that reasonably necessary to accomplish the purpose for which disclosure is sought, and review requests for disclosure on an individual basis in accordance with the criteria.

Reasonable reliance on requests for disclosures

A covered entity may rely on a requested disclosure as the minimum necessary for the stated purpose in any of the following circumstances:

- When making disclosures that are permitted under § 164.512 to public officials, if the public official represents that the information requested is the minimum necessary for the stated purpose.
- When the information is requested by another covered entity.
- When the information is requested by a professional who is either a member of its workforce or a business associate, if:
 - the request for disclosure is for the purpose of providing professional services to the covered entity, and
 - the professional represents that the information requested is the minimum necessary for the stated purpose.
- When the disclosure is for research purposes, and the person requesting the disclosure has provided documentation or representations that comply with the requirements of 45 CFR 164.512(i).

A covered entity's reliance must be reasonable under the circumstances.

Part 4. Minimum necessary requests for PHI

When requesting PHI from another covered entity, a covered entity must limit its request to the PHI that is reasonably necessary to accomplish the purpose for which the request is made.

Routine and recurring requests

A covered entity must implement policies and procedures (which may be standard protocols) regarding requests for disclosures of PHI that the covered entity makes on a routine and recurring basis. The policies and procedures must limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

All other requests

For all other requests for PHI that the covered entity makes, it must develop criteria designed to limit the PHI requested to that reasonably necessary to accomplish the purpose for which the request is made, and review requests for disclosure on an individual basis in accordance with the criteria.

Part 5. Using, disclosing, or requesting an entire medical record

General Rule

If the minimum necessary standard applies to a particular use, disclosure, or request for PHI, a covered entity may not use, disclose, or request the entire medical record. Note that this is the rule *only if* the minimum necessary standard applies. The minimum necessary standard *does not apply* to every use, disclosure, or request for an entire medical record. For example, it does not apply to a request by a health care provider for treatment purposes – the entire record may be requested or disclosed in that circumstance.

Exception

Even if the minimum necessary standard applies, the covered entity may use, disclose, or request the entire medical record if it specifically justifies that the entire record is the amount of PHI that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.