



**POLK COUNTY, IOWA
GENERAL POLICIES**

FOR

COMPLIANCE WITH THE

**HEALTH INSURANCE
PORTABILITY**

**AND ACCOUNTABILITY ACT OF
1996**

“HIPAA”

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INTRODUCTION

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (“HIPAA”). HIPAA has several provisions; however, the most relevant provisions to Polk County are those directed toward administrative simplification in the health care industry. As part of this effort, Congress enacted significant requirements for health care providers with regard to billing, use and disclosure of Individual information, and security measures to be utilized by entities covered by HIPAA.

Although Congress did establish some requirements in HIPAA itself, it delegated authority to the Secretary of the United States Department of Health and Human Services (the “Secretary”) to develop and implement the regulatory scheme. The Secretary has promulgated regulations for the main components of HIPAA’s administrative simplification provisions: (1) Transaction Code Set Rules; (2) Privacy Rules; (3) Security Rules; (4) Breach Notification Rules; and (5) Enforcement Rules.

The American Recovery and Reinvestment Act of 2009, included the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”). The HITECH Act includes a number of provisions which significantly affect HIPAA covered entities and mandated substantial revisions to the HIPAA regulations. A number of proposed regulations were enacted following HITECH. Then, on January 25, 2013, final HIPAA regulations were published which significantly amended the HIPAA privacy regulations, including changes to the requirement for breach notification, the definition of business associate, business associate obligations, and the definition of protected health information, among other significant changes (the “Final HIPAA regulations”). Together, HIPAA, HITECH, and all related regulations (including the Final HIPAA regulations) shall be referred to in this HIPAA manual as “HIPAA”.

The following is a brief summary of each of the main regulatory provisions under HIPAA:

Transactions/Code Sets. One major focus of HIPAA is in the area of electronic data interchange. Specifically, the regulations require all health care providers, health care clearinghouses and health plans who submit electronic transactions to do so in a nationally standardized format. The purpose is to allow for uniformity in claims and other electronic data communications between payors and providers. The regulations apply only to providers who submit transactions electronically. As part of the regulations, the Secretary has published implementation standards for providers to use when transmitting electronic transactions.

Privacy Rule. The HIPAA privacy provisions govern the use and disclosure of an Individual’s individually identifiable health information, known as “protected health information” (“PHI”). These HIPAA privacy regulations are referred to as the “Privacy Rule”. To prevent improper use or disclosure of PHI, providers must develop and maintain numerous safeguards, including, but not limited to adopting compliant policies and procedures and training applicable workforce members. The Privacy Rule establishes a foundation of Federal protections for the privacy of PHI. The Privacy Rule does not replace federal, state, or other law that grants Individuals even greater privacy protections, and covered entities are free to retain or adopt more protective policies or practices. In the event state law or the Polk County policy is more restrictive than the HIPAA privacy regulations, the more restrictive law or policy will apply.

Security Rule. The HIPAA regulations also address the security of PHI and require covered entities and business associates to adopt administrative, physical and technical safeguards to protect the security of PHI. These HIPAA security regulations are referred to as the “Security Rule”. The HIPAA security regulations require organizations to evaluate existing security and confidentiality policies, as well as technical practices and procedures, including access controls, audit trails, physical security and disaster recovery, protection of remote access points, protection of external electronic communications, software discipline and system assessment.

Breach Notification Rule. Under HIPAA, covered entities are required to notify Individuals, the Secretary of HHS, and in some cases, the media, regarding certain breaches of PHI. The term “breach” means the acquisition, access, use or disclosure of PHI in a manner that is not permitted under the privacy regulations, which compromises the security or privacy of the PHI. A breach is presumed to compromise the security or privacy of PHI unless the covered entity can demonstrate through a risk assessment that there is a low probability of compromise to the PHI. In some cases where notice is required, notice of the breach may also be required to be posted on the organization’s website, and/or provided to major print or broadcast media. Each covered entity must also maintain a log of breaches, which must be submitted to the Secretary annually, except in cases in which more than 500 Individuals are affected, in which case the Secretary must be notified immediately.

