



County of El Dorado

Health Insurance Portability and  
Accountability Act (HIPAA)

Privacy and Security Policies  
and Procedures

**I: HIPAA Privacy Rule**

Issue Date: August 8, 2017

Effective Date: August 8, 2017

## **Introduction**

Effective August 8, 2017, the County of El Dorado HIPAA Privacy Rule Policies and Procedures are revised in accordance with *Policy 2.3.1(a)* and *(b)*. Changes in business practices of the County's HIPAA covered components as well as changes in mandated federal law required this revision.

The HIPAA Privacy Rule Policies and Procedures can be accessed electronically at [https://www.edcgov.us/government/bos/Policies/pages/Policy\\_Manual.aspx](https://www.edcgov.us/government/bos/Policies/pages/Policy_Manual.aspx)

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## Definitions

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Terms	Definitions
Access	means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource
Administrative Safeguards	are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's or business associate's workforce in relation to the protection of that information.
Amendment	Information added to a record in order to correct an omission or error.
Authorization	Special permission to use protected health information for other than treatment, payment or health operations. It must include certain elements as required by HIPAA.
Availability	means the property that data or information is accessible and useable upon demand by an authorized person.
Breach	Impermissible and accidental access, acquisition, use, or disclosure of unsecured ePHI that poses a significant risk of financial, reputational, or other harm to the individual who is the subject of the information. Excludes internal incidents, de-identified information, and information that has been made impossible for the unintended individual to maintain or interpret it.
Breach notification	Process of informing affected individuals, the Secretary of HHS (Health and Human Services), and the media (if applicable) of unauthorized use or disclosure of unsecured PHI.
Business Associate agreement	Document initiated by covered entities to ensure that business associates maintain required safeguards to protect health information as required by HIPAA.
Business associates	Entity or individual that is not a part of the workforce and is not a covered entity, but creates, receives, maintains, or transmits PHI on behalf of a covered entity. Examples: billing company, EHR and PMS vendors, ePrescribing gateways, health care clearing houses, IT support.
Confidentiality	Property of not allowing unauthorized persons to have access to information.

<b>Terms</b>	<b>Definitions</b>
Covered entity	Health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form.
Designated record set	A group of records maintained by or for a covered entity, including medical and billing records, used by the covered entity to make decisions about the individual who is the subject of the records.
Facility	means the physical premises and the interior and exterior of a building(s).
Health care operations	Business operations of covered entities, including QA/QI, competency assessments, business planning and management, training new healthcare workers, auditing, and evaluating managed care contracts.
Health information organization (HIO)	Health Information Organization. A group of organizations that share health-related information according to established protocols to maintain privacy and security. They are not usually covered entities, but may perform some functions as business associates.
Identifiers	Data or other types of information used to establish or verify who an individual is.
Information system	means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
Integrity	The property of information or data that means it has not been altered or destroyed.
Limited data set	Information with all direct identifiers (name, address, phone number, Social Security number, etc.) removed and allowed by HIPAA to be used in research, public health activities, and health operations. May have some “indirect” identifiers, such as date of birth, service dates, and zip code. The partially de-identified information may be disclosed only if there is a “data use agreement” in place, much like a Business Associate Agreement.
minimum necessary	Least amount of information to the fewest people required to deliver healthcare and receive reimbursement for the care.
Notice of Privacy Practice (NPP)	the document used to explain to your patients how you may use their protected health information and what their rights concerning their PHI are
Password	means confidential authentication information composed of a string of characters.

Terms	Definitions
Physical safeguards	are physical measures, policies, and procedures to protect a covered entity's or business associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
Privacy	Confidentiality; right of patients to expect information to be protected from unauthorized access, use, or disclosure.
Privacy officer	Individual within the practice assigned the responsibility of ensuring compliance with the Privacy Rule. May be the same person as the Security Officer.
Protected Health Information (PHI)	individually identifiable health information maintained or transmitted by a covered entity in any form or medium. Personnel or employment records are excluded.
Psychotherapy notes	Notes recorded in any media by a mental health professional concerning conversations during counseling session and separated from other medical records. Excludes prescriptions, times, type and frequency of treatments, results of clinical tests, diagnosis, functional status, treatment plan, symptoms, prognosis, and progress.
Qualified protective order	An order of the court or administrative tribunal or stipulation in litigation or administrative proceedings that prohibits parties from using or disclosing PHI for any purpose other than the litigation or proceeding for which the PHI was requested and requires the destruction or return of the PHI to the practice where it originated, including any copies made, at the end of the proceeding or litigation.
Security	Administrative, physical, and technical safeguards to protect information.
Security incident	means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
Security measures	encompass all of the administrative, physical, and technical safeguards in an information system
Security officer	Individual within the practice assigned the responsibility of ensuring compliance with the Security Rule. May be the same person as the Privacy Officer.
Security rule	Part of HIPAA that requires entities to evaluate risks and vulnerabilities in their environments and to implement reasonable and appropriate security measures to protect against reasonably anticipated threats or hazards to the security or integrity of e-PHI.
Subpoena	A writ by a government agency, most often a court, that has

Terms	Definitions
	authority to compel testimony by a witness or production of evidence under a penalty for failure. There are two common types of subpoena:
Technical safeguards	means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.
User	means a person or entity with authorized access



# Policy 1: Client Privacy Rights

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**Issue Date: August 8, 2017**

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## 1.1 HIPAA Regulation

Notice of Privacy Practices, Requests, and Administrative Requirements


## 1.2 Policy Purpose

The intent of this policy is to outline and describe the privacy rights that individuals have with respect to the use and disclosure of protected health information held by County of El Dorado and to establish procedures to ensure compliance to those rights as stipulated in the Health Information Protection and Accountability Act (Privacy Rule).

## 1.3 Policy Description

Individuals of the County of El Dorado have the following HIPAA rights:

- To receive a notice of privacy practices that is;
- Written in plain language explaining how the County may use and/or disclose personal Protected Health Information (PHI) specific to the Privacy Rule, and the County's legal duties with respect to individual PHI.

 **NOTE:** The County of El Dorado employs healthcare providers and administers group health plans. The County's Notice of Privacy Practices addresses both providers and health plans.

The right to access to their own PHI, consistent with certain limitations:

- Individuals have the right to request access to inspect and/or obtain a copy of their PHI in a designated record set, consistent with federal law and California Public Records Law, with some exceptions as detailed in the procedures section of this policy.
- Individuals have the right to receive an accounting of disclosures that the County has made of personal PHI, subject to certain limitations as outlined in the procedures that follow, for disclosures made up to six years prior to the date of the request for an accounting.

The right to request an amendment of PHI that is held by County of El Dorado.

- Individuals have the right to request an amendment of their PHI in the designated record set, for as long as the PHI is maintained in the designated record set. Some restrictions apply as outlined in the procedure below.

The right to request and receive PHI from the County of El Dorado by alternative means or at alternative locations (confidential communications)

- County of El Dorado health care providers must permit individuals to request and must accommodate reasonable requests by individuals to receive communications by alternative means, including but not limited to;
  - postal service mail,
  - e-mail,
  - fax or telephone;
  - delivery to an alternative location.
- County of El Dorado health plans must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of PHI from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

The right to request restrictions of the use and disclosure of their PHI.

- County of El Dorado must permit an individual to request restrictions of PHI about the individual to carry out TPO, uses and disclosures for involvement in the individual's care and notification purposes;

 **NOTE:** Emergency treatment may be provided even with an agreed upon restriction.

The right to submit privacy rights related complaints.

- The County of El Dorado has a process for individuals to make complaints if they believe or suspect that PHI about them has been improperly used or disclosed, or if they have concerns about privacy policies and procedures of the County
- The County will document all complaints received and their disposition if any.

The right to be notified in the case of breach of their unsecured PHI.

- The County will notify each individual whose unsecured PHI has been or is reasonably believed by the County to have been accessed, acquired, used or disclosed as a result of a breach.

## **1.4 Procedures**

### **1.4.1. Notice of Privacy Practices to Individuals**

County of El Dorado will use a “Notice of Privacy Practices” document to inform individuals about individual rights, how the County may use and/or disclose individual PHI, and the legal duties of the County with respect to individual PHI.

County of El Dorado workforce members will:

- Provide the notice no later than the date of the first service delivery, including service delivered electronically, in a manner appropriate to the access point of service.
- In an emergency treatment situation, as soon as reasonably possible after the emergency treatment situation.

### **1.4.2. Notice of Privacy Practices for Health Plans**

County of El Dorado Health Plans must provide a “Notice of Privacy Practices” in the following manner:

- At the time of enrollment to the named insured of the health plan policy.
- Must notify all individuals then covered no less frequently than once every three (3) years of the availability and access to the Notice.

The County Privacy Officer in cooperation with County Risk Management will coordinate notification with the County Health Plans under the following conditions:

- If there is a material change, the County’s health plans must prominently post the change or its revised Notice on their websites by the effective date of the material change
- Provide a revised “Notice” or information about the material change and the means to obtain the revised “Notice” in their next annual mailing to the individuals then covered by the plan.
- In the event the health plan does not post its notice, the health plan must provide the revised “Notice” or information about the material change and how to obtain the revised “Notice” to individuals then covered by the plan within 60 days of the material revision to the Notice.

County of El Dorado workforce members that issue a “Notice” will make a good faith effort to obtain the individual’s signed acknowledgement documenting receipt of a “Notice” using the “Privacy Practices Receipt Confirmation Form”

If the confirmation signature is not obtained, documentation of the good faith effort must be made including the reason why a signature was not obtained.

The original will be placed in the individual's medical or case documentation file, and a copy given to the individual.

County of El Dorado covered health care providers that maintain a physical service delivery site must:

- Have the Notice of Privacy Practices available at the service delivery site for individuals to who request a copy;
- Post the Notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the covered health care provider will be able to read the notice;
- Whenever the Notice of Privacy Practices is revised, make the Notice available upon request, at the service delivery site; and posted in a clear and prominent location, on or after the effective date of the revision.

County of El Dorado will make the Notice available electronically through its internet website: [www.edcgov.us/Government/Risk/](http://www.edcgov.us/Government/Risk/)

Special Requirements for Electronic Notice:

- The County may provide the notice to an individual by e-mail if the individual agrees to electronic notice and the agreement has not been withdrawn.
- In the event of email failure, paper notice will be provided.
- Electronic notice will be provided automatically and contemporaneously in response to an individual's first request for service if that request is made electronically.
- The individual who is the recipient of the electronic notice retains the right to obtain a paper copy of the notice from the covered entity upon request.

County of El Dorado Office of Risk Management will maintain and update the Notices of Privacy Practices in accordance with 45 CFR 164.520.

**1.4.3. Individual PHI Access Requests**

When the County of El Dorado grants a request, in whole or in part, the County will send the requestor notification of approval of access in writing. This communication will outline the scope of access and delivery of the information as noted herein.

County of El Dorado will ensure that individuals may access their PHI that the County maintains in the designated record set, subject to the following:

- Individuals may request to inspect and obtain a copy of their PHI.
- All requests for access will be made by having the individual or designee complete a request to access records in writing.
- The County shall retain access to the records requests and the information provided, for 7 years.
- The County of El Dorado must verify the identity of the individual requesting access by viewing the requestor's valid photo identification or other acceptable types of identification.
- The County of El Dorado may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate a timely provision of access.
- If the County of El Dorado maintains the same PHI in more than one format (such as electronically and in a hard-copy file) or at more than one location, the County need only provide the requested PHI once.

The County of El Dorado must act on an individual's request for access no later than 30 days after receiving the request notifying the individual in writing of the reviewer's determination.


If the County of El Dorado is unable to act within the 30 day time period, the County may extend the time for action by up to one 30 day extension, subject to the following:

- The County of El Dorado must notify the individual in writing within the original 30 time limit of the reasons for the delay and the date by which the County will act on the request.
- The County will retain a copy of notification along with the original request.
- The County will use only one such 30-day extension to act on a request for access.

The County of El Dorado shall provide the requested PHI in a form or format requested by the individual, if readily producible in that form or format. If not readily producible, the County will provide the PHI in a readable hard-copy format or such other format as agreed to by the County and the individual.

If the County of El Dorado does not maintain, in whole or in part, the requested PHI, and knows where the PHI is maintained, County will inform the individual of where to request access.

The County of El Dorado must arrange with the individual for a convenient time and place for the individual and the County to provide access. This may include mailing a copy of the records, having the individual pick up a copy of the records, or reviewing records in a County facility.

 **NOTE:** Individual access and review of the actual health record (not a copy), requires the presence of a County representative at all times during physical access to the material.

The County of El Dorado shall document and retain the individual's request to access PHI, and the reasons for granting or denying the access, in the individual's medical or case record file.

The County of El Dorado shall document the designated record sets that are subject to access by individuals, and the County person or office responsible for receiving and processing the requests for access.

The County may provide an individual with a summary of the requested PHI in lieu of providing access or may provide an explanation of the PHI if access had been granted when:

- The individual agrees in advance; and
- The individual agrees in advance to any fees the County may impose as outlined herein this policy.

Basis to Deny an Individual's Right to Access:

The County of El Dorado may deny an individual's access to PHI without providing that individual with an opportunity for the denial to be reviewed in the following circumstances:

- Psychotherapy notes;
- Information compiled in reasonable anticipation of or for use in a civil, criminal, or administrative action or proceeding; and
- A covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of PHI for the following reasons:
  - if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or;
  - The safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
- **NOTE:** The denial of an inmate's request applies only to a request to obtain a copy of their records. This does not apply to an inmate's request to inspect PHI. The inmate may designate a personal representative and the personal representative may request a copy of the records on behalf of the inmate.

- Protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.
- Protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.
- Information was obtained from someone other than a health care provider under a promise of confidentiality, and access would likely reveal the source of the PHI.

County of El Dorado may deny an individual's access to their PHI for reason other than described above, provided that the County allows the individual to have the denial decision reviewed.

Basis for PHI Access Denial:

- A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; or
- The PHI makes reference to another person (unless the other person is a health care provider), and a licensed health care professional has determined, in the exercise of professional judgment, that the PHI requested may reasonably likely to cause substantial harm to the individual or another person; or
- The request for access is made by the individual's personal representative, and a licensed health care professional has determined, in the exercise of professional judgment, that allowing the personal representative to access the PHI may cause substantial harm to the individual or to another person.

**1.4.4. Appeal of Denial to Access PHI**

The client has the right to have the access denial decision reviewed by a licensed health care professional who is designated by the County of El Dorado to act as a reviewing official and who did not participate in the original decision to deny access. County of El Dorado must promptly refer a request for review to the designated reviewer. The reviewer must determine, within a reasonable time, whether or not to approve or deny the individual's request for access, in accordance with this policy.

Procedure:

- Promptly refer a request for review to the designated reviewer.

✚ **NOTE:** County must act on an individual's request for access of PHI no later than 30 after receiving the request.

- The reviewer must determine whether or not to approve or deny the individual's request for access in accordance with the criteria provided above.
- If County of El Dorado denies access, in whole or in part, to the requested PHI, the County must:
  - Give the individual access to any other requested individual PHI, after excluding the PHI to which access is denied;
  - Provide the individual with a timely written denial of access, containing the following information:
    - the basis for the denial, in plain language
      - a description of how the individual may file a complaint with County of El Dorado, and if the confidential information denied is PHI, with the United States Department of Health and Human Services (DHHS) Office for Civil Rights, pursuant to "Filing a Complaint" herein
      - explain the individual's review rights as specified in this Procedure, above, including an explanation of how the individual may exercise these rights;

#### **1.4.5. Right to an Accounting of Disclosures of PHI**

An individual has the right to receive an accounting of disclosures that County of El Dorado has made of their PHI in the six (6) years prior to the date on which the accounting is requested (or a lesser time period if specified by the requester), including disclosures to or by business associates of the covered entity..

