



ADMINISTRATIVE PRACTICES MANUAL

SUBJECT: CONFIDENTIALITY, PRIVACY AND SECURITY

1. Introduction

- 1.1. It is the policy of Dane County to empower every Dane County employee and volunteer working in a covered component to assist in maintaining a professional culture, using practices that respect the confidentiality of protected health information (PHI).
- 1.2. It is the policy of Dane County to empower every Dane County employee and volunteer working in a covered component, who has any contact (directly or indirectly) with PHI, to use and disclose PHI in accordance with Dane County's HIPAA policies. For example, employees will not be share PHI outside the covered component without specific individual authorization (unless otherwise authorized by law).
- 1.3. It is the policy of Dane County to empower every Dane County employee and volunteer, regardless of where they work, to assist in maintaining a professional culture, using practices that respect the confidentiality of information covered by other confidentiality laws.
- 1.4. It is the policy of Dane County to allow each covered component to establish policies and procedures that will supersede this policy if more specific to the functioning of the covered component. For covered components of Dane County government, county-wide policies and procedures control absent more specific department or division HIPAA policies and procedures.
- 1.5. It is the policy of Dane County that a covered component may not disclose PHI to another part of Dane County government unless the other part of government is a covered component involved in the healthcare, payment or healthcare operations of the covered component; and even then, the exchange of PHI must be limited to the minimum amount necessary for the involved units of government to perform healthcare, payment and healthcare operations.
- 1.6. Questions regarding the application of Dane County's HIPAA policies or other law protecting confidentiality may be directed to Dane County's HIPAA Privacy and Security Officer and/or the Dane County Office of Corporation Counsel.

HIPAA PRIVACY & SECURITY OFFICER

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2. Definitions

These definitions apply to the Health Insurance Portability and Accountability Act (HIPAA), policies, and forms found throughout this manual. For the full definitions, please refer to the HIPAA Privacy Rules in the Code of Federal Regulations. Always refer to the regulations for the full definitions.

Accounting of Disclosures is information that describes a covered entity's (CE) disclosures of Protected Health Information (PHI) other than for treatment, payment, and health care operations; disclosures made with authorization; and certain other limited disclosures.

Breach: Means the impermissible acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI and is presumed to be a breach unless the CE or Business Associate (BA), as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
2. The unauthorized person who used the PHI or to whom the disclosure was made;
3. Whether the PHI was actually acquired or viewed; and
4. The extent to which the risk to the PHI has been mitigated.

Breach excludes:

1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a CE or BA if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. Any inadvertent disclosure by a person who is authorized to access PHI at a CE or BA to another person authorized to access PHI at the same CE or BA, or organized health care arrangement in which a CE participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
3. A disclosure of PHI where a CE or BA has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Business Associate (BA) is a person or entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of, or provides services to, a covered entity; this includes a sub-contractor that creates, receives, maintains, or transmits PHI on behalf of the BA.

Client/Patient means the individual that is receiving health care or their personal representative.

Covered Entity (CE) means an organization that is acting as a health plan, a health care clearinghouse, or a health care provider that transmits any health information in electronic form for which the U.S. Department of Health and Human Services has adopted a standard.

Covered Component is a part of a Hybrid Entity that would meet the definition of a Covered Entity (CE) or business associate (BA) if that part of the Hybrid Entity was a completely separate legal entity. Dane

County is a “Hybrid Entity” as defined under section 45 CFR 164.103 and its Covered Components of Dane County government are listed below.

Data Use Agreement is an agreement that must be entered into before there is a Use or Disclosure of a limited data set to another entity. It establishes the ways in which the information in a limited data set may be used and how it is protected.

Designated Record Set includes any item, collection, or grouping of information that includes PHI and is maintained, collected, Used or disseminated by or for the CE.

Disclose/Disclosure means the release, transfer, provision of access to, or divulging in any other manner of PHI.

Electronic Protected Health Information (ePHI): Any individually identifiable health information protected by HIPAA that is transmitted by or stored in electronic media.

Health Care means care, services, or supplies related to the health of an individual.

Health Care Operations are certain administrative, financial, legal, and quality improvement activities of a CE that are necessary to run its business and to support the core functions of treatment and payment.

Health Insurance Portability and Accountability Act (HIPAA) are federal regulations designed to provide privacy standards to protect clients’/patients’ medical records and other health information.

Health Oversight Agency: A governmental agency or authority that is authorized by law to oversee the Health Care system, including HIPAA compliance.

HIPAA Privacy & Security Officer is the person designated by Dane County to develop, implement, and oversee the organization's compliance with the Health Insurance Portability and Accountability Act (HIPAA). This person acts as the point of contact for all client/patient privacy issues. They oversee all activities related to the development, implementation, maintenance, and adherence to the covered entity’s HIPAA policies and procedures. This person also oversees the management of HIPAA security policies, procedures, and technical systems in order to maintain the confidentiality, integrity, and availability of the organizational information systems.

Hybrid Entity means a single legal entity:

1. That is a covered entity;
2. Whose business activities include both covered and non-covered functions; and
3. That designates health care components in accordance with paragraph § 164.105(a)(2)(iii)(D)

Individually Identifiable Health Information means information that is a subset of health information, including demographic information collected from an individual, and is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and identifies the individual; or there is a reasonable basis to believe the information can be used to identify the individual.

