Disclosing PHI for Treatment, Payment, or Health Care Operations:
Overview for N.C. Local Health Departments

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Part 1: Introduction

General Rule: TPO Disclosures Do Not Require Authorization or Consent

In most cases, local health departments do not need permission to disclose a client's protected health information (PHI) for purposes of treatment, payment, or health care operations (often referred to collectively as "TPO"). These disclosures may be made without permission under both the HIPAA Privacy Rule and North Carolina law. There are a few exceptions to this general rule, which are explained in the next section of this handout. HIPAA defines the terms treatment, payment, and health care operations and is fairly specific about which disclosures qualify as TPO disclosures. Later sections in this handout provide more details.

North Carolina law about TPO disclosures has changed several times over the last decade. As a result, local health department practices may be different from practices staff members learned earlier in their careers or when working in other states. Each of the changes aligned state law to HIPAA and referred to HIPAA's definitions and rules for TPO disclosures. The major changes were:

- In 2004, G.S. 130A-12 (the main law governing local health department patient records) was amended to allow TPO disclosures without specific consent according to the same definitions and rules set out in HIPAA.
- In 2007, G.S. 90-21.20B (one of the main laws governing health care providers and confidentiality generally) was amended to allow TPO disclosures without specific consent according to the same definitions and rules set out in HIPAA.
- In 2011, G.S. 130A-143 (the communicable disease confidentiality law) was amended to allow TPO disclosures of reportable communicable disease information without specific consent, according to the same definitions and rules set out in HIPAA. *This law is still quite strict with respect to other disclosures of information about HIV and other reportable communicable diseases, so it is important to be sure that a disclosure of this type of information is for a TPO purpose before it is made without consent.*

Although written permission is not required for these disclosures, a local health department may choose to obtain written authorization or consent for all or some TPO disclosures. It is important to know your own department's policies on TPO disclosures.

Exceptions to the General Rule

Circumstances in which written permission is required for a TPO disclosure

Written permission is required to make some TPO disclosures, including:

- Information about family planning services. The federal rule for Title X-funded programs is that client information may not be disclosed without documented consent, unless the disclosure is necessary to provide services or is required by law. 42 CFR 59.11. In North Carolina, the general consent form for family planning services (DHHS Form 4112) specifies that health department staff will not share or send medical information from the family planning clinic to anyone unless the patient consents in writing or the disclosure of information is required by law.
- A local health department that provides behavioral health services is probably subject to North Carolina's mental health confidentiality laws (G.S. 122C) and a special provision of HIPAA that protects psychotherapy notes (45 CFR 164.508(a)(3)). If the behavioral health services include substance abuse services, it may also be subject to federal substance abuse confidentiality regulations (42 CFR Part 2).[1]

Restriction on disclosing PHI to health plans when patient pays for care out-of-pocket

A new HIPAA provision also restricts some disclosures for payment and health care operations purposes: If a patient pays for care out-of-pocket in full *and* requests that the information not be disclosed to his or her health plan (insurer), the information must not be disclosed to the health plan unless disclosure to the health plan is required by law.[2] **This is a very narrow provision**. Two important points to keep in mind are:

1. The only disclosures the provision restricts are disclosures to health plans (insurers). It does not restrict disclosures for treatment purposes. It does not restrict disclosures to entities other than health plans for health care operations purposes. Nor does it restrict

[1] Discussion of these laws is beyond the scope of this handout and this workshop. A local health department that provides behavioral health services should review these laws and ensure that they are reflected appropriately in the departments policies and procedures for disclosing protected health information.

[2] 45 CFR 164.522(a)(1)(vi). This provision was added by *Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act* (hereafter "the Omnibus Rule"), 78 Fed. Reg. 5566 (Jan. 25, 2013), at 5701.

other kinds of disclosures, such as disclosures for public health purposes or disclosures that are required by law.

2. The provision applies only if all the conditions are met: the patient pays for the care out-of-pocket in full, the patient requests that PHI about the care not be disclosed to the health plan, and there is no law requiring disclosure to the health plan.

TPO Disclosures and the Minimum Necessary Standard

The HIPAA Privacy Rule's minimum necessary standard requires local health departments to make reasonable efforts to limit the amount of PHI that is disclosed to the minimum necessary to accomplish the intended purpose of the disclosure. 45 CFR 164.502(b)(2) and 164.514(d).

- The standard *does not* apply to disclosures made to a health care provider for treatment purposes.
- The standard *does* apply to disclosures made for purposes of payment or health care operations.

Part 2. Disclosures for Treatment Purposes

Definitions

Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. 45 CFR 164.501.

Health care means care, services, or supplies related to the health of an individual. It includes, but is not limited to: (1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and (2) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription. 45 CFR 160.103.