All requests for an accounting of disclosures will be made by having the individual request the disclosure in writing. Requestors are required to show valid photo identification (or other acceptable identification) to make the request.

Examples of disclosures of PHI that are required to be listed in an accounting, provided that the disclosure is permitted by other confidentiality laws applicable to the individual's confidential information and the purpose for which it was collected or maintained, include:

- Abuse Report: Protected health information about an individual provided by County staff (other than protective services staff who respond to such report) pursuant to mandatory abuse reporting laws to an entity authorized by law to receive the abuse report.



- **Audit Review:** Protected health information provided by County of El Dorado staff from an individual's record in relation to an audit or review of a provider or contractor.
- **Health and Safety:** Protected health information about an individual provided by County of El Dorado staff to protect the health or safety of a person.
- **Licensee/Provider:** Protected health information provided by County of El Dorado from an individual's records in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
- **Legal Proceeding:** Protected health information about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding – include a copy of the court order with the accounting.
- **Law Enforcement Official/Court Order:** Protected health information about an individual provided to a law enforcement official pursuant to a court order – include a copy of the court order with the accounting.
- **Law Enforcement Official/Deceased:** Protected health information provided to law enforcement officials or medical examiner about a person who has died for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law.
- **Law Enforcement Official/Warrant:** Protected health information provided to law enforcement official in relation to a fleeing felon or for whom a warrant for their arrest has been issued and the law enforcement official has made proper request for the confidential information, to the extent otherwise permitted by law.
- **Media:** Protected health information provided to the media (TV, newspaper, etc.) that is not within the scope of an authorization by the individual.
- **Public Health Official:** Protected health information about an individual provided by County of El Dorado staff (other than staff employed for public health functions) to a public health official, such as the reporting of disease, injury, or the conduct of a public health study or investigation.
- **Public Record:** Protected health information about an individual that is disclosed pursuant to a Public Record request without the individual's authorization.
- **Research:** Protected health information about an individual provided by County of El Dorado staff for purposes of research conducted without authorization, using a waiver of authorization approved by an Institutional Review Board (IRB). A copy of the research protocol should be kept with the accounting, along with the other confidential information required under the HIPAA Privacy Rule, 45 CFR § 164.528(b) (4).

Disclosures that are not required to be tracked and accounted for are those that are:

- Authorized by the individual;
- Made to carry out treatment, payment, and health care operations;
- Made to the individual;
- Made to persons involved in the individual's health care;
- Made as part of a limited data set in accordance with the County policy on de-identification of PHI and use of limited data sets."
- For national security or intelligence purposes; or
- Made to correctional institutions or law enforcement officials having lawful custody of an inmate.

Documentation of the accounting must include:

- Single event
  - The date of the disclosure;
  - The name, and address if known, of the person or entity who received the PHI;
  - A brief description of the PHI disclosed; and
  - A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or, in lieu of such statement, a copy of the individual's written request for a disclosure, if any.
- Multiple events:
  - All of the information identified in Section 2. b. v. of this Section for the first such disclosures; and
  - Identify the frequency, periodicity or number of disclosures made during the accounting period; and
  - The date of the last disclosure made during the accounting period.

County of El Dorado must act on the individual's request for an accounting no later than 60 days after receiving the request, subject to the following:

- If unable to provide the accounting within 60 days after receiving the request, the County of El Dorado may extend this requirement by another 30 days.

- The County of El Dorado must provide the individual with a written statement of the reasons for the delay within the original 60-day limit, and inform the individual of the date by which the County will provide the accounting.
- County of El Dorado will use only one such 30-day extension.

The County of El Dorado will temporarily suspend an individual's right to receive an accounting of disclosures that the County has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if:

- The agency or official provides a written statement to the County of El Dorado that such an accounting would be reasonably likely to impede their activities.
- If such agency or official makes an oral request, the County will:
  - Document the oral request, including the identity of the agency or official making the request;
  - Temporarily suspend the individual's right to an accounting of disclosures pursuant to the request; and
  - Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

If an individual requests an accounting of disclosures that cannot be provided, a response will be sent to the requestor in writing.

The following are reasons the Accounting of Disclosures cannot be provided:

- The County of El Dorado has temporarily suspended an individual's right to receive an accounting of disclosures.
- The request is for dates more than six years prior to the date of the request.
- The individual who made the request is not authorized to receive an accounting of disclosures.
- The individual who made the request did not send a copy of a valid photo identification along with the written request .


#### Accounting of Disclosures Documentation

Requests and responses for disclosure, will be maintained in the individual's County program medical or case record file, and must be retained for a minimum of 7 years.

Documentation must include the titles of the County person or office responsible for receiving and processing requests for an accounting.

#### **1.4.6. Requesting Amendments to PHI**

All requests for amendments will be made by having the requestor complete a written request for an amendment of health records. The individual requesting the amendment is required to show a valid photo or other acceptable identification means or provide a copy of documentation to verify they have the authority to make the amendment request.

 **NOTE:** If the form is received by mail or fax, a copy of the requestor's identification must be included with the amendment request form.

The County of El Dorado will honor requests for alternative methods of making this request if reasonable accommodations are needed.

The County of El Dorado must act on the individual's request no later than 60 days of receiving the request.

If the County is unable to act on the request within 60 days, the County may extend this time limit by up to an additional 30 days, subject to the following:

- The County of El Dorado must notify the individual in writing within the 60 day period of the reasons for the delay and the date by which County of El Dorado will act on the receipt; and
- The County of El Dorado will use only one such 30-day extension of time for action on the request.

If the County of El Dorado grants the request, in whole or in part, The County must:

- Make the appropriate amendment to the PHI or records, and document the amendment in the individual's medical record or case record file;
- Identify the records that are affected by the amendment and append or otherwise provide a link to the location of the amendment.
- Provide timely notice of the amendment approval to the individual in writing.
- Seek the individual's identification of, and agreement to notify the relevant persons or entities, with whom the County of El Dorado has shared or needs to share the amended PHI, of the amendment; and
- Make reasonable efforts to inform, and to provide the amendment within a reasonable time to:
  - Persons named by the individual as having received PHI and who thus need the amendment; and

- Persons, including business associates of the County that the County knows has the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on the information to the individual's detriment.

Prior to any decision to amend a health or medical record, the request and any related documentation shall be reviewed by the program's licensed health care professional.

Prior to any decision to amend any other confidential information, that is not a health or medical record, a County staff person designated by the program administrator shall review the request and any related documentation.

#### Denial of an the individual's request for amendment

The County may deny a request for amendment when:

- The County of El Dorado finds the PHI to be accurate and complete;
- The PHI was not created by the County unless the individual provides a reasonable basis to believe that the originator of such confidential information is no longer available to act on the requested amendment;
- The PHI is not part of the County designated records set.

If County of El Dorado denies the requested amendment, in whole or in part, County of El Dorado must:

- Provide the individual with a timely written denial of the amendment. The denial must use plain language and contain:
  - The basis for the denial, as noted above;
  - The individual's right to submit a written statement disagreeing with the denial of all or part of the request for amendment and the basis of such disagreement. The County may reasonably limit the length of a statement of disagreement.
  - A statement that, if the individual does not submit a statement of disagreement, the individual may request that the provide the individual's request for amendment and the denial with any future disclosure of the PHI that is the subject of the amendment; and
  - A description of how the individual may file a complaint to the County of El Dorado, including the name or title, and telephone number of the County person or office designated to receive HIPAA complaints.

An individual may file a complaint or rebuttal to a denial for amendment.

The County Privacy Officer will receive for review all HIPAA complaints including rebuttals to amendment and will ensure the following:

- The County of El Dorado shall enter the written statement into the individual's County medical or case record file;
- The County of El Dorado will also enter a County written rebuttal of the individual's written statement into the individual's County case record.
- County of El Dorado will send or provide a copy of any such written rebuttal to the individual;
  - The County of El Dorado will include a copy of that statement, and of the written rebuttal by the County if any, with any future disclosures of the relevant confidential information.
  - The County may, at its election include an accurate summary of the information with any subsequent disclosure of the PHI to which the disagreement relates; and
  - Explain that if the individual does not submit a written statement of disagreement, the individual may ask that if the County makes any future disclosures of the relevant PHI, the County will also include a copy of the individual's original request for amendment and a copy of the County written denial; and
  - Provide information on how the individual may file a complaint with County of El Dorado, or with the U.S. Department of Health and Human Services (DHHS), Office for Civil Rights, subject to the Procedures, herein.

The County of El Dorado, when informed by another covered entity of an amendment to the individual's PHI, must amend the individual's PHI in the designated record set in accordance with 45 CFR 164.526 (c) (3).

The County of El Dorado shall document the County persons or offices responsible for receiving and processing requests for amendments by individuals and retain the documentation for 7 years as required.

The County of El Dorado will document the individual's request, and the reasons for granting or denying the amendment, the individual's individual statement of disagreement, and the rebuttal in the individual's medical or case record file.

#### **1.4.7. Individual's Request for Confidential Communications through Alternative Means or Location**

The County of El Dorado health care providers must permit individuals to request to receive communication of PHI from the provider by alternative means or at alternative locations.

No explanation is required from the individual, and the County health care provider may not require an explanation as a condition of accommodating the request.

The County health care provider must accommodate the request if it is reasonable.

Health Plans are subject to slightly different rules. Health Plans must permit individuals to request to receive communication of PHI from the provider by alternative means or at alternative location, if the individual clearly states that the disclosure of all or part of the PHI could endanger the individual.

The individual must specify in writing the preferred alternative means or location. All requests for alternative means or locations will be made by having the individual request the restriction of use and disclosures or alternative communication method in writing. The County of El Dorado shall verify the identity of the individual making the request. The requester must provide a valid photo identification (or other acceptable identification), to verify they have the authority to make the request. If the request is made via mail or fax, a copy of the valid identification must be attached to the request.

The County of El Dorado will retain the completed, written request in the individual's County of El Dorado medical or case record file for 7 years.

Prior to any confidential information being sent to the individual, the County of El Dorado staff must confirm if the individual has requested an alternate location or by alternate means, and if the County has granted that request, by reviewing the individual's medical or case record file.

County of El Dorado may terminate its agreement to an alternative location or method of communication if:

- The individual agrees to or requests termination of the alternative location or method of communication in writing. The County will document the request in the individual's County of El Dorado medical or case record file.
- The County of El Dorado informs the individual that the County is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The County of El Dorado may terminate its agreement to communicate at the alternate location or by the alternative means if:
  - The County of El Dorado is unable to contact the individual at the location or in the manner requested; or
  - If the individual fails to respond to payment requests if applicable.


#### **1.4.8. Requesting Restrictions of Uses and Disclosures**

Individuals may request that the County of El Dorado restrict use and/or disclosure of their PHI for:

- Carrying out treatment, payment, or health care operations;
- Disclosure of PHI to a relative or other person who is involved in the individual's care.

All requests for restrictions will be made by having the individual complete a request for the restriction of use and disclosures or alternative communication method in writing. Requestors are required to provide a valid photo identification (or other acceptable identification), to verify they have the authority to make the restriction.

County of El Dorado is not required to agree to a restriction requested by the individual.


 **EXCEPTION:** The County must agree to the individual's request to restrict disclosure of PHI to the individual's health plan when:

- The disclosure is for the purpose of carrying out payment or health care operations and not otherwise required by law; and
- The PHI pertains solely to a health care item or service for which the individual, or someone on behalf of the individual, has paid the County in full.

The County of El Dorado will not agree to restrict uses or disclosures of PHI if the restriction would adversely affect the quality of the individual's care or services.

The County of El Dorado cannot agree to a restriction that would limit or prevent the County of El Dorado from making or obtaining payment for services.

Emergency treatment should be provided even with an agreed upon restriction.

 **EXCEPTION:** For Alcohol and Drug individuals, Federal regulations (42 CFR Part 2 and 34 CFR) prohibit the County from denying individual requests for restrictions on uses and disclosures of their PHI regarding treatment or rehabilitation.

The County of El Dorado will have all denials for restriction reviewed by a supervisor who may refer to a manager for guidance.


The County of El Dorado will document the individual's request, and the reasons for granting or denying the request, in the individual's medical record or case record file. Documentation must be retained for a minimum of 7 years.

Prior to any use or disclosure of individual PHI, the County of El Dorado staff must confirm that such use or disclosure has not been granted a restriction by reviewing the individual's case file.



If the County of El Dorado agrees to an individual's request for restriction, County of El Dorado will not use or disclose confidential information that violates the restriction.

If the restriction is approved, the program area will send the requestor the County "Restriction Approval Notification".

 **EXCEPTION:** If the individual needs emergency treatment and the restricted PHI is needed to provide emergency treatment, the County of El Dorado may use or disclose such PHI to the extent needed to provide the emergency treatment. However, once the emergency situation subsides the County must ask the provider not to further use or disclose the PHI.

If the request is denied, the program will send the requestor the County "Restriction Denial Notification"

The County of El Dorado may terminate its agreement to a restriction if:

- The individual agrees to or requests termination of the restriction in writing;
- The County of El Dorado informs the individual in writing that the County is terminating its agreement to the restriction. Confidential information created or received prior to notification of termination by the covered entity shall remain subject to the restriction.
- The County of El Dorado will document the termination in the individual's County medical or case record file. Documentation shall be retained for 7 years.

#### **1.4.9. Right to File a Complaint**

A person who believes a covered entity or business associate is not complying with the administrative simplification provisions may file a complaint with the Secretary.

The Notice of Privacy Practices must provide the name of the County employee or office that can provide individuals with information relating to the filing of a complaint with the Federal Department of Health and Human Services Office for Civil Rights. The addresses at which the complaint may be filed include:

#### **County of El Dorado:**

The County of El Dorado Privacy/Compliance Officer  
Risk Management  
330 Fair Lane  
Placerville, CA 95667  
(530) 621-5565  
FAX: (530) 642-9815

## U. S. Department of Health and Human Services:

Region IX, Office for Civil Rights  
U.S. Department of Health and Human Services  
50 United Nations Plaza, Room 322  
San Francisco, CA 94102  
Voice Phone: (415) 437-8310  
FAX: (415) 437-8329  
TDD: (415) 437-8311

### Complaint process:

- A complaint must be filed in writing, either on paper or electronically. The County of El Dorado “Privacy Complaint Form” may be used to submit a complaint. County staff will assist those not able to write the complaint by completing the Complaint Form over the phone or in person.

- Complaints can be made anonymously.

 **NOTE:** No responses are provided to anonymous complaints.

- A complaint must name the person that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable administrative simplification provision(s).
- A complaint must be filed within 180 days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived by the Secretary for good cause shown.
- The Secretary may prescribe additional procedures for the filing of complaints, as well as the place and manner of filing, by notice in the *Federal Register*.
- The County of El Dorado will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint.
- The County of El Dorado may not require individuals to waive their rights to file a complaint as a condition of providing of treatment, payment, and enrollment in a health plan, or eligibility for benefits.
- The County of El Dorado will designate staff to review and determine action on complaints filed with County of El Dorado. These designated staff will also perform these functions when the County is contacted about complaints filed with the U.S. Department of Health and Human Services, Office for Civil Rights.
- The County of El Dorado will send a response to the complaint using the County “Complaint Response Form” within 30 days of the receipt of the complaint.