Impermissible Use or Disclosure means acquisition, use, or disclosure of PHI in a manner not permitted by HIPAA that may or may not compromise the security or privacy of the PHI.

Minimum Necessary means a CE must take reasonable efforts to limit the PHI to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

Payment means the various activities of a CE to obtain payment or be reimbursed for their services, and of a health plan to obtain premiums, to fulfill their coverage responsibilities and provide benefits, and to obtain or provide reimbursement for the provision of health care.

Personal Representative is a person with legal authority to make health care decisions on behalf of a client/patient including: 1) a parent, guardian, or other person acting in loco parentis with legal authority to make Health Care decisions on behalf of the minor child; and 2) a person with legal authority to act on behalf of the decedent or the estate (not restricted to persons with authority to make health care decisions). Within this document the personal representative has all of the rights of the client/patient.

Protected Health Information (PHI) means Individually Identifiable health information that is transmitted and/or maintained in electronic or other medium. PHI excludes Individually Identifiable health information in education records covered by the Family Educational Rights and Privacy Act; in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.

Typical types of PHI include, but are not limited to, the following:

- Medical records, diagnostic and/or clinical information
- Client/patient demographics or financial information
- Billing and health insurance information

PHI may be in many forms, including, but not limited to the following:

- Verbal communications
- Hard copy records (charts)
- Electronic records
- Notes maintained by staff providing care to the client/patient
- Client/patient sign-in sheets
- Message logs
- Inquiries or information from payers
- Faxed client/patient information
- Diagnostic testing/results
- Data exchanged copies of client/patient information
- E-mails, letters or other client/patient communications
- Specimen containers, prescription labeled bottles, or other Treatment materials that are labeled with PHI.

Sanitization is the removal or the act of overwriting data to a point of preventing the recovery of the data on the device or media.

Secretary means the Secretary of Health and Human Services (HHS) or any other officer or employee to whom the authority involved has been delegated.

Treatment means the provision, coordination, or management of health care and related services among health care providers.

Unsecured Protected Health Information (PHI) means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary.

Use means the sharing, utilization, examination, or analysis of PHI.

Workforce Members means employees, volunteers, and other persons whose work is under the control of a covered entity or BAA.

Note: Wisconsin State law may have additional or different definitions.

3. Overview

Dane County is a “Hybrid Entity” as defined under section 45 CFR 164.103. “Covered Components” of the hybrid entity are those parts of the government that would meet the definition of a covered entity or business associate if it were a separate legal entity. The Covered Components of Dane County government are as follows:

Dane County Department of Human Services (“DCDHS”). There are eight (8) Divisions within DCDHS. Some Divisions are classified as a “covered component” as defined under section 45 CFR 160.103.

Dane County Department of Emergency Management. Emergency Management involves working with the community to prepare for, respond to, and recover from emergencies. The Division of Emergency Services supports district emergency medical services (“EMS”) offices throughout Dane County. Dane County Department of Emergency Management does not itself provide health care or engage in electronic transactions (as contemplated by 45 CFR 160.103), but it is often a Business Associate to each EMS offices which may be covered entities. Out of an abundance of caution, Emergency Management complies with HIPAA Privacy, Security and Breach Rules.

Dane County Department of Administration (“DOA”). The Department of Administration, including Information Technology and Consolidated Food Services, accesses and handles protected health information created by other county departments, listed above. The Department of Administration particularly processes invoices for payments of health related services. The Department, while not defined as a covered component, must follow this policy regarding protected health information it handles from covered components.

Public Health Madison / Dane County (“PHMDC”). As authorized by Wisconsin Statute §251.02(1m), Dane County and the City of Madison jointly created PHMDC as a health department. Certain Divisions of PHMDC are classified as a “covered component” as defined under section 45 CFR 160.103.

The Office of the Dane County Medical Examiner (“ME”). The ME does not provide healthcare, nor does the ME create patient health care records. Therefore, the Office of the ME is not a covered component under section 45 CFR 164.103. It does receive patient health care records that are confidential under Wis. Stat. § 146.82. Therefore, out of an abundance of caution, the Office of the ME complies with HIPAA Privacy, Security and Breach Rules.

The following Departments are not Covered Components:

The Juvenile Court Program runs the Juvenile Detention Facility and Shelter Home, which contract with an independent healthcare provider to provide health care to residents of the facility. The facility maintains health care information with the healthcare provider. The Juvenile Detention Facility does not conduct electronic transactions as contemplated by section 45 CFR 160.103, and is, therefore, not a covered component. Health records maintained by the facility, however, meet the definition of patient health care records under Wis. Stat. § 146.81(4), and are therefore confidential under Wis. Stat. § 146.82.

Dane County Sheriff's Office ("DCSO"). DCSO contracts with an independent healthcare provider to provide health care to residents of the Dane County jail and to maintain patient health care records that are confidential under Wis. Stat. § 146.82. DCSO does not directly provide healthcare or maintain health care records. While DCSO pays for healthcare, it does not conduct electronic transactions as defined in section 45 CFR 160.103 and is not subject to HIPAA regulations. .

Board of Health – Madison/Dane County ("BoH"). The Board of Health is a separate legal entity from Dane County government and is not covered by this policy.