



**POLK COUNTY, IOWA  
PRIVACY POLICIES**

**FOR**

**COMPLIANCE WITH THE**

**HEALTH INSURANCE PORTABILITY**

**AND ACCOUNTABILITY ACT OF 1996**

**“HIPAA”**

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## OVERVIEW: HANDLING USES AND DISCLOSURES OF PHI

### I. POLICY

Polk County shall Use and Disclose PHI only as permitted under HIPAA. All Polk County workforce members should be familiar with HIPAA, the effect of HIPAA on their job functions, and must comply with this Policy at all times.

### II. PURPOSE

The purpose of this Policy is to provide Polk County workforce with guidance as to the Uses and Disclosures of PHI permitted by HIPAA.

### III. REQUIREMENTS AND EXPLANATION

**A. Use and Disclosure of PHI is Restricted.** Polk County workforce may Use or Disclose PHI only as permitted by HIPAA. The permitted Uses and Disclosures are summarized below.

**B. Use and Disclosure for Treatment, Payment, or Health Care Operations.** Polk County may Use PHI for Treatment, Payment or Health Care Operations, without an Authorization, as follows:

- 1) Polk County may Use or Disclose PHI for its own Treatment, Payment or Health Care Operations;
- 2) Polk County may Disclose PHI for Treatment activities of another Health Care Provider;
- 3) Polk County may Disclose PHI to another Covered Entity or Health Care Provider for the Payment activities of the entity that receives the information;
- 4) Polk County may Disclose PHI to another Covered Entity for Health Care Operations of the entity that receives the PHI if (a) Polk County and the other Covered Entity had or have a relationship with the subject of the PHI; (b) the PHI pertains to that relationship; and (c) the Disclosure is for one of the following purposes:
  - i. Conducting quality assessment and improvement activities (including outcomes evaluation and development of clinical guidelines);
  - ii. Population based activities relating to improving health or reducing health care costs;
  - iii. Protocol development;
  - iv. Case management and care coordination;
  - v. Contacting of Health Care Providers and Individuals with information about Treatment alternatives;

- vi. Related functions that do not include Treatment;
- vii. Reviewing the competence or qualifications of health care professionals;
- viii. Evaluating practitioner and provider performance;
- ix. Evaluating health plan performance;
- x. Conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to Covered Entity or improve their skills as health care providers;
- xi. Training of non-health care professionals;
- xii. Accreditation, certification, licensing or credentialing activities;
- xiii. Health care fraud and abuse detection or compliance.

5) If Polk County participates in an organized health care arrangement, it may Disclose PHI to another participant in the organized health care arrangement for any Health Care Operations of the organized health care arrangement.

**C. Use and Disclosure with Authorization.** Polk County must obtain an Authorization from the Individual who is the subject of PHI before using that PHI for any Use or Disclosure not otherwise provided for under the Privacy Rule. Thus, Polk County must obtain an Authorization before using or Disclosing PHI in any manner other than as described in this Policy. The Authorization must be in accordance with the Authorization Policy contained in the Policy Manual.

**D. Uses and Disclosures That Require an Opportunity for the Individual to Agree or Object.** Polk County may Use or Disclose an Individual’s PHI for the purposes in this paragraph without authorization, provided that the Individual has been informed in advance of the Use or Disclosure and has an opportunity to agree or prohibit or restrict the Disclosure. Such Uses and Disclosures are for either (a) a facility directory (typically a list of a facility’s Individuals); or (b) to discuss an Individual’s care with a family member or other person identified by the Individual.

**E. Uses and Disclosures That Do Not Require an Opportunity for the Individual to Agree or Object.** Polk County may Use an Individual’s PHI without authorization, and without giving the Individual an opportunity to agree or prohibit or restrict the Disclosure in certain situations specified by the Privacy Rule. These situations are where Use or Disclosure is:

1) REQUIRED BY LAW 45 C.F.R. §164.512(a) (See Required By Law Disclosures Policy)

Polk County may use or disclose PHI to the extent that the use or disclosure is required by law. Polk County will notify an Individual, as required by law, of any such uses or disclosures.

2) PUBLIC HEALTH 45 C.F.R. §164.512(b)

Polk County may disclose PHI for public health activities and purposes that may include:

- a) Collecting and receiving information by a public health authority, for the purpose of preventing or controlling disease, injury or disability;
- b) Disclosures to a public health authority authorized to receive child abuse or neglect reports;
- c) Activities related to the quality, safety or effectiveness of FDA-related products;
- d) Contacting Individuals, if authorized by law, who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading the disease; or
- e) Disclosing information to an employer, if Polk County provides healthcare to the Individual at the request of the employer to conduct drug testing or to evaluate whether the Individual has a work-related illness or injury.