- **NOTE:** Complaints may require expedited responses and in some instance require additional time. If additional time is required, the County Department or program will contact the County Privacy Officer.
- The County of El Dorado will document, in the individual's the County of El Dorado medical or case record file:
  - All complaints, the findings from reviewing each complaint, and the County actions resulting from the complaint.
  - This documentation shall include a description of corrective actions that County of El Dorado has taken, if any are necessary, or why corrective actions are not needed, for each specific complaint.
  - This documentation will not include any personnel information regarding County employees.
  - A copy of the documentation is sent to the County Privacy Officer.

When responding to a complaint, County of El Dorado will not include PHI to persons who are not the individual or legal representative.

The County of El Dorado will take reasonable efforts to limit the amount of PHI included in the response to the individual or legal representative.

Complaint documentation must be retained for a minimum of 7 years.

#### **1.4.10. The right to be notified in the case of breach of their unsecured PHI**

The County of El Dorado shall notify each individual whose unsecured PHI has been or is reasonably believed by the County to have been accessed, acquired, used or disclosed as a result of a breach.

The County of El Dorado Privacy Rule Policies and Procedures "Administrative Safeguards", contains additional security incident reporting requirements.

A breach shall be treated as discovered by the County of El Dorado as of the first day on which such breach is known, or by exercising reasonable diligence, would have been known to any other person other than the person committing the breach, who is a workforce member or agency of the County of El Dorado.

All security incidents, threats to, or violations of, the confidentiality, integrity or availability of PHI shall be reported immediately.

Incidents that must be reported include, but are not limited to:

- Suspected or actual unauthorized viewing of PHI or EPHI—including fax or email sent to incorrect recipient
- Unencrypted email that contains PHI
- Loss of any paper, laptop, PDA, smartphone, CD, or USB drive containing PHI due to disaster, failure, error, misdirection or theft
- Any unauthorized alteration or corruption of PHI or ePHI
- Virus, worm, or other malicious code attacks or persistent network or system intrusion attempts from a particular entity
- Unauthorized access to PHI, ePHI, or an ePHI based system or network.
- Unauthorized verbal disclosure
- Facility incidents including but not limited to:
  - Unauthorized person found in a HIPAA covered component's facility
  - Facility break-in
  - Lost or stolen key, C-Cure badge or cardkey

**1.4.11. Breach Reporting Procedure:**

- Workforce members shall notify their manager or supervisor of any suspected or confirmed security incident. The manager or supervisor shall report the incident to the County of El Dorado Privacy and Security Officer in a manner prescribed by the County and/or affiliate operations.
- The manager or supervisor should identify the incident as a HIPAA incident and give notice to the County Privacy Officer via phone or email.
- If a facility incident occurs, the manager or supervisor shall immediately report the incident to their respective facility manager and to both the County Privacy and Security Officer if the incident may affect security of PHI. Examples include:
  - Facility break-in
  - Building intrusion
  - Lost or stolen keycard

- The manager or supervisor shall notify the department's Compliance Officer, in addition to notifying the County Security Officer.
- Additional reporting to the State Department of Health Care Services (DHCS) may be required for County of El Dorado programs with DHCS contractual obligations.
- The County Privacy Office in cooperation with the County Security Officer and designated County Department/Agency appointed staff will log all reported incidents.
- County Privacy Officer will coordinate review of the incident with the reporting County HIPAA covered component.
- A privacy breach risk analysis will be performed by the County Privacy Officer in cooperation with the associated HIPAA covered component and County Security Officer as appropriate to determine if the incident involves PHI and is reportable to the federal DHHS Secretary as per 45 CFR Subpart D.
- The County Privacy Officer will consult with the County Security Officer and County Counsel as necessary.
- The County Privacy Officer will report actual breaches to the federal DHHS Secretary in accordance with 45 CFR Subpart D and California State agencies and/or programs as required by contractual agreement, law or regulation.

Notification to the Individual.

The individual whose protected information was breached will be notified by County of El Dorado without unreasonable delay and in no case later than 60 calendar days after discovery of the breach.

The County Privacy Officer will provide the HIPAA covered component with a Notification Letter template and will assist with the contents of the letter.

- The notification shall be written in plain language and include:
  - A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - A description of the types of unsecured PHI that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - Any steps the affected individuals should take to protect themselves from potential harm resulting from the breach;

- A brief description of what the County of El Dorado is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
- Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- The notification will be by first-class mail at the individual's last known address.

The County of El Dorado will provide notification to the next of kin or personal representative, if the County knows the individual is deceased and the County has the address of the next of kin or personal representative.

#### Substitute notice.

In the case in which there is insufficient or out-of-date contact information that precludes written notification to the individual, a substitute form of notice reasonably calculated to reach the individual shall be provided.

Substitute notice need not be provided in the case in which there is insufficient or out-of-date contact information that precludes written notification to the next of kin or personal representative of the individual.

- In the case in which there is insufficient or out-of-date contact information for fewer than 10 individuals, then such substitute notice may be provided by an alternative form of written notice, telephone, or other means.
- In the case in which there is insufficient or out-of-date contact information for 10 or more individuals, then such substitute notice shall:
  - Be in the form of either a conspicuous posting for a period of 90 days on the home page of the County of El Dorado's web site, or may be a conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside; and
  - Include a toll-free phone number that remains active for at least 90 days where an individual can learn whether the individual's unsecured, PHI may be included in the breach.

#### Urgent Substitute Notice.

In any case deemed by County of El Dorado to require urgency because of possible imminent misuse of unsecured PHI, the County may provide information to individuals by telephone or other means, as appropriate, in addition to written notice.

### Notification to the Media.

Upon discovery of a breach of unsecured PHI involving more than 500 residents of a State or jurisdiction, the County of El Dorado shall notify prominent media outlets serving the State or jurisdiction

The County of El Dorado shall provide the notification required as described above without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, unless there is a law enforcement delay.

The notification required shall meet the requirements herein of this policy.

### Notification to the Secretary.

County of El Dorado Office of Compliance shall, following the discovery of a breach of unsecured PHI notify the federal DHHS Secretary as follows:

- *Breaches involving 500 or more individuals.* For breaches of unsecured PHI involving 500 or more individuals, County of El Dorado shall except in the event of a law enforcement delay, provide the notification as required by 7. J. above, and contemporaneously with the notice in the manner specified on the federal HHS Web site.
- *Breaches involving less than 500 individuals.* For breaches of unsecured PHI involving less than 500 individuals, County of El Dorado Office of Compliance shall maintain a log or other documentation of such breaches and, not later than 60 days after the end of each calendar year, provide the notification required for breaches discovered during the preceding calendar year, in the manner specified on the federal HHS website.

### Notification by a Business Associate.

- A business associate must notify County of El Dorado of any real or suspected breach involving the County's individual's PHI.
- Business Associate will supply County of El Dorado with the identification of any individual whose PHI has been or suspected to have been breached.
- Business Associate will provide County of El Dorado with any other available information required to include in notification to the individual.

### Law Enforcement Delay.

If a law enforcement official states to County of El Dorado that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, County of El Dorado shall:

- If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or
- If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in the above paragraph is submitted during that time.

#### **1.4.12. Burden of Proof.**

In the event of a use or disclosure in violation of the HIPAA Privacy Rule, the County of El Dorado shall have the burden of demonstrating that all notifications were made as required, or that the use or disclosure did not constitute a breach.

#### **1.4.13. Fees:**

Requests for PHI

An individual (or legal guardian or custodian) may request a copy of their PHI from the County of El Dorado which may impose a reasonable, cost-based fee, limited to covering the following:

- Copying the requested PHI, including the costs of supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and of the labor of copying the information, whether it is paper or electronic;
- Postage, when the individual has requested or agreed to having the PHI mailed; and
- Preparing an explanation or summary of the requested PHI, if agreed to in advance by the individual.

Requests for Accounting Disclosures

The County of El Dorado may charge the individual a reasonable cost-based fee for each additional accounting requested by the individual within the 12-month period following the first request, provided that the County:

- Provides the first requested accounting in any 12-month period without charge.
- Informs the individual of the fee before proceeding with any such additional request; and

Allows the individual an opportunity to withdraw or modify the request in order to avoid or reduce the fee.



**FORMS:**

Notice of Privacy Practices Acknowledgement of Receipt  
Privacy Complaint Form

**REFERENCES:**

45 CFR Part 164.520  
45 CFR Part 164.522-164.530

## **Policy 2: Use and Disclosure of Protected Health Information**

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**Issue Date: August 8, 2017**

**Effective Date: August 8, 2017**

**Revised Date: n/a**

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### **2.1 HIPAA Regulation**

Disclosure of PHI

### **2.2 Policy Purpose**

This policy outlines the manner in which the County of El Dorado will ensure the proper use and disclosure of individual Protected health information (PHI), as permitted or required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (45 CFR 164.502).

### **2.3 Policy**

The County of El Dorado or its business associates may not use or disclose PHI except as permitted or required by HIPAA (45 CFR 164.502).

#### **2.3.1 Use and Disclosure of PHI with Individual's Authorization**

The County of El Dorado and its business associates will not disclose PHI without a signed authorization except as otherwise permitted or required by law. Any use or disclosure pursuant to an authorization must be consistent with the terms of the authorization.

The authorization may be client-initiated or County-initiated. A copy of the signed authorization must be provided to the individual.

#### **Individual Present:**

- If the individual is present or available prior to a use or disclosure and has the capacity to make health care decisions, the County may use or disclose PHI only if it:
  - Obtains the individual's agreement to disclose to third parties involved in the individual's care
  - Provides the individual with an opportunity to object to the disclosure and the individual does not express an objection; or
  - Reasonably infers from the circumstances, based on professional judgment, the individual does not object to the disclosure.

### Individual Not Present/Incapacitated:

- If the individual is not present or the opportunity to agree/object cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the County may, in the exercise of professional judgment, determine whether disclosure is in the best interests of the individual and disclose only PHI that is directly relevant to the person's involvement with the individual's health care.
- ❖ **Note:** Alcohol and drug treatment programs are not permitted to make this broader disclosure because the medical emergency exception in 42 CFR Part 2 limits disclosure to medical personnel only.

### Revocation of Authorization:

An individual may revoke authorization at any time if it is in writing. An authorization cannot be revoked to the extent that the covered entity has taken action in reliance on the revocation. A revocation does not apply to PHI already released while the authorization was valid and in effect.

- ❖ **Note:** Alcohol and drug treatment clients may orally revoke authorization. The oral revocation must be documented and maintained in the individual's medical record or case record file.

### Psychotherapy Notes:

- An authorization for any use or disclosure of psychotherapy notes is required.
- ❖ **Exceptions:** An authorization for use or disclosure of psychotherapy notes is not needed:
  - ❖ To carry out treatment, payment or healthcare operations in the following instances: use by originator of notes for treatment, use/disclosure for training purposes for students, trainees or practitioners of health care; use/disclosure to defend legal action/other proceeding brought by client.
  - ❖ If the use/disclosure is required by law, for oversight activities, to coroners and medical examiners, if there is a threat to health or safety and to the HHS Secretary to investigate or disclose compliance.

### Compound Authorizations:

An authorization cannot be combined with any other document to create a compound authorization, except:

- **Research Study Authorization:** An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same or another research study. This exception includes combining an authorization for the use or disclosure of PHI for a research study with another authorization for the same research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in research. Where a covered health care provider has conditioned the provision of research related treatment on the provision of one of the authorizations, as permitted, any compound authorization created under this paragraph must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt in to the research activities described in the unconditioned authorization
- An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.
- An authorization, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization, except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of one of the authorizations.

The prohibition in this paragraph on combining authorizations where one authorization conditions the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits under this section does not apply to a compound authorization created in accordance with this section.

### **2.3.2 Use and Disclosure for Notifying Family or Friends and for Involving Family or Friends in Care**

#### General Rule:

Subject to an individual's objection or the County's determination that disclosure would not be in best interests of the individual, the County may disclose PHI to a person involved with the health care of the individual (such as family member, other relative, close personal friend, or any other person identified by the individual).

Mental health records regarding a patient's diagnosis, prognosis, medication, side effects of medication and patient progress may be disclosed to family members only if there is an authorization (California Welfare & Institutions Code §5328.1.)

Protected health Information disclosed must be "directly relevant" to person's involvement with the individual under care or payment for the individual's health care. No specific definition of "directly relevant" exists in the Privacy Rule, but disclosure should be limited only to the minimum information necessary for the friend or relative to provide the assistance or care s/he was providing.

The County may also use or disclose PHI to notify or assist in the notification of (including identifying or locating) a family member, a personal representative, or another person responsible for the individual's care, of the individual's location, general condition or death.

If the individual is deceased, a covered entity may disclose PHI to a family member, other relative, or close personal friend, who was involved in the individual's care or payment for health care prior to death, that is relevant to such person's involvement, unless doing so is inconsistent with a prior expressed preference of the client that is known to the covered entity.

### **2.3.3 Permitted PHI Use and Disclosure for TPO. Written authorization not required.**

The County of El Dorado and its business associates may use or disclose PHI for treatment, payment and health care operations (TPO) under certain circumstances without the individual's authorization.

Requirements for Using and Disclosing PHI for TPO:

- A covered entity may use or disclose PHI for its own treatment activities and for the treatment activities of another health care provider.
- PHI may be used or disclosed for a covered entity's own payment activities. A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information. Disclosure of medical information for payment purposes without an authorization is consistent with state law (Civil Code §56.10(c)).
- No Limitation on Contacts: The Privacy Rule allows disclosure of PHI as necessary to obtain payment. It does not limit to whom disclosures may be made. The County may contact persons other than the client as necessary to obtain payment for health care services.
- A covered entity may use or disclose PHI for its own health care operations. It may disclose PHI to another covered entity for the health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual, the PHI pertains to such relationship and the disclosure is for quality-related activities or for the purpose of health care fraud and abuse detection or compliance.
- A health plan shall not use or disclose PHI that is genetic information for underwriting purposes.
- A covered entity that participates in an organized health care arrangement may disclose PHI about an individual to other participants in the organized health care

arrangement for any health care operations activities of the organized health care arrangement, unless an exception is noted below.

County of El Dorado shall make reasonable efforts to limit PHI used or disclosed for payment transactions or health care operations to the minimum necessary to accomplish the intended purpose. This standard applies to both requests for, and disclosures of, PHI for such purposes.

❖ **Exception:** The minimum necessary standard does not apply to treatment disclosures.

### **2.3.4 Other Permitted or Required PHI Use and Disclosure *Individual authorization not required.***

In some instances, and as permitted or required by law, the County and its business associates may use or disclose PHI without an authorization and without providing the individual with an opportunity to agree or object.

For instances when the use and disclosure of PHI is permitted but not required by the Privacy Rule, the County may choose whether to make the use or disclosure without the individual's permission.

#### Permitted vs. Required:

County employees should determine the County's obligations under state law before making any disclosures identified in this Policy

- Some disclosures that may be permitted by the Privacy Rule are correspondingly required by California law. In these cases, the County must make the disclosure discussion based on which law “requires” disclosure.
- Some disclosures are permitted by the Privacy Rule, but are not permitted under California law. In these cases, the County may not make the disclosure.

The minimum necessary standard applies to all disclosures made without an individual's permission except those that are required by law. See the Minimum Necessary Standard Policy for details

#### Documentation:

The uses and disclosures authorized without an individual's permission must be documented in the individual's case record file. Most of the disclosures must be included in the accounting of disclosures that an individual may obtain from the County. See the Individual's Privacy Rights Policy for details.

#### Informing the Individual:

In some cases, the County is required to inform the individual of these uses and disclosures. When the requirement exists, the individual may be informed orally. The fact that the information was given should always be documented in the client's case record file.

Verification Requirements:

Prior to use or disclosure of PHI, a covered entity must verify the identity and authority of the persons seeking disclosure of PHI and must obtain any documentation, statements, or representations that the specific provisions of the Privacy Rule governing the disclosure require.

**2.3.5 Under HIPAA, the following types of uses and disclosures do not require an individual's permission:**

Disclosures Required by Law:

- The County will use or disclose PHI to the extent that such use or disclosure is required by law.
- Disclosures required by law compel a use or disclosure of PHI that is enforceable in court. This includes, but is not limited to:
  - Court orders and court-ordered warrants
  - Subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information
  - A civil or an authorized investigative demand
  - Medicare conditions of participation with respect to health care providers in the program
  - Statutes and regulations that require the production of information, including statutes and regulations that require such information if payment is sought under a government program providing public benefits.
- HIPAA only requires disclosures under two circumstances:
  - Disclosure to an individual of their own PHI, when the individual requests the disclosure, or
  - When required by the Secretary of the Department of Health and Human Services (DHHS) to investigate or determine the covered entity's compliance with HIPAA.

### Special Procedures:

Specific procedures must be followed when a "required by law" disclosure pertains to any of the following:

- Disclosures about victims of abuse, neglect or domestic violence that are required by law must be made according to the procedures set forth in this Policy.
- ❖ **NOTE:** This does not apply to reports of child abuse or neglect which are considered public health activities.
- Disclosures for judicial/administrative proceedings that are required by law must be made according to the procedures set forth in Section 3.f. of this Policy.
- Disclosures for law enforcement purposes that are required by law must be made according to the procedures set forth in Section 3.g. of this Policy.

### Uses and Disclosures for Public Health Activities:

- PHI may be disclosed for public health activities and purposes.
- PHI may be disclosed without an authorization to a public health authority that is allowed by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the reporting of disease, injury, vital events (such as birth or death) and the conduct of public health surveillance, public health investigations and public health interventions. A public health authority may use PHI in all cases in which it would be permitted to disclose PHI for its public health activities.

### Public Health Authority for Child Abuse Reports:

- PHI may be disclosed to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. This is consistent with federal mental health laws.

### Person Exposed to a Communicable Disease:

- PHI may be disclosed to a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation. PHI may be disclosed as needed to notify an individual that he has been exposed to a communicable disease if authorized by law.



### An Employer about a Workforce Member in Limited Circumstances:

- PHI may be disclosed to an employer about an individual who is a member of the employer's workforce in limited circumstances:
  - The covered entity is a health care provider that provides the health care service to the individual at the request of the individual's employer;
  - The health care services provided must relate to the medical surveillance of the workplace or an evaluation to determine whether the individual has a work-related illness or injury;
  - The employer must have a duty under OSHA or the requirements of a similar state law, to keep records on or act on such information; and
  - The covered health care provider provides written notice to the individual that PHI relating to medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer. The notice may be given either to the individual at the time the health care is provided or if the health care is provided at the employer's worksite, by posting the notice in a prominent place at the location where the health care is provided.

### Immunization Records:

- A covered entity may use or disclose PHI to a school, about a client who is a student or prospective student of the school, if:
  - The PHI that is disclosed is limited to proof of immunization
  - The school is required by the State or other law to have such proof of immunization prior to admitting the student

### Abuse, Neglect and Domestic Violence:

- PHI about an individual believed to be a victim of adult or dependent adult abuse or neglect, or domestic violence, may be disclosed to a government authorized by law to receive those reports.
- ❖ **Note:** Federal mental health laws do not allow disclosure about individuals other than children.

### Special Conditions/Procedures:

Disclosures of PHI relating to abuse, neglect and domestic violence must comply with one of the following circumstances:

- The individual agrees to the disclosure, either orally or in writing; or
- Disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law; or
- To the extent the disclosure is expressly authorized by statute or law and the County, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or if the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI being sought is not intended to be used against the individual, and that an immediate law enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

Notice of Disclosure:

When any disclosure is made relating to adult abuse, neglect or domestic violence, the individual must be promptly informed that the disclosure has been or will be made, except if:

- Staff, in the exercise of professional judgment and in consultation with an appropriate County of El Dorado program supervisor or manager, believes that informing the individual would place the individual or another individual at risk of serious harm; or
- Staff would be informing a personal representative and County of El Dorado reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the individual, as determined by County of El Dorado, in the exercise of professional judgment and in consultation with appropriate County of El Dorado program supervisor or manager.

Health Oversight Activities:

PHI may be disclosed to a health oversight agency for oversight activities that are authorized by law.

- Oversight activities may include audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other actions necessary for appropriate oversight of the health care system, government benefit programs for which health information is necessary to determine compliance with program standards; or entities subject to civil rights laws for which health information is necessary to determine compliance.

- To the extent that the County or covered entity is also a health oversight agency, it may use PHI for its health oversight activities.

❖ **Exceptions:**

- Disclosures may not be made for purposes of an investigation or other activity in which the individual is the subject of the investigation or activity and the investigation/activity does not arise out of, and is not directly related to, either the receipt of health care, a claim for public benefits related to health or qualification for, or receipt of public benefits or services when a patient's health is integral to the claim for the benefits or services.
- If a health oversight activity/investigation is conducted jointly with an oversight activity/investigation relating to a claim for non-health public benefits, the joint activity/investigation is considered a health oversight activity and disclosure may be made.

Judicial and Administrative Proceedings:

Information that is privileged or confidential under California law should not be disclosed without either the individual's authorization or a court order.

Court Order:

- PHI may be disclosed in response to an order of a court or administrative tribunal. The PHI must be limited to only that PHI expressly authorized by the order.

Subpoenas, etc.:

- PHI may be disclosed in response to a subpoena, discovery request, or other lawful process, without a court order, if one of the following circumstances applies:
  - The County receives satisfactory assurances from the party seeking the PHI that reasonable efforts have been made to ensure that the individual who is the subject of the PHI has been given notice of the request for PHI; or
  - The County receives satisfactory assurance from the party seeking the PHI that reasonable efforts have been made to secure a qualified protective order.

Law Enforcement Purposes:

- Privacy Rule provisions are permissive, not mandatory. Information that is privileged or confidential under California law should not be disclosed without either the individual's authorization or a court order.

- The County may disclose PHI to a law enforcement official in the following, limited circumstances:
  - When required by law, except laws pertaining to the reporting of child abuse or neglect or other victims of abuse, neglect or domestic violence.
  - In compliance with a grand jury subpoena, court order or court warrant or an administrative subpoena or demand if the information sought is relevant and material to a legitimate law enforcement inquiry; the request is specific and limited in scope; and de-identified information could not reasonably be used.
  - If necessary to identify or locate a suspect, fugitive, material witness, or missing person only if the information provided is limited to the following:
    - Name and address
    - Date and place of birth
    - Social security number
    - Blood type and Rh factor
    - Type of injury
    - Date and time of treatment
    - Date and time of death, if applicable
    - Description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos
  - When the use/disclosure is necessary for law enforcement authorities to identify or apprehend an individual who has made a statement admitting participation in a violent crime that the County reasonably believes may have caused serious physical harm and the use/disclosure is consistent with applicable law and standards of ethical conduct.
- ❖ **Exception:** The use/disclosure may not be made if the County learns the information during treatment, counseling or therapy to affect the propensity to commit the criminal conduct or through a request by the individual to start such treatment, counseling or therapy.
  - **Limitation:** The only information that may be disclosed is the statement the individual made and any of the following identifying/locating information: name and address, date and place of birth, social security number, ABO blood type and Rh factor, type of injury, date and time of treatment, date and time of death if applicable, and a description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos
  - When the use/disclosure is necessary for law enforcement authorities to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody, and the use/disclosure is consistent with applicable law and standards.

- When an individual is or is suspected to be a victim of a crime if a law enforcement official requests the information and either:
    - The individual agrees to the disclosure, either orally or in writing; or
    - If the County of El Dorado is unable to obtain the individual's agreement due to incapacity or emergency circumstance, it may disclose PHI if:
      - The law enforcement official represents that such PHI is needed to determine whether a violation of law by someone other than the victim has occurred and such confidential information is not intended for use against the victim;
      - The law enforcement official represents that immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
      - County of El Dorado determines that the disclosure is in the best interests of the individual.
- ❖ **Note:** This does not apply to disclosures related to reports of child abuse and neglect or reports of other victims of abuse, neglect or domestic violence.
- About a decedent for purposes of alerting law enforcement of the death if it is suspected that the death may have resulted from criminal conduct.
  - If the County believes in good faith that the PHI is evidence of criminal conduct that occurred on the County's premises.
  - Reporting a crime, while emergency health care, other than relating to an emergency on the County's premises, if disclosure is necessary to alert law enforcement to the commission of a crime, the location of the crime, the victim of the crime and the identity, description and location of the perpetrator.
  - PHI related to the individual's DNA or DNA analysis, dental records, or typing samples or analysis of body fluids or tissue may not be disclosed.
  - The disclosure of PHI may be made only in response to a law enforcement official's request. It may not be disclosed unless a law enforcement official has asked for it.
  - Such disclosure is prohibited by federal alcohol and drug laws unless made in a way that does not reveal that the individual has a drug/alcohol problem or is in treatment or unless it is made pursuant to an authorization or court order.

Coroners and Medical Examiners:

- The County may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. The County may use PHI for those purposes, in accordance with any limitations by state law.

#### Funeral Directors:

- The County may disclose PHI to funeral directors as necessary to carry out their duties with respect to the decedent. PHI may be disclosed prior to an individual's death if necessary for funeral directors to carry out their duties and the individual's death is reasonably anticipated.

#### Serious Threats to Health or Safety:

##### General Rule:

PHI may be disclosed if all of the following conditions are satisfied:

- The County in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public;
- The disclosure is made to a person or persons reasonably able to prevent or lessen the threat; and
- The disclosure is consistent with applicable law and standards of ethical conduct.

#### Correctional institutions and other law enforcement custodial situations:

- PHI may be disclosed about an inmate or other person in lawful custody to a correctional institution or a law enforcement official with lawful custody of the individual, if the official represents that the PHI is necessary for:
    - The provision of health care to the individual
    - The health and safety of the individual, other inmates
    - The health and safety of officers, employees or others at the correctional institution or persons responsible for transporting inmates
    - Law enforcement on the premises of the correctional institution
    - The administration and maintenance of the safety, security, and good order of the correctional institution
- ❖ **Note:** An individual is no longer an inmate when released on parole, probation, supervised release or when no longer in lawful custody.

### Certain covered government programs providing public benefits:

A health plan that is a government program providing public benefits may disclose PHI relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if a statute or regulation expressly authorizes or requires either;

- The sharing of eligibility or enrollment information among agencies, or
- The maintenance of eligibility or enrollment information in a single/combined data system accessible to all the agencies.
- A covered entity that is a government agency administering a government program providing public benefits may disclose PHI relating to the program to another covered entity that is also a government agency administering a government program providing public benefits if the programs serve the same/similar populations and disclosure of PHI is necessary to coordinate the covered functions or to improve administration and management relating to those functions.

### Workers' Compensation:

PHI may be disclosed to the extent necessary to comply with workers' compensation laws or laws relating to other similar programs that are established by law and provide benefits for work-related injuries or illness without regard to fault.

- ❖ **Note:** An individual does not have the right to request that a covered entity restrict a disclosure of PHI about them for workers' compensation purposes when the disclosure is required by law or authorized by workers' compensation.

### Deceased Individual:

A covered entity may use or disclose PHI of a deceased individual when the individual has been deceased for more than 50 years.

## **2.4 Procedures**

### **2.4.1 Use and Disclosure of PHI that Require Client's Authorization:**

Except as otherwise permitted or required by law, the County of El Dorado will obtain a completed and signed authorization for release of PHI from the client, or the client's personal representative, before using or disclosing PHI to or from a third party.

A signed authorization is required in the following situations:

- Prior to an individual's enrollment in a County of El Dorado administered health plan, if necessary for determining eligibility or enrollment.

- For the use and disclosure of psychotherapy notes (for exception see this Policy).
- For disclosures to an employer for use in employment-related determinations.
- For research purposes unrelated to the individual's treatment.
- For any purpose in which state or federal law requires a signed authorization.

The County of El Dorado may obtain, use, or disclose confidential information only if the written authorization includes all the required elements of a valid authorization.

Uses and disclosures must be consistent with what the individual has authorized on a signed County of El Dorado authorization form

An authorization must be voluntary.

- County of El Dorado may not require the individual to sign an authorization as a condition of providing treatment services, payment for health care services, enrollment in a health plan, or eligibility for health plan benefits.
- ❖ **Exception:** Provisions of health care solely to create PHI for disclosure to third party (e.g., life insurance physical or fitness of duty), prior to enrollment in a health plan if authorization is for the health plan's eligibility or enrollment determinations; or if disclosure is needed to determine payment of claim.

The County of El Dorado will not ask a client to sign an incomplete Authorization form. Authorizations shall be completed only as needed and may not be partially completed and signed by the client "just in case" there is a future need.

Authorization forms are required to include the following:

- The client's name and identifiers in order to ensure the PHI obtained or disclosed is for the correct individual.
- The type of PHI to be obtained or disclosed must be clearly described and must identify the information to be used or disclosed in a meaningful fashion (e.g., discharge summary, laboratory reports, clinical assessments, entire medical record).
- An expiration date or event that relates to the client or the purpose of the use or disclosure. The County of El Dorado requires an expiration of no more than one year from the date the form is signed, and the date must be written on the form.
- The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure (e.g., Dr. John Smith, my psychiatrist; the Kaiser health plan).



- A description of each purpose of the requested use or disclosure. The information may not be obtained or disclosed for any purpose other than what is indicated on the form. If the client initiates the authorization, it is sufficient if the purpose indicates "at the request of the individual."
  - The name or other specific identification of the person or class of persons to whom the covered component will obtain or disclose the PHI.
  - A statement advising that disclosed pursuant to the authorization is subject to re-disclosure by the recipient and no longer protected by the Privacy Rule.
  - The authorization must advise the individual of his right to revoke the authorization in writing and a description of how it may be revoked.
  - The authorization must advise the individual that the County may not condition treatment, payment and/or enrollment in a health plan or eligibility for benefits on signing of authorization by client.
- ❖ **Exceptions:** Provision of health care solely to create PHI for disclosure to third party (life insurance physical, fitness for duty), prior to enrollment in health plan if authorization is for health plan's eligibility or enrollment determinations, disclosure is needed to determine payment of claim.
- A signature and date. If signed by a personal representative of the individual, the authorization must contain a description of the representative's authority to act for the individual.
    - A copy of the legal authority or other documentation of the Personal Representative must be attached, if applicable.
    - If the form is faxed or mailed to the County of El Dorado, a copy of the client's (or Personal Representative's) valid photo identification or other acceptable types of identification shall be included and attached to the Authorization form.
  - Signature and printed name of the County of El Dorado workforce member who assists the client with the form.

Invalid Authorization: An authorization is not valid if it has any of the following defects:

- The expiration date has passed or the expiration event is known to have occurred.
- The authorization is not filled out completely with respect to required elements.
- The authorization has been revoked.

