

ACCOUNTING FOR DISCLOSURES OF PROTECTED HEALTH INFORMATION

KEYWORDS: Accounting, accountable, disclosure, information, PHI.

PURPOSE: To provide the requestor with a list of places to which the patient's Protected Health Information has been sent, required by law. The Proposed Rule contains two separate and distinct rights for individuals: (1) the right to an Accounting of Disclosures, and (2) the right to an Access Report.

LEGAL/REGULATORY CITES: 45 CFR § 164.512

DEFINITIONS: A disclosure is defined as "the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

POLICY/PROCEDURE:

Upon the patient's or the patient's Personal Representative's request, St. Joseph's will provide the requestor with a list of all places to which the patient's Protected Health Information has been sent, required by law ("Accountable Disclosures") in accordance with this policy. An "**Accountable Disclosure**" is any disclosure of a patient's Protected Health Information made by St. Joseph's or a business associate of St. Joseph's on or after April 14, 2003 *except* for those disclosures listed below in Sections II.B.2 and II.B.3.

PROCEDURES

A. General Procedure. When St. Joseph's Privacy Officer receives a written request for an accounting of disclosures of a patient's Protected Health Information, St. Joseph's shall provide the requestor with an accounting of all Accountable Disclosures for the time requested, up to the six (6) year period immediately prior to the date of the request (but not prior to April 14, 2003).

B. Disclosures which must be included in an accounting include information disclosed as follows:

1. Required by Law. (e.g., mandated disease reporting)
2. Public Health Activities. To a public health authority that is authorized by law to collect information for the purpose of preventing or controlling disease, injury or disability, e.g., to the NJ Department of Health and Senior Services.
3. Birth and Death Reporting
4. Child Abuse Reporting. To a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

5. Other Abuse, Neglect or Domestic Violence Reporting. To a governmental authority authorized by law to receive reports of abuse, neglect or domestic violence;
6. FDA Reporting (e.g., adverse events, regarding product defects or biological product deviations; for product recalls, or look back studies; or for post-marketing surveillance)
7. Communicable Disease Exposure Notification. 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 covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;
8. Employment-Related Disclosure. To an employer, about an patient who is a member of the workforce of the employer, in connection with medical surveillance of the workplace or to evaluate a work-related illness or injury;
9. Health Oversight Activities. To a health oversight agency for oversight activities authorized by law, including audits; civil, administrative or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative or criminal proceedings or actions; or other activities necessary for appropriate oversight of: (i) the health care system; (ii) government benefit programs for which health information is relevant to beneficiary eligibility; (iii) entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or (iv) entities subject to civil rights laws for which health information is necessary for determining compliance;
10. Judicial and Administrative Proceedings. In the course of any judicial or administrative proceeding;
11. Wound or Injury Reporting. As required by law including laws that require the reporting of certain types of wounds or other physical injuries;
12. Response to Legal Process. Pursuant to a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; or an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law;
13. Law Enforcement. To a law enforcement official either based on the official's request for Protected Health Information or on the covered entity's own initiative;
14. Coroner or Medical Examiner. To a coroner or medical examiner to assist such official in authorized duties;
15. Organ Procurement. To an organ procurement organization for organ, eye or tissue donation purposes;
16. Research. Pursuant to a waiver of the authorization requirement for the use and disclosure of Protected Health Information for research purposes; for research related to deceased individuals; or to develop a research protocol or for other similar purposes preparatory to research.
17. Threat to Health or Safety. To a third party to prevent serious threat to health or safety;
18. Armed Forces Personnel. To appropriate U.S. or foreign military command authorities regarding an individual who is a member of U.S. or foreign armed forces;

19. Protective Services. To authorized federal government officials for the provision of protective services to the President of the United States, foreign heads of state and certain other government officials and to conduct investigations related to such protective services;

20. Workers' Compensation. As authorized by and to comply with workers' compensations laws (i.e., laws that provide compensation for work-related injuries and illnesses regardless of fault); or

21. Catch-all. Under any other circumstances where Protected Health Information is disclosed to a third party and an exception to the accounting requirement is not available under Sections II.B.2 or II.B.3. For instance, a mistaken disclosure of Protected Health Information without the patient's authorization or pursuant to a defective authorization is an Accountable Disclosure within this catch-all category if the **St. Joseph's** is aware of the mistake.

C. What Information is not Required to be included in an Accounting. St. Joseph's is *not* required to provide a patient an accounting of disclosures of Protected Health Information that were made for the following purposes:

1. To carry out Treatment, Payment and Health Care Operations;
2. To the patient;
3. Incidental to a use or disclosure otherwise permitted
4. Pursuant to an authorization by the patient or the patient's representative;
5. For the patient directory;
6. To persons involved in the patient's care (family, friends)
7. If information was disclosed in an emergency situation;
8. Information disclosed for national security or intelligence purposes;
9. Information disclosed to correctional institutions or law enforcement officials;
10. Information disclosed as part of a limited data set in accordance with Hospital Policy; or
11. Any disclosure that occurred before April 14, 2003.