3) ABUSE OR NEGLECT 45 C.F.R. §164.512(c)

Polk County may disclose PHI to the governmental entity or agency authorized to receive about victims of abuse, neglect or domestic violence, if Polk County believes an Individual has been a victim of abuse, neglect or domestic violence. The disclosure will be made consistent with the requirements of federal and state laws. Polk County will notify the Individual of the disclosure unless, in the exercise of professional judgment, Polk County believes informing the Individual would place them at risk of serious harm.

4) HEALTH OVERSIGHT 45 C.F.R. §164.512(d) (See Health Oversight Uses and Disclosures Policy)

Polk County may disclose PHI to a health oversight agency for activities authorized by law, such as audits, investigations and inspections.

5) LEGAL PROCEEDINGS 45 C.F.R. §164.512(e) (See Judicial or Administrative Purposes Disclosure Policy)

Polk County may disclose PHI in the course of any judicial or administrative proceeding, in response to an order of a court or administrative tribunal (to the extent such disclosure is expressly authorized), in certain conditions in response to a subpoena, discovery request or other lawful process.

6) LAW ENFORCEMENT 45 C.F.R. §164.512(f) (See Law Enforcement Disclosures Policy)

Polk County may disclose PHI for law enforcement purposes, in the following situations:

- a) If required by law (ex. reporting wounds or pursuant to a subpoena);
- b) Limited information requests for identification and location purposes;
- c) Pertaining to victims of a crime;
- d) Suspicion that death has occurred as a result of criminal conduct;
- e) In the event that a crime occurs on Polk County premises; and
- f) Medical emergency if it is likely that a crime has occurred.

7) USES AND DISCLOSURES ABOUT DECEDENTS [45 C.F.R. §164.512\(g\)](#)

a) *Coroners and Medical Examiners*

Polk County may disclose PHI to a coroner or medical examiner for identification purposes, determining cause of death or for the coroner or medical examiner to perform other duties authorized by law.

b) *Funeral Directors*

Polk County may disclose PHI to a funeral director, as authorized by law, in order to permit the funeral director to carry out their duties. Polk County may disclose PHI in reasonable anticipation of death.

8) CADAVERIC ORGAN, EYE OR TISSUE DONATION [45 C.F.R. §164.512\(h\)](#)

Polk County may disclose PHI to organ procurement, banking or transplantation organizations for cadaveric organ, eye or tissue donation purposes.

9) RESEARCH [45 C.F.R. §164.512\(i\)](#) (See Research Uses and Disclosures Policy)

Polk County may disclose PHI to researchers when their research has been approved by an Institutional Review Board or a Privacy Board that has reviewed the research proposal and established protocols to ensure the privacy of the PHI.

10) AVERTING SERIOUS THREAT TO HEALTH OR SAFETY [45 C.F.R. §164.512\(j\)](#) (See Serious Threat to Health or Safety Disclosures Policy)

Consistent with applicable federal and state laws, Polk County may disclose PHI, if in good faith, it believes that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. Polk County may also disclose PHI if it is necessary for law enforcement authorities to identify or apprehend an Individual.

11) SPECIALIZED GOVERNMENT FUNCTIONS [45 C.F.R. §164.512\(k\)](#) (See Specialized Government Functions Disclosures Policy)

a) *Military and Veterans Activities*

Polk County may disclose PHI of Individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities. Polk County, Veteran's Affairs Department as a component of the Federal Department of Veterans Affairs, may disclose PHI for the purpose of determining eligibility for benefits. Polk County may disclose PHI of an Individual who is foreign military personnel to foreign military authority.

b) *National Security and Intelligence Activities*

Polk County may disclose PHI to authorized federal officials for conducting national security and intelligence activities, including for the provision of protective services to the President or others legally authorized.

c) *Correctional Institutions and Other Law Enforcement Custodial Situations*

Polk County may disclose to a correctional institution or law enforcement official PHI for the purposes of providing health care; for the purpose of health and safety of an Individual, other inmates or correctional employees; for the purpose of law enforcement on the premises of the correctional institution or for the administration and maintenance of safety, security and other good order of the correctional institution.

d) *Government Entities Providing Public Benefits*

Polk County as a health plan may disclose PHI relating to eligibility for enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such agencies or the maintenance of such information in a single combined data system accessible to all such agencies is required. In addition, Polk County as a health plan may disclose PHI relating to the program to another covered entity that is a government program providing public benefits if the programs serve the same or similar populations and the disclosure of PHI is necessary to coordinate functions of the programs or improve administration and management.

