SECTION 3: USES & DISCLOSURES OF PHI

3.10. Minimum Necessary Rule

POLICY

1. The principle of Minimum Necessary is based on sound current practice that Protected Health Information (PHI) should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a function. The Minimum Necessary Standard requires UF to evaluate its practices and enhance safeguards as needed to limit unnecessary or inappropriate access to and disclosure of PHI. The HIPAA Privacy Rule's requirements for Minimum Necessary are designed to be sufficiently flexible to accommodate the various circumstances of UF.

2. Setting Limitations: University of Florida (UF) healthcare providers and staff must take reasonable steps to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose.
   a. All staff members are responsible for knowing and following their departments’ minimum necessary procedures.
   b. The entire health record should not be used, disclosed or requested unless it is specifically required for the intended purpose and/or for treatment of the patient.

3. Limiting Uses: UF departments, clinics, and other units should identify, by role, persons or entities that need access to PHI to carry out their assigned job duties;
   a. Categories of PHI to which access is needed must be identified and any conditions appropriate to such access clearly defined.
   b. All access to PHI must be documented and all staff must be educated about their department’s minimum necessary procedures.

4. Limiting Disclosures and Requests: Departments should develop and maintain a list of categories of persons and organizations to which PHI is routinely disclosed and/or from which information is routinely requested, the purpose of the disclosures and requests, and the minimum information needed for each purpose.
   a. Routine Disclosures and Requests should only be for treatment, payment, and health care operations. Personnel may rely on a health care provider’s request for information for treatment to be the minimum necessary for the purpose.
   b. Non-Routine Disclosures should be authorized only after review of the request, verification of the requestor’s identity and authority to receive PHI, and a review of the minimum necessary criteria. Designated personnel in each department should be able to use the “Minimum Necessary Decision Tree” (see Exhibits) to identify persons or entities, who do not routinely request information, as either meeting or not meeting the specifications for the minimum necessary rule.
   c. Non-Routine Requests should be analyzed carefully to determine the minimum necessary information needed to fulfill the purpose. Any PHI requested from another person or organization that is not specifically for treatment should only be made with the patient’s authorization.
DEFINITIONS

1. **Routine Disclosure:** The disclosure of records outside of UF, without the authorization of the individual, for a purpose that is compatible with the purpose for which the information was collected. The following list identifies several examples of uses and disclosures that UF has determined to be compatible with the purposes for which information is collected:
   a. Treatment
   b. Agency for Health Care Administration (AHCA) Reporting
   c. Claims Processing
   d. Mandatory Reporting

2. **Non-Routine Disclosure:** A request or Disclosure that has not been identified and documented as routine or recurring. UF will review each non-routine or non-recurring request or disclosure on an individual basis to ensure that the use or disclosure is appropriate and to ensure adherence to the Minimum Necessary Standard.

3. **Minimum Necessary:** The minimum amount of protected health information (PHI) that is reasonably needed to achieve the purpose of a requested use, disclosure, or request for PHI. The Minimum Necessary Standard requires UF to make reasonable efforts to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose.

4. **Need-to-Know:** Requirement for information that is essential to the provision of patient care and/or the conduct of health care operations as defined by an individual’s employment or professional responsibilities. Whether an individual has a need to know protected health information is determined by whether UF believes that the individual needs the information to care for a patient or to perform his/her assigned duties. Individuals with a need to know protected health information must also comply with the Minimum Necessary Standard.