Enforcement Rule. Violations of HIPAA can result in civil monetary penalties and criminal penalties for willful disclosures. While there is no private right of action under HIPAA, Individuals who believe their rights have been violated may file a complaint directly with the HHS Office of Civil Rights. If through preliminary information HHS determines that a violation was likely due to willful neglect, it must conduct an investigation. If founded, HHS is then required to impose a penalty on the violator. State attorneys general can also bring enforcement actions under HIPAA. Civil monetary penalties under HIPAA range from a minimum of \$100 per violation to \$50,000 per violation for a violation in which the covered entity or business associate did not know and would not have known by exercising reasonable diligence, to a minimum of \$1000 per violation to \$50,000 per violation for a violation due to reasonable cause, but not willful neglect (with a maximum of \$1.5M for violations of identical provisions in a calendar year). For a violation due to willful neglect, the penalty range is a minimum of \$10,000, but not more than \$50,000 per violation, depending on whether the violation was corrected within 30 days of the date the violator knew or should have known of the violation (up to \$.15M for the identical violation in a calendar year), and the penalty could range from a minimum of \$50,000 up to \$1.5M for an identical violation in a calendar year if the willful neglect violation was not corrected within thirty days. Further, a portion of civil monetary penalty proceeds can be distributed directly to harmed Individuals.

WORKFORCE DESIGNATION

Polk County, Iowa, a governmental subdivision organized and existing under the laws of the State of Iowa, has developed policies and procedures to address its obligations under the Health Insurance Portability and Accountability Act (“HIPAA”). Throughout all internal HIPAA policies and procedures, Polk County, Iowa shall be identified as “Covered Entity” or “Polk County.”

In accordance with [45 C.F.R. §164.514\(d\)\(2\)](#), Polk County has identified:

Those persons or classes of persons, as appropriate, in its workforce who need access to PHI to carry out their duties; and

For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.

The following designations have been made:

Position/Job Title	PHI Access Required?	Category or Categories of PHI to be accessed	Method of access to PHI
Community Services Director and Deputy	Yes	All departmental information	Hard copies, digital and data systems
Community Services Medical Providers - Detention	Yes	Medical Charts on Assigned Clients	Hard Copy and electronic
Behavioral Health Director and Deputy	Yes	All departmental information	Hard copies, digital and data systems
General Assistance Staff	Yes	Client files related to general assistance	Hard copies, digital and data systems
Veteran Affairs Staff	Yes	Client files related to Veteran Affairs	Hard copies, digital and data systems
Case Managers and Program Planners	Yes	Client specific files related to case management	Hard copies, digital and data systems
Social Workers	Yes	Client specific files related to case management	Hard copies, digital and data systems
Judicial Mental Health Advocates	Yes	Client medical files	Hard Copies and electronic
County Attorney and Assistants	Yes	Legal files	Hard Copies and electronic
County Attorney Staff	Yes	Legal files	Hard Copies and electronic
Civil Claims Counsel		Legal files, Claims and Insurance Information, Appeals	Hard Copies and electronic
Board of Supervisors	Yes	Claims and Insurance Information, Appeals	Hard Copies
Human Resources Director, Deputy, and Risk Management Staff	Yes	Claims information, insurance information	Hard Copies and electronic

County Administrator and Deputy	Yes	Claims and Insurance Information, Appeals	Hard Copies and electronic
Auditor and Assistant	Yes	Claims information, insurance information	Hard Copy and electronic
Mental Health Program Monitor - Auditor	Yes	Client files; Claims Information	Hard copies, digital and data systems
Home Care Aide	Yes	Medical Charts on Assigned Clients	Hard Copy
Conservation Administrative Staff	Yes	Claims information, insurance information	Hard Copy and electronic
Conservation Leisure Services Manager	Yes	Client specific files related to Equine Therapy program	Hard Copy
Conservation Equine Staff	Yes	Client specific files related to Equine Therapy program	Hard Copy
Health Director and Deputy	Yes	Client Medical Records	Hard Copy and electronic
Health Department Physicians and Nurses	Yes	Client Medical Records	Hard Copy and electronic

Polk County shall make reasonable efforts to limit the access of such persons or class of persons identified in this designation to only the minimum necessary access that is required for the person or class of persons to perform their job function.

POLK COUNTY GROUP HEALTH PLAN

Polk County, Iowa sponsors and funds a group health plan. Polk County, Iowa has a financial arrangement with Wellmark under which Polk County is solely responsible for claim payment amounts for covered services provided to employees. Wellmark provides administrative services and provider network access only and does not assume any financial risk or obligation for claim payment amounts. Wellmark will use or disclose an employee's health information only for treatment, payment, and health care operations according to the standards and specifications of the federal privacy regulations.