12) WORKERS' COMPENSATION [45 C.F.R. §164.512\(l\)](#)

PHI may be disclosed by Polk County as authorized to comply with workers' compensation laws and other similar legally established programs.

Special conditions and limitations apply in each of the situations listed above. For example, PHI may be Used or Disclosed for research purposes only upon the approval of an Institutional Review Board or privacy board. The Privacy Officer must be contacted to approve the Use or Disclosure of PHI for any of the above special situations. This Manual will include more comprehensive Policies on some of the above special situations that are more commonly experienced.

**F. Disclosures That Require a Business Associate Contract.** (See Business Associate Assurances Policy) Whenever Polk County engages a third party to perform or assist in the performance of Polk County's activities which may involve the use or disclosure of PHI to such third party, Polk County will need to enter into a "Business Associates Agreement" with such party. Polk County may Disclose PHI to a Business Associate, or allow the Business Associate to create or receive PHI on Polk County's behalf, if the Business Associate enters into a contract with Polk County assuring that the Business Associate will appropriately safeguard the PHI. See Polk County's Business Associate Assurances Policy for more information on this issue.

**G. Disclosures of Limited Data Sets.** (See Limited Data Set Policy) Polk County may Use or Disclose PHI that meets the definition of a Limited Data Set only if Polk County enters into a Data Use Agreement with the recipient of the Limited Data Set, and if the recipient will use the Limited Data Set only for research, public health or Health Care Operations. Polk County may Use PHI to create a Limited Data Set, and may Disclose PHI to a Business Associate to create a Limited Data Set.

If Polk County personnel become aware of a pattern of activity that constitutes a material breach or violation of a Data Use Agreement, the personnel should notify the Privacy Officer, who will take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Disclosure of PHI to the Limited Data Set recipient must be discontinued and the violation must be reported to the Secretary of the Department of Health and Human Services.

Polk County may Disclose De-identified data without an Authorization only after it has been properly De-identified in accordance with the De-Identification Policy in this Manual.

Limited Data Sets will be released only to organizations that have signed a Data Use Agreement that satisfies the Privacy Rule requirements and the identifying data has been removed as required by the Privacy Rule. Limited Data Sets will be used only for research, public health, or Health Care Operations purposes.

- 1) Definition of Limited Data Set: A Limited Data Set is PHI that excludes the following direct identifiers of subject of the PHI, or of relatives, employers, or household members of the subject of the PHI: (i) names; (ii) postal address other than town, city, state and zip code; (iii) telephone numbers; (iv) fax numbers; (v) e mail address; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) web universal resource locators; (xiv) internet protocol address numbers; (xv) biometric identifiers, including finger and voice prints; and (xvi) full face photographic images and any comparable images.
- 2) Data Use Agreement. Polk County may Use or Disclose a Limited Data Set (“LDS”) only if Polk County enters into an agreement with the recipient of the Limited Data Set that:
  - a) Establishes the permitted Uses and Disclosures of the LDS by the recipient;
  - b) Does not allow the recipient to Use or Disclose the LDS in a manner that would violate the Privacy Rule if done by Polk County;
  - c) Establishes who is permitted to Use or Receive the LDS; and
  - d) Provides that the LDS recipient will:
    - i. Not Use or Disclose the LDS other than as permitted by the agreement or otherwise required by law;
    - ii. Use appropriate safeguards to prevent Use or Disclosure of the information other than as provided for by the agreement;



- iii. Report to Polk County any Use or Disclosure of the LDS not provided for by the agreement;
- iv. Ensure that any agents, including a subcontractor, to whom it provides the LDS agrees to the same restrictions; and
- v. Not identify the information or contact the Individuals.

If Polk County becomes aware of a pattern of activity of the LDS recipient that constitutes a material breach or violation of the data use agreement, Polk County must take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Polk County must discontinue Disclosure of PHI to the LDS recipient and report the problem to the Secretary of Health and Human Services (or her designee).

**H. The Minimum Necessary Standard.** (See Minimum Necessary Policy) The minimum necessary standard applies to all of Polk County's Uses and Disclosures of PHI except to (1) Disclosures to or requests by a health care provider when the PHI will be Used for Treatment purposes; (2) Disclosures to the Individual who is the subject of the PHI; or (3) Uses or Disclosures made pursuant to an Authorization requested by the Individual.

Polk County shall limit Use or Disclosure of PHI to the "minimum necessary," as set forth in guidance that the Secretary of the Department of Health and Human Services will issue. Until the issuance of such guidance, Polk County shall limit Use and Disclosure of PHI, to the extent practicable, to the Limited Data Set, or, if needed, to the minimum necessary to accomplish the intended purpose.

When Using or Disclosing PHI, or when requesting PHI from another entity, Polk County must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure or request for health information. Polk County must implement the following requirements after assessing their own unique circumstances. The requirements do not require limiting PHI Use or Disclosure to only what is absolutely the minimum necessary amount, but rather to what may reasonably be necessary to accomplish the purpose of the Use or Disclosure.

- 1) Polk County personnel's access to PHI. Polk County must identify those persons or classes of persons in its workforce who need access to PHI to carry out their duties. For each such person or class of persons, Polk County must identify the category or categories of PHI to which access is needed, and any appropriate conditions to such access. Polk County must make reasonable efforts to limit the access to PHI of such identified persons or classes of persons to the identified categories of PHI.
- 2) Minimum Necessary Disclosure of PHI.
  - a) For Disclosures made on a routine and recurring basis, Polk County must implement a standard protocol that limits the Disclosure to PHI reasonably necessary to achieve the purpose of the Disclosure.
  - b) For non-routine Disclosures, Polk County must develop criteria for determining and limiting such Disclosure to the minimum necessary PHI to

accomplish the purpose of the non-routine Disclosure. Such Disclosures must be reviewed on a case-by-case basis in accordance with these criteria.

3) Minimum Necessary Requests for PHI.

- a) For requests for PHI made on a routine and recurring basis, Polk County must implement a standard protocol that limits the Disclosure to PHI reasonably necessary to achieve the purpose of the Disclosure.
- b) For non-routine requests, Polk County must develop criteria for determining and limiting Disclosure to the minimum necessary PHI to accomplish the purpose of the non-routine Disclosure. Such requests must be reviewed on a case-by-case basis in accordance with these criteria.

4) Reasonable Reliance. Polk County may rely on a requested Disclosure for PHI as being the minimum necessary for a stated purpose when the request is made by:

- a) A public health official or agency for a Disclosure permitted under the Privacy Rule;
- b) Another Covered Entity;
- c) A professional who is a workforce member or Business Associate of Polk County holding the PHI; or
- d) A researcher with appropriate documentation from an Institutional Review Board or Privacy Board.

**I. Other Permitted Uses and Disclosures.** Polk County may also Use or Disclose PHI as follows:

- 1) Polk County may Disclose PHI to the subject of the PHI;
- 2) Polk County may Use or Disclosure PHI incident to a Use or Disclosure permitted or required by the Privacy Rule, provided that Polk County has complied with the Minimum Necessary requirements and enacted reasonable safeguards to prevent the intentional or unintentional Use or Disclosure of PHI that is not in compliance with the Privacy Rule.

**J. Mental Health Information and Other Situations in Which Iowa Law Provides Greater Protection for Data.** (See the Iowa Laws Requiring Greater Protections Policy for further information.) One example of an Iowa law that provides greater protection for information than does HIPAA, is Iowa's Mental Health Privacy Law at [Iowa Code Chapter 228](#). Therefore, before disclosing Mental Health Information, Polk County must confirm with the Privacy Officer that such disclosure is permitted under Iowa's Mental Health Privacy Law at [Iowa Code Chapter 228](#). Mental Health Information is defined as oral, written, or recorded information which indicates the identity of an Individual receiving professional services and which relates to the diagnosis, course, or treatment of the Individual's mental or emotional condition. Polk County shall not disclose Mental Health Information except as set out in this policy and in compliance with Iowa law regarding the disclosure of Mental Health Information.

## IOWA LAWS REQUIRING GREATER PROTECTIONS POLICY

### I. POLICY

HIPAA is meant to be comprehensive and uniform throughout the United States. However, HIPAA does not repeal (or “preempt”) any state laws that are not contrary to the provisions of HIPAA, which: (1) are related to the privacy of individually identifiable health information that are more stringent than HIPAA; (2) provide for the reporting of disease or injury, child abuse, birth or death, or for the conduct of public health surveillance, investigation or intervention; (3) require a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals; or (4) are approved based upon a determination of the Secretary.

### II. PURPOSE

The purpose of this policy is to provide greater clarification regarding *some* of the most common Iowa laws that are more protective than HIPAA, and thus, which must also be followed when using or disclosing certain information.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §160.203](#)
- [Iowa Code Chapter 135](#)
- [Iowa Code Chapter 228](#)
- [Iowa Code Chapter 125](#)
- [42 U.S.C. 290dd-2](#)
- [42 C.F.R. Part 2](#)
- [Iowa Code Chapter 141A](#)

### IV. REQUIREMENTS AND EXPLANATION

#### A. Department of Public Health [Iowa Code Chapter 135](#).

- 1) Definition:
  - a) Care Coordination is defined as the management of all aspects of a patient’s care to improve health care quality.

#### B. Mental Health Information [Iowa Code Chapter 228](#).

- 1) Definitions:
  - a) Mental Health Information is defined as oral, written, or recorded information which indicates the identity of an Individual receiving

professional services and which relates to the diagnosis, course, or treatment of the Individual's mental or emotional condition.

- b) Professional Services means diagnostic or treatment services for a mental or emotional condition provided by the mental health professional.
- 2) Polk County shall not disclose Mental Health Information except as set out in this policy and in compliance with Iowa law regarding the disclosure of Mental Health Information.
- 3) In addition to the HIPAA rules governing the disclosure of PHI, the following rules apply to disclosures of Mental Health Information:
- a) Care Coordination. Mental Health Information may be disclosed for purposes of care coordination (as defined under [Iowa Code §135D.2\(2\)](#)) if not otherwise restricted by federal law or regulation.
  - b) Voluntary Authorization. An Individual eighteen years of age or older, or an Individual's legal representative, may consent to the disclosure of Mental Health Information relating to the Individual by signing a voluntary authorization form.
    - i. The authorization form shall:
      - 1) Specify the nature of the Mental Health Information to be disclosed;
      - 2) State the persons or type of persons authorized to disclose the information;
      - 3) State the purposes for which the information may be used both at the time of the disclosure and in the future;
      - 4) Advise the Individual of the Individual's right to inspect the disclosed mental health information at any time;
      - 5) State that the authorization is subject to revocation and state the conditions of revocation;
      - 6) Specify the length of time for which the authorization is valid; and
      - 7) Contain the date on which the authorization was signed.
    - ii. A copy of the authorization shall be provided to the Individual or to the legal representative of the Individual authorizing the disclosure, and must be included in the Individual's record of Mental Health Information.
    - iii. An Individual or an Individual's legal representative may revoke a prior authorization by providing a written revocation to the recipient named in the authorization and to the Individual/entity previously authorized to disclose the Mental Health Information. The revocation is effective upon receipt of the written revocation by the person previously authorized to disclose the Mental Health

Information. After the effective revocation date, Mental Health Information shall not be disclosed pursuant to the revoked authorization. However, Mental Health Information previously disclosed pursuant to the revoked authorization may be used for the purposes stated in the original written authorization.

c) Disclosures in the Event of Medical Emergency or for Medical or Mental Health Professional Services.

- i. A recipient of Mental Health Information shall not disclose the information received, except as specifically authorized for initial disclosure. However, Mental Health Information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the Individual or the Individual's legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of this policy regarding the disclosure of mental health information shall be followed.

d) Disclosures to Providers of Professional Services and Administrative Disclosures.

- i. An Individual shall be informed that Mental Health Information relating to the Individual may be disclosed to employees or agents of the or for the same mental health facility, or to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the Individual.
- ii. Mental health professionals or facilities may disclose administrative information necessary for the collection of fees, to a person or agency providing collection services, as well as additional information in civil litigation related to the collection when necessary to respond to a motion by the Individual for greater specificity or to dispute a defense or counterclaim.
- iii. Mental health professionals or facilities may disclose Mental Health Information if necessary for the purpose of conducting scientific and data research, management audits, or program evaluations of the mental health professional or facility, only to persons who have demonstrated and provided written assurance of their ability to ensure compliance with [Iowa Code Chapter 228](#).
- iv. Mental Health Information may be disclosed to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the Individual.

e) Compulsory Disclosures.

i. [Iowa Code §228.6](#) includes a number of situations in which mental health professionals or facilities may disclose Mental Health Information in order to meet certain requirements under Iowa laws, or to meet the compulsory reporting or disclosure requirements of other state or federal law relating to the protection of human health and safety.

f) Disclosures for Claims Administration and Peer Review.

i. Mental Health Information may be disclosed by a mental health professional, data collector, mental health facility to a third-party payor or to a peer review organization if:

- 1) The Individual or legal representative has given prior written consent; and
- 2) The third-party payor or the peer review organization has filed a written statement with the Iowa Commissioner of Insurance in which the filer agrees to certain conditions. Note that self-insured employers that have not filed such statement shall not be granted routine or ongoing access to Mental Health Information unless the employees or agents have signed a statement indicating that they are aware that the information shall not be used or disclosed except as provided under Iowa law and that they are aware of the penalty for unauthorized disclosure.

ii. Third party payors and peer review organizations shall not use or disclose Mental Health Information to any person, except as necessary to administer claims submitted or to be submitted for payment to the third-party payor, to conduct a utilization and quality control review of mental health care services, to conduct an audit of claims paid, or as otherwise authorized by law.

g) Disclosures to Family Members.

i. A mental health professional or facility may disclose Mental Health Information to the spouse, parent, adult child, or adult sibling of an Individual who has a chronic mental illness if all of the following conditions are met:

- 1) The disclosure is necessary to assist in the provision of care or monitoring of the Individual's treatment;
- 2) The spouse, parent, adult child, or adult sibling is directly involved in providing care to or monitoring the treatment of the Individual; and
- 3) The involvement of the spouse, parent, adult child, or adult sibling is verified by the Individual's attending physician,

attending mental health professional, or a person other than the spouse, parent, adult child, or adult sibling who is responsible for providing treatment to the individual.