- The authorization is an impermissible compound authorization.
- Material information in authorization is known to be false.

Copies and Retention of Authorization Form:

- The County of El Dorado shall provide a copy of the completed, signed form to the client.
- The original completed and signed form shall be maintained in the appropriate section of the individual's medical or case record file.
- Authorization forms shall be retained for 7 years in the client's medical record or case record file.

Revocation of Authorization:

- An individual may revoke authorization at any time if the revocation is in writing. A revocation does not apply to PHI already released while the authorization was valid and in effect.

Note: Alcohol and drug treatment clients may orally revoke authorization; however, the oral revocation must be documented and maintained in the client's case record file.

**2.4.2 Permitted PHI Use and Disclosure for TPO: *Written authorization not required***

PHI may be used or disclosed for treatment, payment of health care operations without the individual's authorization under the following circumstances.

- ❖ **Note:** Substance abuse programs may not use or disclosure any information about any patient unless the patient has consented in writing or unless another very limited exception specified in the regulations applies. Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure. (42 CFR, Part 2.)

Disclosure to the individual:

- The County of El Dorado may disclose PHI without authorization to individuals who have requested disclosure of their PHI to themselves, or to the individual's personal representative.
- The County must verify the identity of the individual or the individual's personal representative before discussing PHI in a treatment setting.

Treatment, Payment and Health Care Operations:

- The County of El Dorado may disclose PHI without authorization for its own treatment, payment or health care operations as authorized by 45 CFR 164.506.

### Organized Health Care Arrangement:

- A covered entity that participates in an organized health care arrangement may disclose PHI about an individual to other participants in the organized health care arrangement for any health care operations activities of the organized health care arrangement, unless an exception is noted herein.

### Minimum Necessary Standard:

- When using or disclosing PHI from or to another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of use, disclosure, or request.
- The minimum necessary standard does not apply to use or disclosure of PHI for treatment purposes.

### Documentation:

The County of El Dorado must document and retain any agreed upon use or disclosure or objection to use or disclosure. Documentation shall include the date, what was agreed or objected to, and who or what the restriction is.

The County of El Dorado may document agreement on the County “Client Initiated Release of Health Records” form.

The County of El Dorado may document objections or restrictions on the County “Client Request for Restriction/Alternate Communication” form.

### Individual Present:

If the individual is present or available prior to a use or disclosure and has the capacity to make health care decisions, the County may use or disclose PHI only when:

- Obtaining the individual's agreement to disclose to third parties involved in the individual's care
- Providing the individual with an opportunity to object to the disclosure and the individual does not express an objection; or
- Reasonably infers from the circumstances, based on professional judgment, the individual does not object to the disclosure.

County of El Dorado must document and retain the appropriate forms as described above.

- Documentation shall include the date, and what use or disclosure the client agreed to and
- Documentation shall be kept in the client's medical record or case record file and retained for 7 years.
- Individual Not Present/Incapacitated: If the individual is not present (e.g., a friend picks up the client's prescription at pharmacy) or the opportunity to agree/object cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the County may, in the exercise of professional judgment, determine whether disclosure is in the best interests of the client and disclose only PHI that is directly relevant to the person's involvement with the client's health care.

Note: Alcohol and drug treatment programs are not permitted to make this broader disclosure because the medical emergency exception in 42 CFR Part 2 limits disclosure to medical personnel only.

Note: All programs will follow their program Policies and Procedures if, in the exercise of professional judgment, the disclosure is in the best interests of the client.

- ❖ **Note:** Best interest considerations. County staff must use professional judgment and must take into account whether disclosure is likely to put the individual at risk of serious harm.

### **2.4.3 Permitted or Required PHI Use and Disclosure: No Individual authorization required**

#### Verification Requirements:

A covered entity must verify the identity and authority of persons seeking disclosure of PHI and must obtain any documentation, statements, or representations that the specific provisions of the Privacy Rule governing the disclosure require.

#### Identity of Public Official:

The County may rely, if such reliance is reasonable under the circumstances, on the following if the disclosure of PHI is to a public official:

- If the request is made in person, presentation of an agency identification badge or other credentials or other proof of government status.
- If the request is in writing, the request is on the appropriate government letterhead; or

- If the disclosure is to someone acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract or MOU.
- Authority of Public Officials: The County may rely, if such reliance is reasonable under the circumstances, on the following when the disclosure of PHI is to a public official:
  - A written or oral statement of the legal authority under which the information is requested;
  - A warrant, subpoena, order or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority

**Documentation:**

The uses and disclosures authorized without an individual's permission must be documented in the individual's record. Most disclosures must also be listed in the written accounting of disclosure .

**Accounting of Disclosures:**

- Some disclosures must be listed on the written accounting of disclosure.
- Minimum Necessary: The disclosures in this section are held to the Minimum Necessary Standard.

**FORMS:**

Authorization for Release of Protected Health Information

**REFERENCES:**

- 45 CFR 164.501, 164.502, 164.506 and 164.508
- County of El Dorado HIPAA Privacy Rule Policy 6: Business Associate

## Policy 3: Minimum Necessary

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Issue Date: August 8, 2017

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Revised Date: n/a

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### 3.1 HIPAA Regulation

Minimum Necessary Standard to limit the use and disclosure of PHI

### 3.2 Policy Purpose

The intention of this policy is to outline the manner in which the County of El Dorado will comply with the Minimum Necessary standard of the Health Insurance Portability and Accountability Act (HIPAA) and other privacy laws. The goal of the Minimum Necessary standard is to limit the use and disclosure of protected health information (PHI) to only that which is necessary to carry out intended business purposes.


Specific guidance on uses and disclosures of PHI is found in Privacy Policy 2, Use and Disclosure of PHI.

### 3.3 Policy

#### 3.3.1 General

The minimum necessary requirements in the Privacy Rule require a covered entity such as the designated components of County of El Dorado to develop and implement policies and procedures that:

- Limit the use and disclosure of PHI to the minimum amount of PHI needed to accomplish the purpose of the use/disclosure;
- Limit requests for PHI to the minimum amount of PHI needed to accomplish the purpose of the request; and
- Limit workforce access to PHI to those authorized users who require the PHI to perform their assigned duties.

 **NOTE:** HIPAA's minimum necessary standard is similar to 42 CFR Part 2 substance abuse and 42 CFR 2.13 (a) behavioral health services confidentiality requirements, limiting any disclosure to only the information necessary to carry out the purpose of the disclosure.

#### 3.3.2 Minimum Necessary Rule Not Applicable

Under the Privacy Rule, the minimum necessary rule ***does not*** apply to 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 that specifies more than the minimum necessary.
- Disclosures made to the Secretary of US Department of Health and Human Services for compliance enforcement and investigation purposes.
- Uses or disclosures that are required to comply with the Privacy Rule.

**NOTE:** For alcohol and drug treatment programs, the minimum necessary standard applies to all disclosures of information.

### **3.3.3 Minimum Necessary Disclosures of PHI**

County of El Dorado must implement policies and procedures regarding any PHI disclosures made on a routine and recurring basis.

Routine and Recurring Disclosures:

- The disclosure of PHI must be limited to the amount reasonably necessary to achieve the purpose of the disclosure.

All Other Disclosures:

- For all other disclosures, County of El Dorado 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 on an individual basis in accordance with the criteria.

Reasonable Reliance on Requests for Disclosure:

- For disclosures of PHI, the County may reasonably assume that the minimum necessary standard has been applied when disclosure is requested by;
  - - public officials
    - another covered entity
    - a professional who is either a member of the workforce or a business associate if the request is to provide services to the County of El Dorado and the professional represents that the information requested is the minimum necessary
- All disclosures must be documented as found in Policy “Use and Disclosure of PHI”.

### **3.3.4 Minimum Necessary Requests for PHI**

When requesting PHI, County of El Dorado 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:

- The County of El Dorado must implement policies and procedures regarding requests for disclosures of PHI that it makes on a routine and recurring basis. The request for PHI must be limited to the amount reasonably necessary to achieve the purpose of the disclosure. **Examples:** Referrals for child abuse, disclosure of PHI for legal proceedings, disclosure to law enforcement, disclosure for public health, disclosures for Workers Compensation.

All Other Requests:

- For all other requests, County of El Dorado must develop criteria designed to limit the PHI requested to that reasonably necessary to accomplish the purpose for which the request is sought and review requests on an individual basis in accordance with the criteria.

### **3.3.5 Use Disclosure or Request of Entire Medical Record**

If the minimum necessary standard applies to a particular use, disclosure or request for PHI, the entire medical record may not be used, disclosed, or requested.

- **Exception:** 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.

## **3.4 Procedures**

### **3.4.1 Disclosures of PHI on a Routine or Recurring Basis:**

For Routine and Recurring Disclosures, the County of El Dorado will:

- Determine who is requesting the confidential information 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 in the following section.
- Confirm that the applicable County of El Dorado policies and program rules permit the requested use (disclosure is consistent with the program purposes), and that the nature or type of use recurs (occurs on a periodic basis) within the program or activity;



- Identify the kind and amount of PHI that is necessary to respond to the request; and
- If the disclosure is one that must be included in the written accounting of disclosures, include required documentation in the individual's medical record or case record file.

### **3.4.2. Disclosures of an individuals' PHI on a non-routine basis:**

For non-routine disclosures, County of El Dorado will:

- Determine who is requesting the confidential 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.
- Determine which PHI of the individual is within the scope of the request, and what County of El Dorado policies and program rules apply to the requested use;
- If the confidential information requested may be disclosed under the applicable program and HIPAA policies, limit the amount of confidential information to the minimum amount necessary to respond to the request; and
- Document the disclosure in writing.

### **REFERENCE(S):**

45 CFR 164.502(b), 164.514(d)

## **Policy 4: Administrative, Technical and Physical Safeguards**

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**Issue Date: August 8, 2017**

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**Revised Date: n/a**

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### **4.1 HIPAA Regulation**

Safeguards minimizing the risk of access, use, and disclosure of PHI.

### **4.2 Policy Purpose**

The intent of this policy is to implement reasonable and appropriate safeguards to minimize the risk of unauthorized access, use or disclosure of an individual's protected health information (PHI).

### **4.3 Policy**

The County of El Dorado HIPAA-covered components, and business associates, will implement reasonable safeguards to ensure the confidentiality, integrity and availability of an individual's PHI and limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

#### **4.3.1. Administrative Safeguards**

##### General

- All HIPAA covered worksites will receive regular internal review and monitoring to ensure the effectiveness of current safeguards for PHI
- All electronic applications that contain PHI will receive regular internal review and monitoring to ensure the effectiveness of current safeguards.

##### Sanctions

- County of El Dorado will apply sanctions, including appropriate disciplinary action, against members of the workforce who fail to comply with HIPAA policies and procedures. All sanctions will be documented.
- Sanctions do not apply in the following circumstances:
  - Whistleblower:
    - When the member of the workforce (or business associate) discloses PHI while acting as a whistleblower and the disclosure is to a health oversight agency or public health authority authorized to investigate or oversee the relevant conduct of the County or to a health care accreditation organization to report alleged failure to meet professional standards or

misconduct or to an attorney retained by or on behalf of the workforce member to determine legal options.


- Workforce Member is a victim of crime:
  - When the workforce member who discloses PHI is the victim of a crime and disclosure is made about the suspected perpetrator of the criminal act and only certain limited PHI is disclosed.
- Privacy complaint:
  - When the workforce member exercises any right under the Privacy Rule, including filing a complaint.

### Assigned Compliance Responsibility

- The County of El Dorado has a designated privacy official who is responsible for the development and implementation of the County's privacy policies and procedures, and a contact person/office that is responsible for receiving complaints and providing information about matters covered by the required notice of privacy practice document.

### Workforce Security: Information Access Management

- The County of El Dorado has implemented role-based access and the minimum necessary standard to promote administrative safeguards.

 **NOTE:** Specific access management requirements are found in the County's HIPAA Security Rule under "User Access Management".

### HIPAA Training

- The County of El Dorado's HIPAA-covered workforce will be trained in the County's Privacy and Security, policies, procedures and security awareness standards, as necessary and appropriate for the members of the workforce to carry out their functions within the HIPAA covered component.

### Security Incident Procedures

- The County of El Dorado has a procedure to report and document incidents that affect the privacy, security and integrity of client's protected health information.

### Contingency Plan

- The County of El Dorado will maintain a contingency plan for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, and nature disaster) that damages systems that contain electronic protected health information.

## Business Associates

- The County of El Dorado may permit a business associate to create, receive, maintain, or transmit electronic protected health information (ePHI) on behalf of the County only if the County obtains satisfactory assurances that the business associate will appropriately safeguard the information.

✚ NOTE: Specific business associate requirements are addressed the County Privacy Policy, section “Business Associates”.

## Special Rules for Some Group Health Plans

- Group health plans that meet certain conditions are exempt from certain administrative requirements.
- To qualify for the exemption, the group health plan will provide health benefits solely through an insurance contract with a health insurance issuer or an HMO and will not create or receive PHI except for summary health information or information on an individual's participation or enrollment in the health insurance or HMO offered by the plan.

### **4.3.2. Physical Safeguards**

#### Facility Access Controls

- The County of El Dorado has policies and procedures to limit physical access to its protected health information and the facility or facilities in which it is housed, while ensuring that properly authorized access is allowed.
- The County of El Dorado has policies and procedures to safeguard the facility and equipment from unauthorized physical access, tampering, and theft.
- The County of El Dorado has procedures to control and validate a work force member's access to HIPAA Component facilities and worksites based on their role or function, including visitor control.
- The County of El Dorado will implement policies and procedures to document repairs and modifications of a facility which are related to security.
- Workstation Use.
  - The County of El Dorado has policies and procedures that specify the proper functions to be performed, the manner in which they are performed, and the physical attributes of the surroundings of a specific workstation which contains protected health information.
    - Paper


- The County of El Dorado will implement policies and procures to ensure that all hard copy (paper) containing protected health information is safeguarded from loss or unauthorized use or access.
- Oral:
  - The County of El Dorado workforce will take reasonable steps to protect the privacy of all verbal exchanges or discussions of protected health information, regardless of where the discussion occurs.
- Electronic:
  - The County of El Dorado workforce will ensure that protected health information in computers and other portable electronic devices is safeguarded from unauthorized access or viewing.

### **4.3.3. Technical safeguards**

The County of El Dorado will have technical policies and procedures for electronic information systems that contain EPHI to limit access to authorized individuals only. The procedures for safeguards are detailed in the County of El Dorado Security Policy and will not be further described in procedure here.

## **4.4 Procedures**

**These requirements apply only to those parts of the County of El Dorado designated as a HIPAA component business operation.**

 **Note:** Some administrative safeguards do not apply to Group Health Plans as described in the County Privacy Policy Group Health Plan Section.


### **4.4.1. General**

*There are no accompanying procedures.*

### **4.4.2. Administrative Safeguards**

- County of El Dorado has HIPAA Privacy Rule Policies and Procedures and HIPAA Security Rule Policies and Procedures.
- The County will periodically update its HIPAA Policies and Procedures.
- The County's HIPAA Policies and Procedures are accessible to all County workforce members via the County intranet, edcnet/.

- The County Privacy Officer in coordination with the County Security Officer and designated Department/Agency personnel will conduct site assessments of HIPAA-covered work sites in order to evaluate and improve the effectiveness of current safeguards for PHI.
- The County Privacy Officer in coordination with the County Security Officer and designated Department/Agency personnel will assess electronic applications that contain PHI to evaluate and improve the effectiveness of current safeguards.
- The result of assessment will be documented in a medium determined appropriate by the County. The County Security and Privacy Officer will maintain a central index of completed assessments.

 **NOTE:** Further procedural details can be found in the County of El Dorado Security Rule Policies and Procedures “Risk Analysis and Management” section.

### Sanction Policy.

- Workforce sanctions may include:
  - suspension or termination of access privileges to protected health information;
  - remedial training;
  - appropriate disciplinary action; or personnel actions;
  - criminal or civil penalties in accordance with applicable law, as required;
  - notification to law enforcement officials and regulatory, accreditation and licensure organizations, as required.
- The County’s covered component will decide upon the appropriate workforce sanction(s).


### Assigned Compliance Responsibility

- The assigned County of El Dorado privacy official is the County Privacy Officer. The County Privacy Officer will be responsible for receiving HIPAA privacy complaints and will provide information about matters covered by the required HIPAA Notice of Privacy Practice.

### Workforce Security: Information Access Management

- The County of El Dorado HIPAA covered components will ensure that all access to PHI is role-based access, as defined in County policy and will employ the minimum necessary standard to all PHI access.

- Workforce members will receive access only to the minimum necessary PHI to correspond with their job classification functions.
- Only the manager (authorized requester) of the workforce member will authorize access to PHI. Authorization is based on the following:
  - Workforce members will receive access only if it is required to perform their assigned job duties
  - Workforce members will receive access only to the minimum necessary protected health information required to perform their assigned job duties.
  - Access will be altered or terminated when the workforce member's role and responsibilities change, or the workforce member is on a leave of absence, transfers outside of the HIPAA-covered component, or no longer works for the County.
  - The supervisor or manager who is an authorized requestor will as soon as possible notify the County Security Officer of designee to change or terminate computer access.

 **NOTE:** Procedure details can be found in the County's HIPAA Security Rule Policies and Procedures, "User Access Management".

### Privacy and Security Training

- The County of El Dorado's HIPAA-covered workforce will be trained in County privacy and security policy and procedure,
- All County employee workforce members in HIPAA-covered components will attend HIPAA privacy and security training within 60 days of appointment to a position and will attend re-training at a minimum every three years thereafter.
- Other County workforce members, including employees from temporary agencies, volunteers, registry staff and contractors, will be trained on the County's HIPAA Privacy and Security Rules, as soon as they are assigned to a HIPAA-covered component.
- All workforce members will sign a County sanctioned acknowledgement form, attesting to their receipt of County HIPAA Privacy and Security policy/procedure training, and their compliance with the County's HIPAA Privacy and Security Policies and Procedures.
- The signed acknowledgement form will be maintained by the appropriate HIPAA covered component or program for a period no less than seven years.

- The County Privacy Officer or designee may develop, revise and conduct HIPAA training for the County of El Dorado workforce, and will document and maintain training records as appropriate.
- Training records and copies of the training materials will be maintained by the County Privacy Officer, the HIPAA covered component of both for a period of seven years.
- The County of El Dorado departments or agencies may have additional training requirements and will conduct that training consistent with program and/or service criteria.
- Additional training standards are outlined in County of El Dorado HIPAA Security Rule Policy, “Security Awareness and Training”.

### Security Incident Reporting

- County of El Dorado workforce members will comply with all County Security policies and procedures including the reporting and documenting of events or incidents that may affect the privacy, security and integrity of an individual’s PHI.
- ✚ NOTE: Procedural details of security incident reporting can be found in the County, “Right to Breach Notification” section of the County Privacy Policy.
- Incidents will be promptly reported to supervisors or managers, who will report the event to the appropriate department or agency privacy official, County Security Officer or both.
  - All incidents will be documented and the County Privacy and County Security Officer will coordinate with the reporting HIPAA covered component to ascertain all facts and investigate as needed.
  - The County Privacy Officer will coordinate and facilitate notification and reporting of all incidents and breaches.
  - The County Privacy Officer will notify the federal Department of Health and Human Services Secretary of reportable breaches as appropriate in compliance with 45 CFR, Subpart D.
  - The County Privacy Officer in cooperation with the County Security Officer will perform a risk analysis to determine if an incident meets the definition of a PHI breach.
  - The responsible HIPAA-covered component will notify individuals whose protected health information has been breached without unreasonable delay and in no case later than 60 days after discovery of the breach.



- The County Privacy Officer will work with the HIPAA-covered component to ensure the notification complies with the requirements in 45 CFR 164.404.
- In order to evaluate the actions leading up to an incident and to mitigate harm, the responsible HIPAA covered component will, to the extent practicable, prepare a correction action plan (CAP) that includes reasonable steps taken to reduce the harmful effect of the incident, and prevent further violations.
- County Counsel may advise the County Privacy Officer and the HIPAA-covered component responsible for the breach as to actions required.
- The County Privacy Officer will maintain documentation of reported incidents and breaches for a period of seven years.

#### Contingency Plan

- The County will develop a Contingency Plan as outlined in County of El Dorado Security Rule Policies and Procedures “Contingency Plan”.
- Business Associates
  - Business Associate requirements are addressed in detail in Privacy Policy, Business Associates.
- Group Health Plans
  - Group Health Plans are addressed in detail in Privacy Policy Group Health Plans.

#### **4.4.3. Physical Safeguards**

##### Facility access controls

- Only authorized workforce members will enter facilities where protected health information is created or maintained.
  - All visitors will be escorted.
  - Workforce members will receive the facility and/or work site access level appropriate to their work role.
  - Only the workforce member’s manager or an appropriate designee (authorized requestor) will authorize access to facilities or work sites containing protected health information (PHI).
  - Workforce members will receive appropriate minimum necessary access level as required to perform their assigned job duties (work role based access).

- Access will be altered or terminated when the workforce member's role and responsibilities change, or the workforce member is on a leave of absence, transfers outside of the HIPAA-covered component, or no longer works for the County.
- The supervisor or manager will as soon as possible notify facilities management or other appropriate workforce member, to change alters or terminates facility access.
- "Employee Only" external doors will be kept shut and locked at all times to prevent unauthorized access.
- Network/server rooms will be reasonably secured and access to the rooms will be monitored as appropriate. An access/maintenance log will be used to document access in all HIPAA Covered facilities as described in the County Information Security Policy.
- Maintenance records will be maintained to document when building repairs are requested and completed. An individual at each HIPAA covered facility will be identified to carry out this monitoring.
- Records will be maintained by each HIPAA-covered component on hard key distribution including, what each key opens, and which personnel are issued keys. Keys will be returned when no longer needed by the individual.
- Facilities with keypad locks will change the keypad code as determined by the County.
- Facility access controls are addressed in detail in County of El Dorado HIPAA Security Rule Policies and Procedures.

#### Workstation use

- The County of El Dorado will implement safeguards to restrict access by unauthorized users.
  - Workforce members will make every effort to ensure that confidential information on computer screens is not accessible or visible to unauthorized persons.
  - Computer monitors will face away from public viewing or a privacy screen will be used to prevent viewing by unauthorized individuals.
  - Computers will be set to lock automatically when not in use.

- Workforce members will manually lock their computers when away from their workstation by using the Control-Alt-Delete-Enter command or the Windows and L keys.
- Workforce members will never share a log on or password with another individual.
- Passwords for electronic device access will not be written down or accessible to unauthorized individuals.

### Paper based PHI

- Each County of El Dorado HIPAA covered workplace will store files and documents containing protected health information (PHI) in locked rooms or storage systems when the files or documents are not in use and after working hours.
- In workplaces where lockable storage is not available, County of El Dorado staff will take reasonable efforts to procure needed lockable storage or use nearby available lockable storage to ensure the safeguarding of protected health information.
- Areas containing paper charts or other written materials with protected health information should not be in view of, or easily accessed by, unauthorized individuals. If charts or other documents cannot practicably be kept in a secure area during use, then establish a practice of turning documents over or covering documents to prevent incidental viewing.
- Materials containing protected health will not be left in plain sight when unattended regardless of environment.
- PHI will not be removed from the work site except for business necessity determined by the operating unit and consistent with the conditions outlined below:
  - No one will remove PHI from the work site without prior approval and authorization.
  - All Protected Health Information (PHI) in paper and electronic form will be transported and stored in a secure manner to safeguard it against improper disclosure and/or loss. Confidential information will be stored or transported outside a secure facility only as necessary. Only the minimum amount of PHI necessary to accomplish the purpose of the use/disclosure should be transported.
  - PHI that is being transported within a facility, such as from one department to another, will be attended or supervised at all times, or otherwise secured to avoid unauthorized access, loss and/or tampering.

- Additional measures will be taken to secure PHI that is being transported outside of a facility to assure confidentiality and integrity in the event of an accident, theft, or other unforeseen event.

#### Vehicle transported PHI:

- PHI should be transported in a secure container such as a locked box or briefcase whenever possible; and
- PHI should be transported without stops that involve leaving the vehicle unattended if possible. If stops must be made do not leave the PHI in the vehicle. Remove it and secure it so that unauthorized individuals cannot access it.
- Never leave documents or electronic media containing PHI where it can be seen inside an unattended vehicle, even if the PHI is inside a secure container.

#### Out of facility use of PHI

- Field use of PHI in the home or other location must be secured from access or view by family members and others.
- Protected health Information will be attended or supervised at all times, or otherwise secured to avoid unauthorized access, loss and/or tampering.

#### U.S. Mail or commercial delivery systems

- Care will be taken to ensure that the contents are being sent to the correct recipient.
- Contents will be sealed in a separate envelope inside, or at the least should have a cover sheet over the contents to prevent incidental viewing by an individual who opens the mail by mistake.
- The cover sheet will state the sender's contact information, recipient's name, and a HIPAA privacy advisory similar to the example below.
- If contents contain PHI on 10 or more individuals, the mail will be sent Certified, Return Receipt Requested, or an equivalent receipt tracking method.

#### Courier transported PHI

- The information being transported will be under the courier's control at all times.
- If PHI is lost, stolen or improperly accessed by others, immediately report this as a HIPAA Security Incident in accordance with the County HIPAA Security Rule Policy "Security Incident Reporting and Response".

## Faxed PHI

- Faxes that are received will be promptly picked up by or delivered to the recipient.
- Fax machines will not be located in areas easily accessed by unauthorized persons.
- Workforce members will take reasonable precautions to ensure that the intended recipient is either available to receive the fax as it arrives or has exclusive access to the fax machine.
- If there is any reason to question the accuracy of a fax number, contact the recipient to confirm the number prior to faxing PHI.
- Do not include any PHI on the fax cover sheet.
- Faxes that are sent will include an easily read fax cover sheet with a message containing the following or comparable alternative:
  - *This facsimile transmission contains confidential information, some or all of which may be protected health information as defined by the federal Health Insurance Portability & Accountability Act (HIPAA Privacy Rule). This transmission is intended for the exclusive use of the individual to whom or entity to which it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law.*

*If you are not the intended recipient, please contact the sender immediately and permanently destroy the original and any copies of this document.*

## Disposal of PHI

- Promptly dispose of documents containing protected health information (PHI) that are no longer needed, such as duplicate documents, notes, etc. Place in locked shred bins.
- If materials containing PHI are in a desk-side temporary shred container, the container will be emptied into the locked shred bin each day.
- Each County of El Dorado workplace will ensure that shredding of files and documents is performed on a timely basis, consistent with record retention requirements.
- Do not place materials containing PHI in trash bins or recycle bins.

## Shredding companies

- County of El Dorado will ensure that such entity is under a written contract that requires safeguarding of confidential information throughout the destruction process.

### Verbal Communication of PHI

- County of El Dorado workforce members will take reasonable steps to protect the privacy of all verbal exchanges or discussions of PHI regardless of where the discussion occurs, and must consider the inadvertent disclosure risk factors outlined below.
  - Locations of verbal exchange with degrees of disclosure risk:
    - Low risk: interview rooms, enclosed offices and conference rooms.
    - Medium risk: employee only areas, telephone and individual cubicles.
    - High risk: public areas, reception areas and shared cubicles housing multiple staff where clients are routinely present.
- Speak softly when discussing PHI, and be aware of who may be in the surrounding area.
- Do not discuss PHI in public areas such as elevators and reception area.
- Whenever possible use private space when discussing protected health information with workforce members, clients, or other authorized individuals.
- Do not disclose PHI over the phone without verifying the identity and authority of the individual to who you are speaking.
- Check for restrictions before disclosing PHI over the phone to anyone other than the client.
- Do not discuss clients or disclose PHI with anyone, including friends, families or even co-workers, who does not have an authorized, work-related reason to have that information and needs the information in order to perform their assigned work duties.

### Electronic Medium

- The County of El Dorado workforce will ensure that PHI stored in computers and other portable electronic devices is safeguarded from loss, or unauthorized use, access or viewing.
- All access to EPHI information will be authorized as described herein this Procedure.

- Workforce members will not save any protected health information on workstation hard drives (also known as the C: \ drive).
- The County of El Dorado will remove PHI from electronic media before the media is made available for re-use.
- The County of El Dorado will maintain an inventory of all portable devices containing PHI, including but not limited to the following: Smartphones, iPhones, iPads and other tablet devices, laptops, USB/flash drives, CDs, DVDs or any other mobile devices which contain PHI.
- The County of El Dorado will maintain a record of the movements of hardware and electronic media and the person responsible thereof.
- The County of El Dorado will create a retrievable, exact copy of electronic PHI, when needed, before movement of equipment.
- Protected health information will not be stored, downloaded or maintained on any portable device without the authorization of the HIPAA- covered component's manager or supervisor.
- Any PHI stored on a portable device will be the minimum necessary and will be deleted after the information has been transferred to and saved on the HIPAA-covered component's assigned network drive or other designated electronic location.
- All devices, including County-owned or personally owned, which are used for County business, will be password-protected and/or encrypted in accordance with County IT policies and procedures.

#### E-mail Format

- All email containing PHI that is sent outside the County of El Dorado network will be encrypted.
- Do not put PHI into the subject line of the email.
- Check the recipient's names before sending, forwarding or replying to all.
- Make certain the email is sent only to the correct, authorized recipients.
- Use the minimum necessary standard and send only the information that is required for the purpose of the email.

#### **4.4.4. Technical safeguards**

- The County of El Dorado will apply technical safeguards to limit access to electronic information systems that contain PHI using the following controls.
  - Each workforce member who accesses County of El Dorado EPHI will have a unique user identity.
  - The County of El Dorado will verify that a person or entity seeking access to EPHI is the one claimed.

#### **FORM(S):**

Training Acknowledgement Form

#### **REFERENCE(S):**

45 CFR 164.308, 164.310 and 164.312

HIPAA Security Rule Policies and Procedures

HIPAA Security Rule Policy "Security Incident Reporting and Response"



## **Policy 5: De-Identification of PHI and Use of Limited Data Sets**

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**Issue Date: August 8, 2017**

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**Revised Date: n/a**

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### **5.1 HIPAA Regulation**

De-identification of PHI.

### **5.2 Policy Purpose**

The intent of this policy is to establish County of El Dorado standards under which an individual's protected health information (PHI) can be used and disclosed if information that can identify an individual has been removed (de-identified) or restricted to a limited data set.

### **5.3 Policy**

#### **5.3.1 General**

De-identified Information Standards:

- Health information that does not identify an individual, and to which there is no reasonable basis to believe that the information can be used to identify an individual, is not PHI and therefore not protected by Privacy Rules.
- Unless otherwise restricted or prohibited by other federal or state law, the County of El Dorado can use and share de-identified PHI as appropriate for the work of the County, without further restriction, provided the County or another entity has taken steps to de-identify the confidential information consistent with the requirements and restrictions of this policy.

Limited Data Set:

- A limited data set is described as health information that excludes certain, listed direct identifiers (see below) but that may include city; state; ZIP Code; elements of a date; and other numbers, characteristics, or codes not listed as direct identifiers. The direct identifiers in the limited data set provisions apply both to information about the individual and to information about the individual's relatives, employers, or household members.
- Because limited data sets may contain identifiable information, they are still PHI.
- The County of El Dorado may disclose a limited data set only for the purposes of research, health care operations, or public health activities.
- The County of El Dorado is not restricted to using a limited data set for its own activities or operations.

Where the County of El Dorado and a business associate are both governmental entities, the County may disclose to the business associate a limited data set to carry out a health care operations function if the County has a data use agreement with the business associate.

The County of El Dorado may use or disclose a limited data set that meets the requirements of Section 4 below, when the County enters into a data use agreement with the limited data set recipient (or with the data source, if the County will be the recipient of the limited data set), in accordance with the requirements of Section 5 herein.

If the County of El Dorado knows of a pattern, activity or practice demonstrated by the limited data set recipient that constitutes a material breach or violation of a data set agreement, the County will take reasonable steps to cure the breach or end the violation.

When such steps are unsuccessful, the County of El Dorado will discontinue disclosure of confidential information to the recipient and report the problem to the United States Department of Health and Human Services (DHHS), Office for Civil Rights as appropriate.

### **5.3.2. Requirements for De-Identification of an Individual's Confidential Information**

The County of El Dorado may determine that PHI is sufficiently de-identified, and cannot be used to identify an individual under the following conditions:

- A person with appropriate knowledge of, and experience with, generally accepted statistical and scientific principles and methods for rendering information not individually identifiable has:
  - Applied such principles and methodology, determining that there is minimal risk that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient, to identify the individual who is a subject of the information; and
  - Has documented the methods and results of the analysis that justify such a determination.
- The County has ensured that all of the following identifiers of the individual or of relatives, employers, and household members of the individual are removed:
  - Names;
  - Geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geo codes.

- The initial three digits of a zip code may remain on the information if, according to current publicly available data from the Bureau of the Census, the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and the initial three digits for all such geographic unit containing 20,000 or fewer people is changed to 000;
  - All elements of dates (except year) for dates directly relating to an individual, including birth date, dates of admission or discharge from a health care facility, and date of death. For persons age 90 and older, all elements of dates (including year) that would indicate such age must be removed,
    - except that such ages and elements may be aggregated into a single category of “age 90 or older;”
- Telephone numbers;
- Fax numbers;
- Electronic mail addresses;
- Social security numbers;
- Medical record numbers;
- Health plan beneficiary numbers;
- Account numbers;
- Certificate or license numbers;
- Vehicle identifiers and serial numbers, including license plate numbers;
- Device identifiers and serial numbers;
- Web Universal Resource Locators (URLs);
- Internet Protocol (IP) address number(s);
- Biometric identifiers, including fingerprints and voiceprints;
- Full face photographic images and any comparable images; and
- Any other unique identifying number, characteristic, or codes, except as permitted under this policy; and

- County of El Dorado has no actual knowledge that the information could be used alone or in combination with other information to identify an individual who is the subject of the information.

The County of El Dorado Privacy Officer may designate a person or persons as defined above to assess de-identification of PHI, including but not limited to:

- A County of El Dorado employee; or
- An employee of another governmental agency; or
- An outside contractor or consultant, subject to County of El Dorado contracting and personnel policy.

If not a County workforce member, the individual or entity who performs the de-identification shall be a business associate as per County of El Dorado HIPAA Privacy Rule Policy 6, "Business Associates".

### **5.3.3. Re-identification of De-Identified Health Confidential Information**

The County of El Dorado may assign a code or other means of record identification to allow information de-identified under this policy to be re-identified by the County, within the following specifications:

- The code or other means of record identification is not derived from or related to confidential information about the individual and cannot otherwise be translated to identify the individual; and
- The County of El Dorado does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

### **5.3.4. Requirements for a Limited Data Set**

A limited data set is information that excludes the following sixteen direct identifiers of the individual, or of relatives, employers or household members of the individual:

- Names;
- Postal address confidential information, other than town or city, state and zip code;
- Telephone numbers;
- Fax numbers;
- Electronic mail addresses;

- Social Security numbers;
- Medical record numbers;
- Health plan beneficiary numbers (such as Medicaid Prime Numbers);
- Account numbers;
- Certificate/license numbers;
- Vehicle identifiers and serial numbers, including license plate numbers;
- Device identifiers and serial numbers;
- Web Universal Resource Locators (URLs);
- Internet Protocol (IP) address numbers;
- Biometric identifiers, including finger and voice prints; and
- Photographic image of a person's face which would allow identification by sight or electronic means.

### **5.3.5. Contents of a Data Use Agreement**

The County of El Dorado may use or disclose a limited data set only if the County obtains satisfactory assurance, in the form of a data use agreement in accordance to this section as outlined below and specified in the written agreement.

A data use agreement between the County of El Dorado and the recipient of the limited data set will:

- Specify the permitted uses and disclosures of such information by the limited data set recipient. The data use agreement may not permit the limited data set recipient to use or further disclose the information in a manner that would violate the requirements of this policy.
- Specify who is permitted to use or receive the limited data set; and
- Specify that the limited data set recipient will:
  - Not use or further disclose the information other than as specified in the data use agreement or as otherwise required by law;
  - Use appropriate safeguards to prevent use or disclosure of the confidential information other than as specified in the data use agreement;

- Report to the County of El Dorado, if the recipient becomes aware of any use or disclosure of the information not specified in its data use agreement with the County of El Dorado;
- Ensure that any agent, including a subcontractor, to whom it provides the limited data set, agrees to the same restrictions and conditions that apply to the limited data set recipient with respect to such information; and
- Not identify the information or contact the individuals whose data is being disclosed.

### **5.3.6. Limited Data Set Compliance**

To ensure compliance, the County of El Dorado must take reasonable steps to correct any material breach or violation of a data use agreement established with a limited data set recipient. These steps include but are not limited to acting on known or discovered patterns of activity or practices that are inconsistent with the conditions of the data use agreement.

If such reasonable steps are not successful, the following action will be taken:

- Discontinue disclosure of PHI to the recipient; and
- Report the problem to the County Privacy Officer who may;
- File a report with the Secretary of the Department of Health and Human Services as appropriate.

The County, when acting as a limited data set recipient, is held to the same standards as described above. Any violation of a data use agreement may result in noncompliance with the standards, implementation specifications, and requirements of 45 CFR 164.514 (e)(4)(iii).

### **REFERENCE(S):**

45 CFR 164.514

HIPAA Privacy Rule Policy AS-100-08, "Business Associates"

## **Policy 6: Business Associate**

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**Issue Date: August 8, 2017**

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### **6.1 HIPAA Regulation**

Business Associates

### **6.2 Policy Purpose**

The intent of this policy is to outline applicability and responsibilities of business associates, and to describe both the privacy and security standards set forth in law governing HIPAA compliance for County of El Dorado business associates and their respective subcontractors.

### **6.3 Policy**

#### **6.3.1 General**

A “business associate” is a person or entity, other than a workforce member of the County who performs functions or activities on behalf of, or provides certain services to the County of El Dorado that includes access business associate to protected health information (PHI). A business associate subcontractor that creates, receives, maintains, or transmits PHI on behalf of another business associate is also considered a “business associate”.

Business associates contracts serve to clarify and limit, as appropriate, the permissible uses and disclosures of PHI by the business associate, based on the relationship between the parties and the activities or services being performed. A business associate may use or disclose PHI only as permitted or required by its business associate contract or as otherwise required by law.

A business associate is directly liable under HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of PHI that are not authorized under contract or required by law. A business associate may also be liable and subject to civil penalties for failing to safeguard electronic PHI in accordance with the HIPAA Security Rule.

If a contractor or business partner is a “business associate,” those contracts that define the contractual relationship remain subject to all federal and state laws and policies governing the contractual relationship. A “business associate” relationship also requires additional contract provisions. The additional contract requirements are described in Section 2 below.

Business Associate

With respect to the County of El Dorado specifically, a business associate is a person or organization who, on behalf of the County or of an organized health arrangement in which the County participates as a non-workforce member creates, receives, maintains or transmits PHI for a function or activity that includes the following:

- The use or disclosure of PHI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities as listed in 42 CFR 3.20, billing benefit management, practice management, and repricing; or
- Provides, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the County, or for an organized health care system in which the County participates, where the provision of the service involves the disclosure of PHI from the County or from another business associate of the County to the person.

The following types of organizations are included in the definition of business associate:

- A health information organization,
- E-prescribing gateway, or other person or organization that provides data transmission services with respect to PHI to the County and that requires routine access to such PHI; and
- A person or entity who offers a personal health record to one or more individuals on behalf of the County of El Dorado.

A covered entity participating in an organized health care arrangement that engages in a function, activity or service as described above for such organized health care arrangement, does not through the performance of such function, activity or service, become a business associate of other covered entities participating in such organized health care arrangement.

A covered entity may be a business associate of another covered entity.

A business associate relationship is formed only if PHI is used, created, maintained or transmitted in the relationship.

The following are **not** business associates business associate relationships or activities:

- County of El Dorado employees, offices, and programs which are part of the covered components of the County;
- Medical providers exclusively providing treatment to individuals;
- Enrollment or eligibility determinations, involving County service recipients between government agencies;



- Payment to medical providers, child care providers, managed care organizations, or other vendors for services to County, when the vendor is providing its own normal services that are not on behalf of the County;
- When an individual's PHI is disclosed based solely on an individual's authorization;
- When an individual's PHI is not being disclosed by the County of El Dorado or created for the County ; and
- When the only information being disclosed is information that is de-identified in accordance with the County of El Dorado Privacy Rule Policy, "De-identification of PHI and Use of Limited Data Sets."

County of El Dorado may disclose an individual's PHI to a business associate and may allow a business associate to create or receive an individual's PHI on behalf of the County, when:

- County first enters into a written contract, or other written agreement or arrangement, with the business associate before disclosing an individual's PHI to the business associate, in accordance with the requirements of Section 2, below;
- The written contract or agreement provides satisfactory assurance that the business associate will appropriately safeguard the information;
- A business associate may permit a business associate that is a subcontractor to create, receive, maintain, or transmit electronic PHI on its behalf only if the business associate obtains satisfactory assurances, in accordance with 45 CFR 164.314(a), that the subcontractor will appropriately safeguard the information and;
- County is not required to obtain such satisfactory assurances from a business associate that is a subcontractor of the County's business associate

### **6.3.2. Contract Requirements Applicable to Business Associates**

A contract or other arrangement between the County of El Dorado and a business associate must include terms and conditions that:

- Establish the permitted and required uses and disclosures of PHI by the business associate.
- The contract may not authorize the business associate to further use or further disclose PHI obtained from County of El Dorado, except that the contract may permit the business associate to:
  - Use and disclose protected health confidential information for the proper management and administration of the business associate; and

- Collect data relating to County of El Dorado health care operations.
- Provide that the business associate will:
  - Not use or further disclose PHI other than as permitted or required by the contract or as required by law;
  - Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the contract;
  - Report to County of El Dorado any use or disclosure not allowed by the contract of which the business associate becomes aware, as required by state and federal regulations including breaches of unsecured PHI, and any security incident of which it becomes aware;
  - Ensure that any agents or subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate agree to the same restrictions, conditions and requirements that apply to the business associate under the contract, by entering into a contract or other arrangement with the business associate;
  - Make PHI in a designated record set available to the individual in accordance with County of El Dorado HIPAA Privacy Rule Policy L-02, "Client Privacy Rights;"
  - Make PHI in a designated record set available for amendment and incorporate any amendments in accordance with County of El Dorado HIPAA Privacy Rule Policy L-02, "Client Privacy Rights;"
  - Maintain and make available the information required to provide an accounting of disclosures in accordance with County of El Dorado HIPAA Privacy Rule Policy L-02, "Client Privacy Rights;"

Makes its internal practices, books, and records relating to the use and disclosure of PHI available to the County of El Dorado and to the United States Department of Health and Human Services (DHHS) for the purpose of determining County compliance with federal requirements; and

- At termination of the contract, if reasonably feasible, the business associate shall recover any PHI relating to the contract in the possession of its subcontractors, agents or representatives. The business associate shall return to the County of El Dorado, or destroy with consent of the County all such PHI plus all other PHI relating to the contract and in its possession and shall retain no copies. If not feasible, the business associate shall continue to protect the confidential information.

- Authorize termination of the contract if County of El Dorado determines that the business associate has violated a material term of the contract unless inconsistent with the County’s statutory obligations.
- If the business associate of County of El Dorado is another governmental entity:
  - County of El Dorado may enter into a memorandum of understanding, rather than a contract, with the business associate if the memorandum of understanding contains terms covering all objectives of Contract Requirements as outlined above.;
  - The written contract, agreement, or memorandum does not need to contain specific all provisions required herein if other law or regulations contain requirements applicable to the business associate that accomplish the same objective;
- If a business associate is required by law to perform a function or activity on behalf of the County of El Dorado, or to provide a service to the County, County may disclose PHI to the business associate to the extent necessary to enable compliance with the legal requirement, without a written contract or agreement, when:
  - County of El Dorado attempts in good faith to obtain satisfactory assurances from the business associate that the business associate will protect health confidential information to the extent specified above; and
  - If such attempt fails, the County documents the attempt and the reasons that such assurances cannot be obtained.
- The written contract or agreement between County of El Dorado and the business associate may permit the business associate in its capacity as a business associate to:
  - Use and disclose confidential information it receives in its capacity as a business associate if:
    - The disclosure is required by law; or
    - The business associate receives reasonable assurances from the person to whom the confidential information is disclosed that:
      - It will be held or disclosed further only as required by law or for the purposes to which it was disclosed to such person; and
- The person notifies the business associate of any known instances in which the confidentiality of the confidential information has been breached.

- Use information for the proper management and administration of the business associate; or;
- Use information to carry out legal responsibilities of the business associate, provided the disclosures are required by law, or the business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware that the confidentiality of the information has been breached.

### **6.3.3. Responsibilities of County of El Dorado in Business Associate Relationships**

The County of El Dorado will provide business associates with contract conditions necessary to ensure compliance to PHI Privacy Rule requirements.

The County may also be a business associate of another covered entity if the County is performing any of the activities consistent with the definition of “business associate”.

The County of El Dorado responsibilities in business associate relationships include, but are not limited to, the following:

- Receiving and logging an individual’s complaints regarding the uses and disclosures of PHI by the business associate or the business associate relationship;
- Receiving and logging reports from the business associate of possible violations of the business associate contracts;
- Implementation of corrective action plans, as needed; and
- Mitigation, if necessary, of known violations up to and including contract termination.

### **6.3.4. Business associate Non-Compliance**

If County of El Dorado knows of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the business associate’s obligation under the contract or other arrangement, County of El Dorado must take reasonable steps to cure the breach or end the violation, as applicable, including working with and providing consultation to the business associate.

If such steps are unsuccessful, County of El Dorado must:

- Terminate the contract or arrangement, if feasible; or

- If termination is not feasible, report the problem to the United States Department of Health and Human Services (DHHS).

