SECTION 3: USES & DISCLOSURES OF PHI

3.2. Specific Types of Health Information

POLICY

1. **Protected by Law:** Health information that is subject to specific privacy rules (i.e., mental health, substance abuse, genetic information, HIV/AIDS, sexually transmissible diseases), which are mandated by state or federal laws that are more stringent than HIPAA, will only be used and disclosed in accordance with those more stringent laws.

2. **Limited Disclosures:** In general, “extra-sensitive” health information shall not be released or made public by anyone, except under the following circumstances:
   a. With the consent of the person(s) to which the information applies;
   b. For statistical and research purposes, as long as the information is summarized so that no person can be identified and no names are revealed;
   c. To healthcare personnel, appropriate state agencies, public health agencies, or courts of appropriate jurisdiction, to enforce any applicable laws;
   d. In a medical emergency, but only to the extent necessary to protect the health or life of a named party, or an injured officer, firefighter, paramedic, or emergency medical technician; or
   e. To the proper authorities as required by other applicable laws.

DEFINITIONS

1. **Genetic Information:**
   With respect to an individual, information about:
   a. The individual’s genetic tests;
   b. The genetic tests of family members of the individual;
   c. The manifestation of a disease or disorder in family members of such individual; or
   d. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

   Concerning an individual or family member of an individual, the genetic information of:
   a. A fetus carried by the individual or family member who is a pregnant woman; and
   b. Any embryo legally held by an individual or family member utilizing an assisted reproductive technology.
   c. Genetic information excludes information about the sex or age of any individual.

2. **Genetic Services:** A genetic test; genetic counseling (including obtaining, interpreting, or assessing genetic information); or genetic education.

3. **Genetic Test:** an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition.
4. **Psychotherapy Notes:** Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. “Psychotherapy notes” excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

5. **“Extra-sensitive” Information:** Information pertaining to Substance Abuse, Mental Health Conditions, HIV Testing, Sexually Transmissible Diseases, and Genetic Information, as defined and protected by specific federal and/or state laws.

**REQUIREMENTS**

1. **Sexually Transmissible Diseases:** (F.S. 384.29)
   a. All information and records held by the [Department of Health] or its authorized representatives relating to known or suspected cases of sexually transmissible diseases are strictly confidential and exempt from the provisions of F.S. 119.07(1).
   b. Such information shall not be released or made public by the department [DOH] or its authorized representatives, or by a court or parties to a lawsuit upon revelation by subpoena, except under the circumstances enumerated in the statute.
   c. When disclosure is made pursuant to a subpoena, the court shall seal such information from further disclosure, except as deemed necessary by the court to reach a decision, unless otherwise agreed to by all parties.

2. **Human Immunodeficiency Virus Testing:** (F.S. 381.004) The identity of a person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1).

3. **Genetic Testing:** (F.S. 760.40) DNA analysis may be performed only with the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Exceptions apply.

4. **Mental Health:** (F.S. 394.4615) A clinical [mental health] record is confidential and exempt from the provisions of s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient’s guardian or guardian advocate or, if the patient is deceased, by the patient’s personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.

5. **Psychotherapy notes (HIPAA):** A covered entity (CE) must obtain an authorization for any use or disclosure of psychotherapy notes, except:
   a. To carry out the following treatment, payment, or health care operations:
      i. Use by the originator of the psychotherapy notes for treatment;
      ii. Use or disclosure by the CE for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
      iii. Use or disclosure by the CE to defend itself in a legal action or other proceeding brought by the individual; and
b. A use or disclosure that is:

   i. Required by the Secretary (of HHS) to investigate or determine the CE’s compliance with HIPAA,
   ii. Required by law,
   iii. Permitted by health oversight activities, with respect to the oversight of the originator of the psychotherapy notes,
   iv. Permitted for coroners and medical examiners to perform their duties, or
   v. In situations where the CE, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to health or safety

6. Substance Use Disorder: (F.S. 397.501) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

PROCEDURES

1. Responding to requests for Extra-Sensitive Health Information:
   a. By Authorization from the Patient or Legal Representative:
      i. Verify that the authorization includes necessary specific permissions for the super-confidential health information to complete the request. For example, if the record contains mental health information, the authorization must specifically include release of mental health records.
      ii. If the authorization is incomplete or non-specific for the extra sensitive health information, contact the patient or the patient’s legal representative and verify that he/she is aware of the contents of the record and whether the patient/representative’s specific permission will be granted to release the requested information.
         • With the patient’s permission, notify the requesting entity that the authorization does not meet requirements and request a more specific authorization; or
         • Provide a copy of UF’s Authorization form directly to the patient.
      iii. When a valid authorization is obtained, process the health records according to the established procedure, and stamp the pages as appropriate (see below).
   b. By Subpoena:
      i. Health Information concerning sexually transmissible, excluding HIV/AIDS information, may be released in response to a subpoena alone. Follow the procedures for responding to subpoenas.
      ii. Health information concerning substance abuse treatment, mental health, and HIV/AIDS testing may NOT be released in response to a subpoena alone. The patient or the patient’s legal representative must also provide a signed authorization, specifically allowing the release of the requested information.
         • Contact the patient or legal representative directly and request an authorization for the release of the information.

It is important to contact the patient/representative directly to avoid disclosing the patient’s extra sensitive health information to the patient’s attorney or to the opposing attorney, in case this information has not already been disclosed.
- Process the records according to the established procedure, and stamp the pages with the appropriate non-disclosure statement (see below).

c. By Court Order: Refer all court orders for the release of health information to the UF AHC General Counsel’s Office.

2. Required Non-Redisclosure Statements: Stamp the appropriate statement (following) on each copied page, as required by federal and state laws.

   a. Substance Use Disorder Records from federally assisted drug/alcohol rehabilitation programs, Federal Law 42 CFR, Part 2.32: “This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR, part 2). The Federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosures or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see §2.31). The Federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at 2.12(c)(5) and 2.65.”

   b. HIV/AIDS Testing and Results (F.S. 381.004(2) (f)): “This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for this release of medical or other information is NOT sufficient for this purpose.”

3. Non-Redisclosure Statement for Mental Health Records: This requirement is no longer included in the Florida Statutes, but has been retained by UF as a suggested standard of practice. Stamp copies with: “Confidential and Privileged Information for Professional Use Only”

REFERENCES

1. HIPAA: 45 CFR §160.103 Definitions; §164.508(b)(1) Authorizations

2. Title 42: Public Health – Part 2, Subpart A - § 2.1 and § 2.2: Confidentiality of Substance Use Disorder Patient Records


EXHIBITS

None