- ii. A request for Mental Health Information by a person authorized to receive such information under this section shall be in writing, except in an emergency as determined by the mental health professional verifying the involvement of the spouse, parent, adult child, or adult sibling.
- iii. Unless the Individual has been adjudged incompetent, the person verifying the involvement of the spouse, parent, adult child, or adult sibling shall notify the Individual of the disclosure.
- iv. The Mental Health Information that can be disclosed under this section is limited to the following:
  - 1) A summary of the Individual's diagnosis and prognosis;
  - 2) A listing of the medication which the Individual has received and is receiving and the Individual's record of compliance in taking medication prescribed in the previous six months; and
  - 3) A description of the Individual's treatment plan.

h) Disclosures of Psychological Test Material.

- i. Unless otherwise permitted under [Iowa Code Chapter 228](#), a person in possession of psychological test material shall not disclose the test material to any other person, including in any administrative, judicial or legislative proceeding. However, in accordance with HIPAA, the Individual who is the subject of the test material has a right to access the material. Also, if the Individual so requests in writing and completes a written authorization, all records associated with a psychological test of the Individual shall be disclosed to a psychologist licensed under [Iowa Code Chapter 154B](#) who is designated by the Individual.

- i) Record of Disclosures. Upon the disclosure of Mental Health Information, the person disclosing the mental health information shall enter a notation on and maintain the notation with the Individual's record of Mental Health Information, stating the date of the disclosure and the name of the recipient of Mental Health Information.

- j) Statements to Recipients. Further, the person disclosing Mental Health Information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an Individual or an Individual's legal representative, or as otherwise provided under state and federal law, that the unauthorized disclosure of mental health information is unlawful, and that

civil damages and criminal penalties may be applicable to the unauthorized disclosure of Mental Health Information.

**C. Chemical or Substance Abuse [Iowa Code Chapter 125](#)**

- 1) A physician or any person acting under the direction or supervision of a physician, or a Facility (as defined under [Iowa Code §125.2](#)) shall not report or disclose to any law enforcement officer or agency, the name of an Individual who has applied for voluntary treatment or rehabilitation services for substance abuse, or the fact that the treatment was requested or undertaken, nor shall such information be admissible as evidence in any court, grand jury or administrative proceeding unless authorized by the Individual seeking treatment.
- 2) Further, if a minor personally makes application seeking such treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent.
- 3) The registration records and other records of Facilities are confidential and privileged to the Individual patient. However, the director of the Iowa Department of Public Health may make available information from patient's records for purposes of research into the causes and treatment of substance abuse as long as the information does not disclose any Individual's name or other identifying information.
- 4) However, a patient's records may be disclosed to medical personnel in a medical emergency with or without patient consent.
- 5) A patient's records may also be disclosed for purposes of care coordination (as defined under [Iowa Code §135D.2\(2\)](#)) if not otherwise restricted by federal law or regulation.
- 6) Records of the identity, diagnosis, prognosis, or treatment of a person which are maintained in connection with the provision of substance abuse treatment services are confidential under Iowa law. Further, under federal law, [42 U.S.C. 290dd-2](#) and [42 C.F.R. Part 2](#), there are additional restrictions on disclosures of drug abuse information obtained by a federally assisted drug abuse program, that must be followed by third party payors with regard to records disclosed to them by federally assisted alcohol or drug abuse programs, entities having direct administrative control over such programs, and persons who receive patient records directly from such programs who are notified of the restrictions on redisclosure of the records. These federal laws should be reviewed carefully to determine if and how they apply in each circumstances involving patient records regarding drug or alcohol abuse treatment.
- 7) *Notice to accompany disclosure.* Each disclosure made with the patient's written consent must be accompanied by the following written statement: "This information has been disclosed to you from records protected by Federal



confidentiality rules ([42 CFR part 2](#)). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by [42 CFR part 2](#). A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.”