D. When the Hospital is not required to provide a disclosure

St. Joseph's must temporarily suspend a patient's right to receive an accounting of disclosures that were made to a health oversight agency or law enforcement official if the health oversight agency or law enforcement official informs St. Joseph's that providing such an accounting to the patient would be reasonably likely to impede such agency's or official's activities. The patient's right to receive an accounting will be suspended for the length of time specified in the request for a suspension received from the health oversight agency or law enforcement official. If the Hospital receives an oral request from the agency for a suspension, it will document the occurrence of the request and the agency or official making the request. Unless received in writing, the oral request shall be good for thirty days.

E. Content of the Accounting

Any accounting given by St. Joseph's will be in writing and include disclosures in accordance with this policy made by St. Joseph's or its Business Associates (of which St. Joseph's has been made aware) during the accounting period (six years from the date of the patient's request, unless the patient requests a shorter time period, but not before April 14, 2003). The accounting given

to the patient will include: (a) the date of the disclosure, (b) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person, (c) a brief description of the Protected Health Information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the patient of the basis for the disclosure.

F. Multiple Disclosures Exception.

If, during the period covered by an accounting, St. Joseph's has made multiple disclosures to the same person or entity for a single purpose, the Hospital need only include the following information about these disclosures in an accounting:

1. The required information listed above for the first disclosure during the accounting period;
1. The frequency, periodicity, or number of the disclosures made during the accounting period; and
2. The date of the last such disclosure during the accounting period.

G. Research.

If, during the accounting period, St. Joseph's has made disclosures of Protected Health Information for a particular research purpose (without a patient authorization) for 50 or more individuals, the accounting *may*, with respect to such disclosures for which the Protected Health Information about the individual may have been included, provide:

1. The name of the protocol or other research activity;
2. A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
3. A brief description of the type of Protected Health Information that was disclosed;
4. The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
5. The name address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
6. A statement that the Protected Health Information of the individual may or may not have been disclosed for a particular protocol or other research activity.

If St. Joseph's provides an accounting for research disclosures, in accordance with this policy, and if it is reasonably likely that the Protected Health Information of the patient was disclosed for such research protocol or activity, St. Joseph's shall, at the request of the patient, assist in contacting the entity that sponsored the research and the researcher.

H. Timing of Response to Patient's Request for Accounting

The Hospital must provide within sixty (60) days after receipt of a written request for an accounting, one of the following:

1. A written accounting as described in this policy; **or**
2. If the Hospital is unable to provide the written accounting within sixty (60) days of receipt of the patient's written request, then a written statement of the reasons for the delay and the date by which the St. Joseph's will provide the accounting (which may not be later than ninety (90) days from the date of written request).

I. Fee for Accounting.

St. Joseph's will provide the first accounting to a patient in any twelve (12) month period without charge in connection with processing and producing the requested accounting. For each subsequent request for an accounting during such twelve (12) month period, the Hospital will charge the patient a flat fee of \$50 to complete the requested accounting. This fee represents a reasonable, cost-based fee, as updated from time to time. In the event that the patient did not submit a completed Accounting Request Form to the Privacy Office, St. Joseph's will, prior to charging the patient any such fee, inform the patient of the fee and will provide the patient with an opportunity to withdraw or modify the request for such subsequent accounting in order to avoid or reduce the fee.

J. Retention of Accounting.

St. Joseph's shall retain each written accounting that it creates in accordance with this policy and each written response it provides to a patient in connection therewith for a period of six (6) years from the date that the written accounting or other written response, as applicable, is created. In addition, St. Joseph's shall retain each written request for an accounting it receives and any documentation it creates pursuant to Section II.B.3 of this policy for a period of six (6) years from the date such written request is received or such documentation is created, as applicable. All requests shall be maintained by the Privacy.

REQUEST FOR AN ACCOUNTING OF DISCLOSURES

Date of Request: _____

Patient's Name: _____

Date of Birth: _____ Medical Record Number: _____

Patient's Address: _____

Address to send disclosure accounting (if different than above):

Dates Requested:

I would like an accounting of all disclosures for the following time frame. Please note – the maximum time frame that can be requested is 6 years prior to the date of request.

From: _____ To: _____

Fees:

First request in a 12-month period: Free

Subsequent Requests: \$50.00

The fee for this request will be: _____

I understand that there is a fee for this accounting and wish to proceed. I also understand that the accounting will be provided to me within 60 days unless I am notified in writing that an extension of up to 30 days is needed.

Signature of Patient or Legal Representative

Date

Relationship if Representative is not patient

For Healthcare Organization Use Only:

Date Received: Date Sent:

Extension Requested: No Yes, Reason

Patient Notified in writing on this date:

Staff Member Processing Request:
