

Permitted Uses and Disclosures: Exchange for Treatment and Health Care Operations

45 Code of Federal Regulations (CFR) 164.506(c)(2)

45 Code of Federal Regulations (CFR) 164.506(c)(4)

The Health Insurance Portability and Accountability Act (HIPAA) governs how Covered Entities (CEs) protect and secure Protected Health Information (PHI). HIPAA also provides regulations that describe the circumstances in which CEs are permitted, but not required, to use and disclose PHI for certain activities *without first obtaining* an individual's authorization: including for treatment and for health care operations of the disclosing CE or the recipient CE when the appropriate relationship exists. This document provides examples of exchange between or among health care providers (hereafter "providers") for **treatment** and exchange for the **health care operations** of the discloser or of the recipient of the PHI that is exchanged.

Other laws may apply. This document only discusses HIPAA. Under HIPAA, CEs may disclose PHI (whether orally, on paper, by fax, or electronically) to another provider for the treatment activities of that provider, without needing patient consent or authorization (45 CFR 164.506(c)(2)). Treatment (45 CFR 164.501) is broadly defined as the provision, coordination, or management of health care and related services by one or more providers, including the coordination or management of health care by a provider with a third party; consultation between providers relating to a patient; or the referral of a patient for care from one provider to another.

Likewise, a CE may disclose PHI *to another CE or that CE's business associate* for quality and certain other health care operations activities of the *recipient* CE (45 CFR 164.501) without needing patient consent or authorization (45 CFR 164.506(c)(4)). In general, before a CE can share PHI for these health care operations of another CE, three requirements must be met:

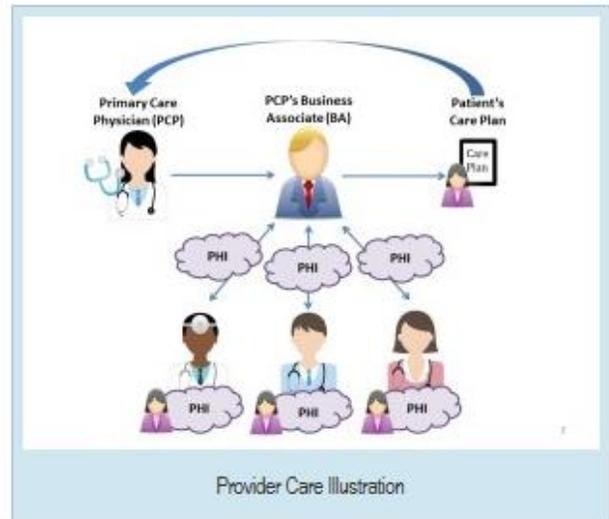
1. Both CEs must have or have had a relationship with the patient (can be a past or present patient)
2. The PHI requested must pertain to the relationship
3. The discloser must disclose only the minimum information necessary for the health care operation at hand.

Treatment: Care Planning by a Health Care Provider

A provider wants to ensure that her patients have a comprehensive care plan after they are discharged from the hospital. The provider hires a care planning company (i.e., its BA) to develop these plans for her patients. To develop the plan, the care planning company requests pertinent PHI about each patient from the patients' other providers, such as the hospitals to which the patients have been admitted for the same or similar medical care and the patients' health plans. Each of these covered entities may disclose the relevant PHI for care planning purposes using Certified EHR Technology. Disclosure of electronic PHI by such technology or other electronic method requires HIPAA Security Rule compliance.

Note: In this scenario, a business associate agreement (BAA) is only required between the covered entity that hires the care planning company and that company. The responding covered entities may permissibly disclose PHI in this scenario directly to the provider's care planning company for the provider's care planning purposes (without the need to execute their own BAA with the care planning company) just as they could share this information directly with the provider.

Under HIPAA, the patients' other providers and health plans, which have sent PHI to the initial treating provider's BA, are not responsible for what the BA does with the PHI once it has been sent to the BA for permissible reasons and in a secure manner.



Health Care Operations: Quality Improvement Among Several Covered Entities for Population Health

Unaffiliated hospitals in the same community often see the same patients and may not be able to tell whether a patient's hospital-acquired infection resulted from care received at the current treating hospital or from a prior visit to a separate hospital in the community.

The hospitals that have treated or are treating the patient may use Certified EHR Technology to share relevant PHI to try to determine the source and/or cause of the infection in order to prevent further infections. Further, a provider that has treated the patient and is responding to a query may use Certified EHR Technology to send the relevant information directly to the requesting health care provider, or may disclose to the requesting provider using a Health Information Exchange.

Disclosure of electronic PHI by Certified EHR Technology or other electronic means requires HIPAA Security Rule compliance.