HYBRID ENTITY DESIGNATION

In accordance with [45 C.F.R. § 164.105\(a\)](#), Polk County has been designated as a Hybrid Entity. The following Polk County Departments and Offices have been designated as healthcare components of Polk County and thus are subject to the HIPAA provisions:

Board of Supervisors

Sheriff's Office

Veteran's Affairs

Public Health Department

Community, Family, and Youth Services

Auditor's Office

General Services

Human Resources/Risk Management

Information Technology

Medical Examiner's Office

County Attorney's Office

Behavioral Health and Disability Services

Select Offices of the Polk County Conservation Board employees: Administrative, Leisure Services, and the Jester Park Equestrian Center

Wellmark Health Plan of Iowa [Administrator of the Polk County Group Health Plan]

Other Polk County Departments and Offices have not been designated as healthcare components of Polk County and thus are not subject to the HIPAA provisions but will be trained on handling confidential information as appropriate. The following offices and departments are not subject to HIPAA privacy provisions: Recorder's Office, Treasurer's Office, Polk County Conservation Board and employees except as described above, Public Works, Regional Facilities, Planning and Development, and Special Projects.

Polk County shall ensure that if a member of its workforce performs duties for both a healthcare component and another office or department, that person shall not use or disclose PHI created or received in the course of or incident to the member's work for the healthcare component.

References within this HIPAA Manual to Polk County mean the HIPAA covered entity components of Polk County.

AFFILIATED COVERED ENTITY DESIGNATION

Under [45 C.F.R. §164.105\(b\)](#), legally separate covered entities may designate themselves as a single affiliated covered entity if all of the covered entities are under common ownership or control. Common control exists if an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of another entity. Common ownership exists if an entity possesses an ownership or equity interest of 5% or more in another entity.

Polk County Conservation Board

Polk County Board of Health Advisory Committee

Polk County Mental Health and Disability Services Region Governing Board

Polk County Service Appeal Board

Veterans Affairs Commission

Accordingly, because they are each part of a single affiliated covered entity under HIPAA, the policies set forth in this manual apply to each entity listed above. Further, any entity formed after the adoption of this policy manual that is under common ownership or control of Polk County will be considered part of Polk County's single affiliated covered entity under HIPAA, whether or not the entity is expressly added to the list of entities set forth above.

However, it is important to note that while the same set of policies and procedures in this HIPAA manual apply to all of the affiliated covered entities designated herein, the affiliated covered entities may only share PHI with each other as permitted under applicable state and federal law.

HIPAA RECORD RETENTION POLICY

POLICY

Polk County recognizes that HIPAA requires all documentation of HIPAA compliance to be maintained for a period of at least six (6) years. To support Polk County's commitment to compliance with HIPAA, Polk County shall retain all records documenting HIPAA compliance for at least the required retention period. Records and communications covered by this policy may be retained in either written or electronic form.

PURPOSE

The purpose of this policy is to provide Individuals with guidance on the required retention period for HIPAA documents, including examples of the type of records that must be retained.

REFERENCES/CROSS-REFERENCES

[45 C.F.R. §164.530\(j\)](#)
45 C.F.R. §164.520(c)(3)

PROCEDURE

Polk County shall retain all documentation of its HIPAA compliance for six years from the date of its creation or the date when it was last in effect, whichever is later. The following are more specific examples of the retention obligations for certain HIPAA compliance records:

Accounting of Disclosures

Polk County shall retain the following for a period of at least 6 years from the date of its creation or the date when it last was in effect, whichever is later:

- the information required to be included in an Accounting of Disclosure under HIPAA;
- all requests by an Individual for an Accounting of Disclosures; and
- the Accounting of Disclosures that is provided to the Individual.

Amendment of PHI

Polk County shall retain the following for a period of at least 6 years from the date of its creation or the date when it last was in effect, whichever is later:

- all signed requests to amend PHI for a period of six (6) years;
- if a request for amendment to PHI is granted, a copy of the material sent to the Individual and/or any third party in response to the amendment; and
- if a request for amendment is denied, a copy of the written notice of denial, the Individual's statement of disagreement and Polk County's rebuttal, if applicable.

Business Associate Agreements

Polk County shall retain all executed Business Associate Agreements and underlying agreements for a period of at least 6 years from the date of their creation or the date when they last were in effect, whichever is later.

De-Identified Information

Polk County shall retain all documentation related to HIPAA de-identified data for a period of at least six (6) years from the date of creation or when last in effect, whichever is later.