REQUIREMENTS

1. Minimum Necessary applies: When using or disclosing PHI or when requesting PHI from another covered entity (CE) or business associate, a CE or business associate must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

2. Minimum Necessary Standard does not apply to the following uses, disclosures, or requests:
   a. By or to a health care provider for treatment
   b. By or to the Department of Health and Human Services (HHS) for Privacy Rule enforcement purposes
   c. By or to the individual who is the subject of the information
   d. For HIPAA-mandated transactions
   e. In response to a valid authorization by the patient/representative
   f. When and as required by law

3. Minimum Necessary disclosures of and requests for PHI:
   a. For any type of disclosure or request made on a routine and recurring basis, a CE must implement policies and procedures that limit the PHI disclosed or requested from other CE’s to the amount reasonably necessary to achieve the intended purpose.
b. For all other (non-routine) disclosures and requests, a CE must develop criteria to limit the PHI, disclosed and requested, to what is reasonably necessary, and review disclosures and requests on an individual basis in accordance with such criteria.

4. A CE may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:
   a. Making disclosures to public officials as permitted to a public official if the public official represents that the information requested is the minimum necessary for the stated purpose(s);
   b. The information is requested by another CE;
   c. The information is requested by a professional who is a member of its workforce or is a business associate of the CE for the purpose of providing professional services to the CE, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or
   d. Documentation or representations that comply with applicable requirements have been provided by a person requesting the information for research purposes.

5. For all uses, disclosures, or requests, a CE may not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount reasonably necessary to accomplish the purpose of the use, disclosure, or request.

6. Access Controls:
   a. UF Identity and Access Management or applicable access management staff shall identify the persons or class of persons (users or user groups) who need access to PHI to carry out their job duties, the categories or types of PHI needed, and conditions appropriate for such access.
   b. UF workforce shall take reasonable efforts to limit an individual’s access to Confidential and Protected Information to the minimum necessary to perform their duties.
   c. Workforce are not granted access to any UF Information System for purposes of reviewing their own medical records, or the medical records of friends and family. Employees are granted such access with the express limitation that they only access the records contained within the system if there is a professional “need to know” the information to care for a patient or perform his or her assigned duties. If there is a professional need to know an employee may access information to care for a friend or family member as long as their actions remain within the employee’s assigned job duties. Employees who are also patients must follow the same process as any other patient for accessing, reviewing, or obtaining copies of their medical record.
   d. UF management and supervisors will identify for all access requests and access changes to UF information systems containing, accessing, or retaining PHI:
      i. Those individuals (or classes of individuals) who need access to PHI to perform their duties; and
      ii. Categories of PHI needed by each of these individuals (or classes of individuals) to perform those duties and when it’s appropriate for individuals to have access to those categories.

PROCEDURES

1. For All Information Requests
   a. UF workforce shall determine if the request for PHI is "routine" (i.e., carried out on a regular or recurring basis) or "non-routine" (i.e., a special or unique request). Once this decision has been made, UF workforce shall follow the appropriate procedures described below.
i. When requesting PHI about an individual from another entity, UF must limit requests to those that are reasonably necessary to accomplish the purpose for which the request is made.

ii. UF will not request an individual’s entire medical record unless UF can specifically justify why the entire medical record is needed.

2. Routine Requests and Disclosures of PHI
   a. When making Routine Requests for PHI, limit the request to the minimum amount of information necessary to accomplish the intended purpose (see Exhibit: Examples of Routine and Non-Routine Disclosures and Requests).
   b. When making Routine Disclosures of PHI, UF’s workforce will:
      i. Determine who is requesting the PHI and the purpose for the request; if the request is not compatible with the purpose for which it was collected, refer to and apply the "non-routine use" procedures;
      ii. Confirm that the applicable UF policies permit the requested use (disclosure is consistent with the purposes) and that the nature or type of the use recurs (occurs on a periodic basis);
      iii. Identify the kind and amount of information that is necessary to respond to the request; and
      iv. If the disclosure is one that must be included in the UF accounting of disclosures, enter the disclosure using the UF On-line Disclosure Tracking System (DTS).