**D. HIV/Acquired Immune Deficiency Syndrome [Iowa Code Chapter 141A](#).**

- 1) Any information related to HIV or AIDS tests, including reports and records obtained, submitted or maintained pursuant to [Iowa Code Chapter 141A](#) is strictly confidential medical information and shall not be disclosed except as provided under [Iowa Code Chapter 141A](#).
- 2) [Iowa Code Chapter 141A](#) includes numerous provisions addressing when, and under what circumstances, HIV/AIDS information can be disclosed. Confidential information disclosed pursuant to [Iowa Code Chapter 141A](#) should include a notice to the recipient that the recipient must continue to maintain the confidentiality of the information and that the recipient must not further disclose the information without a specific authorization of the Individual or as otherwise permitted by law. A general authorization for the release of HIV/AIDS information is not sufficient, thus any authorization form must include an opportunity for the Individual to specifically authorize the release of such information.

## ACCESSING PHI POLICY

### I. POLICY

Polk County recognizes that Individual rights are a critical component to maintaining quality care and service, and is committed to allowing Individuals to exercise their rights under applicable federal, state and/or local laws and regulations. To support this commitment, Polk County maintains written Policies and Procedures to provide guidance when faced with a request by an Individual for access to their PHI.

### II. PURPOSE

The purpose of this policy is to provide Individuals with access to PHI when such access is required and appropriate.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.524](#)

### IV. SPECIFIC ACCESS POLICIES

#### A. General Rule

Under the Privacy Rule, Individuals may request access to their PHI which is found in the records Polk County keeps. Polk County, in most situations, is obligated to provide the Individual with the requested information. This access may be in various forms, including allowing the Individual to inspect and/or obtain a copy of the PHI held by Polk County, including electronic copies if possible. In certain situations, Individuals are not entitled to have access to the requested information, which are set forth in greater detail below. If the request for access is denied, an Individual may be entitled to a review of that denial. It is anticipated that most requests for access to an Individual's PHI will be accommodated. However, in some situations, the determination will be made to deny access. This Policy is designed to set forth the procedures Polk County should follow in responding to a request for access.

#### B. Processing Requests

Because of the many complexities surrounding a request for access under the Privacy Rule, it is Polk County's Policy to refer requests for access to the Department Director or designee who will review the request to determine if the Individual is eligible to receive requested PHI.

#### C. Form of Request

Polk County shall request that the Individual requesting access to PHI complete an appropriate form.

#### D. Response Time for Request for Access

- 1) *Respond Within Thirty Days.* Upon receipt of the request to access PHI, Polk County will, within thirty (30) days: (a) inform the Individual of the acceptance of

the request to provide access and provide the access requested; or (b) provide the Individual with a written denial.

- 2) *One Thirty Day Extension.* In certain circumstances, Polk County may extend the time required to respond to the request by an additional thirty (30) days as long as: (1) Polk County, within thirty days, provides the Individual with a written statement of the reasons for the delay and the date by which Polk County will complete its action on the request; and (2) Polk County may only have one such delay per request. This delay should be the exception and not the rule, however, and the reason for delay in responding to the request for access must be documented and retained by Polk County.

#### **E. Approving Request for Access**

- 1) *All Access.* Polk County will provide the Individual with access to the PHI in the form or format requested by the Individual, if the PHI is readily reproducible in such form or format. If the information is not readily reproducible in the form or format requested, then Polk County will provide the Individual with access to the PHI in a readable hard copy form or such other form as agreed to by the Individual and Polk County.
- 2) *Electronic Access.* If Polk County maintains one or more Designated Record Sets in electronic form, then an Individual has the right to receive a copy of the PHI maintained electronically in the Designated Record Sets in the electronic form and format the Individual requests, if readily producible in that form and format. If not readily producible in the electronic form and format requested, the Individual has the right to receive such PHI in another readable electronic format as the Individual and Polk County agree.
- 3) *Inspection/Mailing.* If requested by the Individual, Polk County will arrange with the Individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing of the PHI within the specified time period.
- 4) *Summary.* A summary of the requested PHI may be provided in lieu of access to the information only when the Individual had agreed to such summary in advance, and to any related fees imposed.
- 5) *Designated Person.* If the Individual directs Polk County to transmit a copy of the PHI directly to another person, Polk County must provide a copy to such person. However, Polk County should ensure that the Individual designated the other person in writing and clearly specified where to send the PHI.
- 6) *Written Approval.* If Polk County approves the request for access, the Access Request Form must be completed by Polk County including signature and date noting acceptance of the request to access.

## **F. Denying Request for Access**

Polk County may deny the Individual's request for access in certain situations, some of which will trigger the right to have the denial reviewed, in accordance with the criteria described below.