## **6.4 Procedure**

### **6.4.1. Tracking and identifying County of El Dorado' Business associates**

County of El Dorado will identify those business relationships that are also Business associates.

County employees developing or preparing contracts may apply the County of El Dorado Business Associate Decision Tool as part of the contract approval process. County of El Dorado will include legally appropriate "business associate" contract terms and conditions in such contracts, which may include incorporation by reference to administrative rule.

- County Department contract staff will document the HIPAA business relationship information provided to them by the Contract Requestor at the time the request is received.
- Department contracts staff will keep a list identifying all Business associates contracts or agreements with a retention period consistent with federal, state or program requirements.

### **6.4.2. County of El Dorado's Response to Complaints about Business associates Inappropriate Uses or Disclosures**

County of El Dorado employees who receive a PHI use or disclosure complaint, concerning a business associates, will

- Provide confidential information regarding that report or complaint to the County of El Dorado Privacy Officer.

The County Privacy Officer will coordinate with the respective county department contract administrator or program personnel holding the contract to ensure proper documentation of the alleged violation.

County department contract staff will send a letter to the business associate, requesting that the business associate review the circumstances related to the alleged pattern or practice and requiring that:

- The business associate respond in writing, to the complaint within 10 business days and;
- If determined necessary and appropriate, County department contract staff will generate a "cure letter" outlining required remediation in order for the business associate to attain contract compliance.

Where contract compliance cannot be attained, the County may terminate the contract. If termination is not feasible, the County Privacy Officer and County Council in cooperation with the department holding the business associate agreement will determine the appropriate action to take.

### **6.4.3 Notification of Breach**

As required by 45 CFR Section 164.308(a)(2), the Business associate shall notify the County of El Dorado in writing within five (5) working days to discovery of any use or disclosure of PHI not permitted by the agreement of which the Business associate or its officers, employees or agents become aware. Such notice shall include the name of each individual, with address or other identifiers where known, whose unsecured PHI has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure.

Any unauthorized use or disclosure shall be treated as discovered by the business associate on the first day on which such access, acquisition or disclosure is known to the Business associate, including any person, other than the individual committing the unauthorized use or disclosure, that is an employee, officer or other agent of the Business associate, or who should reasonably have known such unauthorized activities had occurred.

Business associate shall promptly identify, respond to and report to County any suspected or known "security incident" of which it becomes aware. Such term is defined in the HIPAA Security Rule, 45 CFR Section 164.304: "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." Business associate's incident report shall identify the date of the security incident, the scope of the security incident, the Business associate's response to the security incident and the identification of the party responsible for causing the security incident, if known.

Business associate agrees that any sub-contractor of the Business associate that provides services to the Business associate has the same responsibilities regarding reporting unauthorized uses or disclosures as the Business associate. Business associate shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service an agreement with the County. The County of El Dorado Privacy Officer will coordinate with the business associate's County department contract administrator to:

- Document the breach;
- Notify affected individual(s);
- Notify the DHHS Secretary; and

- Notify major media if the breach involves more than 40 residents of a State or jurisdiction.

**REFERENCE(S):**

45 CFR 160.103, 164.308, 164.314, 164.402, and 164.410

**FORM(S):**

Business Associate Decision Tool

## **Policy 7: Enforcement, Sanctions, and Penalties**

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**Issue Date: August 8, 2017**

**Effective Date: August 8, 2017**

**Revised Date: n/a**

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### **7.1 HIPAA Regulation**

Enforcement, sanction, penalty, and disciplinary actions that may result from violation.

### **7.2 Policy Purpose**

The intent of this policy is to specify enforcement, sanction, penalty, and disciplinary actions that may result from violation of County of El Dorado policies regarding the privacy and protection of an individual's protected health information (PHI) and to establish guidelines on how to conform to the required standards.

### **7.3 Policy**

#### **7.3.1 General**

- The County of El Dorado must have and apply appropriate sanctions against its workforce members who fail to comply with the County's privacy policies and procedures. These sanctions do not apply to disclosures by whistleblowers and workforce members who are victims of crime.
- All County of El Dorado workforce members, including employees, contract employees, volunteers, interns, and business associates, must guard against improper uses or disclosures of any PHI maintained on any individual by the County.
- County of El Dorado workforce members and business associates, who are uncertain if a disclosure is permitted, are advised to consult with a supervisor or manager of the County of El Dorado. The County Privacy Officer may be consulted on any disclosure question that cannot be resolved in the course of normal business operation in accordance with operational procedures of the County covered department, division, section or program.
- All workforce members and business associates are required to be aware of their responsibilities under County of El Dorado privacy policies and procedures.
- County of El Dorado workforce members will be expected to sign a County of El Dorado Privacy & Security Policies and Procedures Acknowledgement Form documenting that they have been trained on the County's privacy and security policies and procedures and that they understand their responsibilities to comply with privacy and security policies.



- County of El Dorado workforce members who fail to comply with County of El Dorado privacy policies and procedures to safeguard PHI are subject to disciplinary action by the County up to and including dismissal from employment.
- County of El Dorado workforce members who knowingly and willfully violate state or federal law for improper use or disclosure of an individual's PHI are subject to criminal investigation, prosecution and civil monetary penalties.
- Failure of the County and agents of the County to enforce privacy safeguards and apply appropriate sanctions against workforce members, and/or employees failing to comply with County privacy and security policies may result in administrative sanctions by the United States Department of Health and Human Services (DHHS), including fiscal penalties.

### **7.3.2. Retaliation**

No employee or agent of the County will intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action in response to:

- An individual exercising any right established under County of El Dorado policy, procedure or process, including the filing of a complaint with the County or with the United States Department of Health and Human Services (DHHS) Office for Civil Rights (OCR).
- An individual testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing relating to County of El Dorado HIPAA policy and procedures;
- An individual opposing any unlawful act or practice, provided that:
  - The individual has a good faith belief that the act or practice being opposed is unlawful; and
  - The manner of opposition is reasonable and does not involve a use or disclosure of PHI in violation of County of El Dorado policy.

### **7.3.3. Whistleblowers and Crime Victims**

A County of El Dorado workforce member or business associate may disclose an individual's PHI under the following conditions:

- The County of El Dorado workforce member or business associate believes, in good faith, that the County or an agent of the County has engaged in conduct that is unlawful or that otherwise violates professional standards or policy, or that the care, services, or conditions provided by the County could endanger persons in the care of the County or the public; and
- The disclosure is to:

- An oversight agency or public authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of County of El Dorado;
- An appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or of misconduct by County of El Dorado; or
- An attorney retained by or on behalf of the County of El Dorado workforce member or business associate for the purpose of determining the legal options of the County of El Dorado workforce member or business associate with regard to this County policy.

A County of El Dorado workforce member may disclose limited PHI about an individual to a law enforcement official if the workforce member is the victim of a criminal act and the disclosure is:

- About only the suspected perpetrator of the criminal act; and
- Limited to the following information about the suspected perpetrator:
  - Name and address;
  - Date and place of birth;
  - Social security number;
  - ABO blood type and Rh factor; E. Type of any injury;
  - Date and time of any treatment; and
  - Date and time of death, if applicable.

## **7.4 Procedure**

### **7.4.1 General**

County of El Dorado workforce members who violate County of El Dorado policies and procedures regarding the safeguarding of an individual's PHI may be subject to the following:

- Appropriate disciplinary action by County of El Dorado, up to and including immediate dismissal from employment.

County of El Dorado workforce members who knowingly and willfully violate state or federal law for improper invasions of personal privacy may be subject to the following:

- Criminal investigation and prosecution, both by the County of El Dorado and by the federal government, depending on the nature of the violation. Federal and state law provides substantial fines and prison sentences upon conviction, depending on the nature and severity of the violation.

- Civil monetary penalties that the Federal Department of Health and Human Services (DHHS) may impose, as described in 45 CFR 160.404.
- Workforce members may be individually liable for accreditation, licensure sanctions, or even criminal and civil prosecutions and penalties under other Federal or State regulations.
- Improper uses and disclosures of PHI shall be reported as security incidents and investigated by the Privacy Officer.
- County of El Dorado must mitigate, to the extent practicable, any harmful effect that is known to the County of a PHI use or disclosure in violation of its policies and procedures.

**FORM(S):**

Notice of Privacy Practices Acknowledgement of Receipt

**REFERENCE(S):**

45 CFR 160.404-160.408 and 164.530

## **Policy 8: Group Health Plans**

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**Issue Date: August 8, 2017**

**Effective Date: August 8, 2017**

**Revised Date: n/a**

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### **8.1 HIPAA Regulation**

Requirements for County-sponsored group health plans.

### **8.2 Policy Purpose**

The intent of this policy is to outline the special requirements for County sponsored group health plans in relation to safeguarding protected health information (PHI), giving notice and the allowable uses and disclosures of PHI.

### **8.3 Policy**

A group health plan means an employee welfare benefit plan, including insured and self-insured plans, to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

- Has 50 or more clients; or
- Is administered by an entity other than the employer that established and maintains the plan.

#### **8.3.1. Requirements for Group Health Plans**

A group health plan must ensure that plan documents restrict uses and disclosures of PHI consistent with the requirements of this policy.

The group health plan, health insurance issuer or health maintenance organization (HMO) with respect to the group health plan, may disclose summary health information to the plan sponsor, if the plan sponsor requests summary health information for the following purposes:

- Obtaining premium bids from health plans for providing health insurance coverage under the group health plan; or
- Modifying, amending, or terminating the group health plan.

The group health plan, health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

#### **8.3.2. Notice of Privacy Practices**

An individual enrolled in a group health plan has a right to receive notice under the following conditions:

- From the group health plan, if, and to the extent that, such an individual does not receive health benefits under the group health plan through an insurance contract with a health insurance issuer or HMO; or
- From the health insurance issuer or HMO with respect to the group health plan through which such individuals receive their health benefits under the group health plan.

A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and that creates or receives health information in addition to summary health or individual participation information including enrollment status from a health insurance issuer or HMO offered by the plan, must:

- Maintain a notice under this section; and
- Provide such notice upon request to any person.

A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and **does not** create or receive health information other than summary health or individual participation information in the group health plan, including enrollment status from a health insurance issuer or HMO offered by the plan, **is not required** to maintain or provide a notice.

## **8.4 Procedure**

### **8.4.1. Requirements for Group Health Plan Documents**

The plan documents of the group health plan must be amended (only if health information other than summary health information is sought) to incorporate provisions to:

- Establish the permitted and required uses and disclosures of such information by the plan sponsor, provided that such permitted and required uses and disclosures may not be inconsistent with this section.
- Provide that the group health plan will disclose protected health information to the plan sponsor only upon receipt of a certification by the plan sponsor that the plan documents have been amended to incorporate the following provisions and that the plan sponsor agrees to:
  - Not use or further disclose the information other than as permitted or required by the plan documents or as required by law;

- Ensure that any agents, including a subcontractor, to whom it provides protected health information received from the group health plan agree to the same restrictions and conditions that apply to the plan sponsor with respect to such information;
- Not use or disclose the information for employment-related actions and decisions, or in connection with any other benefit or employee benefit plan of the plan sponsor;
- Report to the group health plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
- Make available protected health information in accordance with an individuals' right to access their health information;
- Make available health information for amendment and incorporate any amendments to health information;
- Make available the information required to provide an accounting of disclosures;
- Make its internal practices, books, and records relating to the use and disclosure of health information received from the group health plan available to the Secretary of Health and Human Services for purposes of determining compliance;
- If feasible, return or destroy all protected health information received from the group health plan that the sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made.
- EXCEPTION: When such return or destruction is not feasible, further uses and disclosures will be limited to those purposes that make the return or destruction of the information infeasible.
- Provide for adequate separation between the group health plan and the plan sponsor.

The plan documents must:

- Describe those employees, classes of employees or other persons under the control of the plan sponsor that have access to the health information for disclosure, provided that any employee or person who receives health information relating to payment under, health care operations of, or other matters pertaining to the group health plan in the ordinary course of business must be included in such description;

- Restrict the access to and use by such employees and other persons as described above to the plan administration functions that the plan sponsor performs for the group health plan; and
- Provide an effective mechanism for resolving any issues of noncompliance by persons with the plan document.

#### **8.4.2. Uses and Disclosures**

A group health plan may use and disclose protected health information as follows, only to the extent that the group health plan has been amended consistent with Policy 8 A group health plan:

- May disclose health information to a plan sponsor to carry out plan administration functions that the plan sponsor performs.
- May not permit a health insurance issuer or HMO with respect to the group health plan to disclose health information to the plan sponsor except as permitted by this policy.
- Not disclose, and may not permit a health insurance issuer or HMO to disclose, protected health information to a plan sponsor unless a statement of disclosure is included in the appropriate notice or as otherwise permitted under this policy.
- Not disclose protected health information to the plan sponsor for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the plan sponsor.

Health plans, including group health plans, health insurance issuers (including HMOs) and issuers of Medicare supplemental policies, are prohibited from using or disclosing genetic information for underwriting purposes.

A group health plan shall ensure that any agents to whom it provides protected health information received from the group health plan agree to the same restrictions and conditions that apply to the plan sponsor with respect to such information.

#### **8.4.3. Provision of Notice**

The County of El Dorado health plans must provide a Notice of Privacy Practices as stipulated below:

- At the time of enrollment, to clients who are new enrollees; and
- No less frequently than once every three years to clients then covered by the plan, including how to obtain the Notice.

The County Privacy Officer in cooperation with County Risk Management will coordinate notification with the County Health Plans under the following conditions:

- If there is a material change, the County's health plans must prominently post the change or its revised Notice on their websites by the effective date of the material change.
- Provide a revised "Notice" or information about the material change and the means to obtain the revised "Notice" in their next annual mailing to the individuals then covered by the plan.
- In the event the health plan does not post its notice, the health plan must provide the revised "Notice" or information about the material change, including how to obtain the revised "Notice" to individuals then covered by the plan, within 60 days of the material revision to the Notice.

The County shall prominently post the notice of privacy practices on the County internet web site and make the notice available electronically through the website.



## Appendix A - HIPAA Privacy Rule / County Policies Crosswalk

<b>HIPAA Privacy Rule</b>	<b>Section</b>	<b>Policy #</b>
Notice of privacy practices for protected health information	164.520	1
Rights to request privacy protection	164.522	1
Access to PHI	164.524	1
Amendment of PHI	164.526	1
Accounting of Disclosures of PHI	164.528	1
Administrative Requirements for Individually Identifiable Health Information	164.530	1
Privacy of Individually Identifiable Health Information Definitions	164.501	2
Uses and disclosures of protected health information	164.502	2
Uses and disclosures to carry out treatment, payment, or health care operations.	164.506	2
Uses and disclosures for which an authorization is require	164.508	2
Other requirements for use and disclosure of protected health information.	164.514(d)	3
Minimum necessary to accomplish the use, disclosure, or request	164.502(b)	3
Administrative safeguards for covered entity	164.308	4
Administrative safeguards for business associate	164.308	6
Physical Safeguards	164.310	4
Technical Safeguards	164.312	4
Other requirements relating to uses and disclosures of protected health information	164.514	5
Data General Provisions Definitions	160.103	6
Notification in the Case of Breach of Unsecured PHI, Definitions	164.402	6
Notification of Breach by a business associate	164.410	6
Notification to individuals, the media, and Secretary	160.404-160.408	7
Privacy of Individually Identifiable Health Information Administrative Requirements	164.530	7

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**County of El Dorado HIPAA Privacy Rule  
Policies and Procedures**

**~END~**

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