3. Non-Routine Requests and Disclosures of Information
   a. When UF is Making Non-Routine Requests for PHI: UF will review each Non-Routine Request for disclosure of PHI on an individual basis to ensure that the use or disclosure is appropriate and to ensure the Minimum Necessary Standard is met.
      i. UF workforce shall identify the purpose for which the request will be made as specifically as possible. For example, if individuals suspect that some PHI maintained by UF is incorrect and there is a need to validate PHI with someone whom you believe has more up-to-date information.
      ii. UF workforce shall identify the items of PHI required as specifically as possible (e.g., the results of a particular test performed on a particular day).

4. UF Workforce shall:
   a. Determine who is requesting the information and the purpose for the request. If the request is compatible with the purpose for which it was collected, apply the "routine and recurring use" procedures in the previous section;
   b. Determine what information is within the scope of the request and which UF policies apply to the requested use;
   c. UF’ workforce will not disclose an individual's entire medical record unless the request specifically justifies why the entire medical record is needed, and applicable laws and policies permit the disclosure of all the information in the medical record to the requestor.
   d. If the information requested can be disclosed pursuant to state and federal laws and UF policies, limit the amount of information to the minimum amount necessary to respond to the request; and
   e. Document the disclosure of PHI using UF’s On-Line Disclosure Tracking System (DTS) when necessary. See 4.7 Accounting for Disclosures for more information.
5. NOTE: If there is any doubt about whether a disclosure of PHI is routine or non-routine, UF workforce shall contact the Privacy Office for assistance prior to disclosing the PHI. Also see Exhibit: Examples of Routine and Non-Routine Disclosures and Requests.

REFERENCES
1. HIPAA: 45 CFR §164.502(b) General Rules: Minimum Necessary; §164.514(d) Other Requirements: Minimum Necessary

EXHIBITS
1. Minimum-Necessary Decision Tree
2. Examples of Routine and Non-Routine Disclosures and Requests

Minimum-Necessary Decision Tree

<table>
<thead>
<tr>
<th>Ask</th>
<th>If the answer is “NO”</th>
<th>If the answer is “YES”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the intended use, request, or disclosure being made for or by, a healthcare provider for treatment purposes?</td>
<td>Go to the next question</td>
<td>The Minimum Necessary Rule does NOT apply.</td>
</tr>
<tr>
<td>Is the use or disclosure being made to the individual who is the subject of the PHI?</td>
<td>Go to the next question</td>
<td></td>
</tr>
<tr>
<td>Is the use and disclosure being made in response to a valid authorization?</td>
<td>Go to the next question</td>
<td></td>
</tr>
<tr>
<td>Has HHS requested disclosure for HIPAA compliance and enforcement?</td>
<td>Go to the next question</td>
<td></td>
</tr>
<tr>
<td>Is the use or disclosure required by law (reporting abuse, neglect or domestic violence, responding to a subpoena or court order, or in response to a law enforcement officer investigating a crime)?</td>
<td>Then the information to be used, disclosed, or requested must abide by the minimum necessary rule. Verify identity and authority, if appropriate.</td>
<td>Then certain other restrictions apply under HIPAA, but not the Minimum Necessary Rule.</td>
</tr>
</tbody>
</table>

Examples of Routine and Non-Routine Disclosures and Requests

<table>
<thead>
<tr>
<th>Category</th>
<th>Routine Disclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment Purposes</td>
<td>Disclosures associated with routine referrals to local Pharmacies, Rehab Facilities, etc.</td>
</tr>
<tr>
<td>Payment Purposes</td>
<td>Disclosures for Billing/Reimbursement Purposes</td>
</tr>
<tr>
<td>Required by Law</td>
<td>Disclosures for Public Health Activities</td>
</tr>
<tr>
<td></td>
<td>Disclosures Relating to Victims of Crime or Abuse</td>
</tr>
<tr>
<td>Category</td>
<td>Routine Disclosures</td>
</tr>
<tr>
<td>--------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Treatment Purposes</td>
<td>Emergency Disclosures of Health Information Needed</td>
</tr>
<tr>
<td>Payment Purposes</td>
<td></td>
</tr>
</tbody>
</table>