Documentation of HIPAA Uses and Disclosures

Polk County shall retain the following for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later:

- policies and procedures related to the use and disclosure of PHI;

- all requests for use or disclosure of PHI, including Individual requests for access, amendment and accounting, whether made by the Individual who is the subject of the PHI or third parties;

- original or electronic copies of agreements with Business Associates referring to the use or disclosure of PHI; and

- any and all forms related to the use or disclosure of PHI, including but not limited to the following forms:

 - Authorization to Use or Disclose PHI;

 - Request to Access PHI;

 - Request to Amend PHI;

 - Complaint Form; and

 - Notice of Privacy Practices and any changes made thereto.

Family Involvement/Personal Representatives

Polk County shall retain the following for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later:

- all HIPAA Authorizations to Use or Disclose PHI provided by an Individual's family members; and

- all documentation provided regarding an Individual's status as a personal representative or guardian of an Individual.

Health Oversight Disclosures

Polk County shall retain all documentation relating to a use or disclosure which was made to a Health Oversight Agency for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later. This shall include, at a minimum, the following:

- the name of the person or entity requesting the information;
- the authority pursuant to which the Individual or entity is requesting the information;
- the verification procedures used;
- the circumstances under which the information was sought and released; and
- the date of the disclosure and a copy of any and all information released.

Judicial or Administrative Disclosures

Polk County shall retain the following for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later:

- the original, or a copy, if appropriate, of the court or administrative tribunal's request;
- statements regarding assurances of notice to the Individual or statements regarding a qualified protective order;
- the procedures used to verify the identity and authority of the requesting party; and
- a copy of the PHI provided, if any.

Law Enforcement Disclosures

Polk County shall retain all documentation relating to a use or disclosure which was made to a Law Enforcement Official for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later. This shall include, at a minimum, the following:

- the name of the person or entity requesting the information;
- the authority pursuant to which the Individual or entity is requesting the information, the verification procedures used;
- the circumstances under which the information was sought and released; and
- the date of the disclosure and a copy of any and all information released.

Limited Data Sets

Polk County shall retain all documentation relating to the creation, use or disclosure of a limited data set for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later This shall include, at a minimum, the following:

- the name of the person or entity receiving the information;
- the purpose for which the limited data set was created, used or disclosed;
- the date of the creation, use or disclosure; and
- a copy of any and all information created, used or disclosed.

Marketing

Polk County shall retain the following for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later:

- marketing policies and any and all revisions to those policies; and
- all Authorizations to use or disclose PHI for marketing; and
- copies of all marketing materials.

Acknowledgement of Receipt of Notice of Privacy Practices

Polk County shall retain copies of any written acknowledgments of receipt of the Notice of Privacy Practices, or, if not obtained, documentation of its good faith efforts to obtain such written acknowledgment. Polk County may provide the notice required by this section to an individual by e-mail, if the individual agrees to electronic notice and such agreement has not been withdrawn. If Polk County knows that the e-mail transmission has failed, a paper copy of the Notice of Privacy Practices must be provided to the individual. [45 C.F.R. §164.520\(c\)\(3\)](#). Polk County must retain this documentation from the date of its creation until six (6) years after the date when it was last in effect.

Authorizations

Polk County shall retain the signed Authorizations to Use or Disclose PHI for at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Notice of Privacy Practices

Polk County shall retain a written and electronic copy of each effective HIPAA Notice of Privacy Practices for a period of six (6) years from the date of its creation or if later, the date it was last in effect.

Privacy Officer

Polk County shall retain the following for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later:

the official designation of the Privacy Officer; and

the job description for the Privacy Officer.

Disclosures Required by Law

Polk County shall retain all documentation relating to a use or disclosure which was Required by Law for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later. This shall include, at a minimum, the following:

the name of the person or entity requesting the information;

verification of the identity and/or authority of the Individual requesting the information;
and

a copy of any and all information released.

Uses and Disclosures of PHI for Research

Polk County shall retain all documentation relating to the use and disclosure of PHI for research for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Safeguarding of PHI

Polk County shall retain all documentation relating to the safeguarding of PHI for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Sale of PHI

Polk County shall retain all documentation relating to the sale of PHI for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Sanctions

Polk County shall retain all documentation relating to the investigation of potential violations of HIPAA subject to sanctions and the imposition of sanctions for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Training of Personnel

Polk County shall retain all documentation relating to training of personnel for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Verification

Polk County shall retain all documentation relating to the verification of the identify and legal authority of a public official or a person acting on behalf of the public official requesting disclosure of PHI for a period of at least six (6) years from the date of its creation or the date when it last was in effect, whichever is later.

Breach Notification

Polk County shall retain all documentation relating to the risk assessment performed in analyzing a potential breach, a record of all breach notifications provided and a record of all requests for law enforcement delays, for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.