Disclosure Rules

General rules (45 CFR 164.506; GS 130A-12)

- A local health department may disclose PHI for its own treatment activities.
- A local health department may disclose PHI for the treatment activities of another health care provider.

Exceptions

- Family planning services: A local health department may use PHI pertaining to family planning services within the clinic for its own treatment activities, but it must obtain written consent before disclosing PHI pertaining to family planning services to another provider for treatment purposes. See DHHS Form 4112.
- Behavioral health services: A local health department that provides behavioral health services should consult applicable laws before making TPO disclosures of PHI pertaining to those services.

Part 3. Disclosures for Payment Purposes

Definition

Payment means:

- Activities undertaken by a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan,[3] or
- Activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care.

The activities must be related to an individual to whom health care has been provided. HIPAA's definition of this term includes a list of activities that are covered by the definition. Among many other things, those activities include billing, claims management, collection activities, medical necessity reviews, preauthorization and precertification. Consult the definition for the full list. 45 CFR 164.501.

Disclosure Rules

General Rules (45 CFR 164.506; GS 130A-12):

- A local health department may disclose PHI for its own payment activities.
- A local health department may disclose PHI to another health care provider or covered entity for the payment activities of the health care provider or covered entity that receives the information.

[3] HIPAA's definition of "payment" was recently amended to reflect new prohibitions on some uses and disclosures of genetic information by health plans. See the Omnibus Rule, 78 Fed. Reg. at 5696. I do not anticipate that this amendment will affect payment-related disclosures by local health departments.

Exception:

- If a patient pays for care out-of-pocket in full and requests that the health department not disclose PHI related to such care to the patient's health plan, the health department must honor the request—in other words, it may not disclose PHI related to the care paid out-of-pocket to the patient's health plan.

Part 4. Health Care Operations

Definition

Health care operations[4] means any of a number of activities undertaken by a covered entity. HIPAA's definition of this term includes a list of activities that are covered by the definition. The following summarizes some of the types of activities listed—consult the definition for the full list (45 CFR 164.501):

- Quality assessment and improvement and patient safety activities
- Reviewing the competence or qualifications of health care professionals
- Evaluating performance
- Conducting training programs that permit students, trainees, or health care practitioners to practice or improve their skills
- Accreditation, certification, licensing, or credentialing activities
- Underwriting and other activities related to health insurance or benefit contracts
- Conducting or arranging for medical review, legal services, and auditing functions
- Business planning and development
- Business management and general administrative activities, including but not limited to management activities related to implementing and complying with HIPAA; customer service; resolution of internal grievances; the sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity; and fundraising.

Disclosure Rules (45 CFR 164.506 and 164.514(e); GS 130A-12)

General rules:

- A local health department may disclose PHI for its own health care operations.
- In some circumstances, a local health department may disclose PHI to another covered entity for the health care operations of the entity that receives the information. This disclosure of PHI may be made only if all of the following conditions are met:

[4] HIPAA's definition of "health care operations" was recently amended by the Omnibus Rule. 78 Fed. Reg. at 5695. Relevant amendments related to patient safety are reflected in this brief description of the definition.

    - Each entity (the local health department and the entity receiving the PHI) has or had a relationship with the individual who is the subject of the PHI that is requested; and
    - The PHI pertains to such relationship; and
    - The disclosure is for one of the following purposes:
        - Conducting quality assessment and improvement activities, as described in the definition of "health care operations," or
        - Reviewing the competence or qualifications of health care professionals, as described in the definition of "health care operations," or
        - Health care fraud and abuse detection or compliance.
- A local health department may disclose a "limited data set" for health care operations purposes. There are special requirements for this type of disclosure that include removing specified identifiers from the data before disclosing it, and entering a data use agreement with the recipient of the limited data set. A health department that wants to disclose a limited data set should consult the section of the HIPAA Privacy Rule that describes these requirements, 45 CFR 164.514(e).

Exceptions:

- If a patient pays for care out-of-pocket in full and requests that the health department not disclose PHI related to such care to the patient's health plan, the health department must honor the request—in other words, it may not disclose PHI related to the care paid out-of-pocket to the patient's health plan for health care operations purposes. This does not prevent the health department from disclosing information for health care operations purposes to entities other than a health plan.
- Family planning services: A local health department may use PHI pertaining to family planning services within the clinic for its own health care operations activities, to the extent that the PHI is needed to provide services at the clinic. However, the department probably needs the client's written consent to make other disclosures of PHI pertaining to family planning services for health care operations purposes. See DHHS Form 4112.
- Behavioral health services: A local health department that provides behavioral health services should consult applicable laws before making TPO disclosures of PHI pertaining to those services.