### 1) *Unreviewable Grounds for Denial of Access to PHI.*

Polk County may deny an Individual access to PHI, without providing the Individual an opportunity for review, for the following reasons:

- a) Individuals have a right of access to inspect and obtain PHI (PHI) about the Individual in a designated record set, for as long as the information is maintained by Polk County, except for:
  - i. Psychotherapy notes;
  - ii. Information compiled in reasonable anticipation of, or for use in, a legal proceeding.
- b) The Covered Entity is a health care provider acting under the direction of a correctional institution and has determined that the requested information would jeopardize the health, safety, security, custody or rehabilitation of the Individual or other inmates, or the safety of a correctional employee or other person responsible for transporting the Individual;
- c) The information requested was obtained under a promise of confidentiality from someone other than Polk County and the inspection or copying will likely reveal the source of the information;
- d) The PHI is obtained by the Covered Entity in the course of research that includes treatment of the research participants, while such research is in progress. For this exception to apply, the Individual must have agreed to the denial of access in conjunction with the Individual's consent to participate in the research and the covered provider must have informed the Individual that the right of access will be reinstated upon completion of the research; or
- e) The PHI requested is also subject to the Privacy Act set out in federal law at 5 U.S.C. §552a.

### 2) *Reviewable Grounds for Denial of Access to PHI*

Polk County shall provide the Individual with a right to review the following reasons for denial:

- a) If 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;
- b) the PHI requested makes reference to someone other than the Individual (unless such person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that

the access requested is reasonably likely to cause serious harm to that other person; or

- c) The request is made by an Individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the Individual or another person.

3) *Response to the Individual in the Event of a Decision to Deny Access*

- a) *Written Notice of Denial.* If Polk County has determined that it will deny the Individual's request for access, Polk County will provide a timely (per the time frames required under this Policy), written denial to the Individual. The denial shall be written in plain language and shall include: (i) the basis for the denial; (ii) if applicable, the statement of the Individual's right to have the denial reviewed, including a description of how the Individual can exercise these rights; and (iii) a description of how the Individual may complain to Secretary of Health and Human Services, including the name or title and telephone number of the contact person.
- b) *Procedure in Grounds for Review.* If access is denied and the Individual has grounds for review, the Individual has the right to have a denial reviewed by a licensed health care professional who is designated by Polk County to act as a reviewing official and who did not participate in the original decision to deny access. If the Individual requests such review, Polk County must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested. Polk County must provide or deny access in accordance with the determination of that official, and must promptly notify the Individual of the determination.

## **G. Fees**

Polk County may assess a fee to the Individual for the costs associated with granting access to the requested PHI. Fees shall be reasonable and based on cost and may only be assessed for the costs associated with:

- 1) Labor for copying the PHI requested by the Individual whether in paper or electronic form;
- 2) Supplies for creating the paper copy or electronic media if the Individual requests that electronic copy be provided on portable media;
- 3) Postage when the Individual had requested the copy or the summary or explanation be mailed; and
- 4) Preparing an explanation or summary of the PHI. The fee may not include costs associate with searching for and retrieving the requested information.

## **H. Documentation and Record Retention Requirements:**

- 1) *Forms.* Polk County shall retain a copy of the signed Request to Access PHI form for a period of six (6) years.
- 2) *Responses to Requests.* If a request for access to PHI is granted, Polk County will maintain a copy of the material sent to the Individual and/or any third party in response to the request for access. If a request for access is denied, Polk County will maintain a copy of the written notice of denial, the Individual's statement of disagreement and Polk County's rebuttal, if applicable. All documentation required under this section must be retained for a period of at least six (6) years.

## DOCUMENTATION POLICY

### V. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI and appropriately documenting the various Policies, Procedures and other administrative requirements of HIPAA.

### VI. PURPOSE

The purpose of this policy is to provide guidance and ensure compliance with provisions of HIPAA related to maintenance of Policies, Procedures and other administrative requirements.

### VII. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.530\(i\)](#)
- [45 C.F.R. §164.530\(j\)](#)

### VIII. SPECIFIC DOCUMENTATION POLICIES

- A. Administrative Requirements under the Privacy Rule.** The Privacy Rule requires Polk County to develop and implement Policies and Procedures related to PHI that are designed to comply with the standards under the Privacy Rule, as from time to time amended. Polk County must maintain documentation, in written or electronic form, of Policies, Procedures communications and other administrative documents as required by the Privacy Rule for a period of at least six years from the date of creation or the date when last in effect, whichever is later.
- B. Changes in the Privacy Rule or Other Laws.** Polk County will promptly incorporate into its policies, procedures and other administrative documents any and all changes in the Privacy Rule and other federal, state and/or local laws that relate to the use and/or disclosure of PHI.
- C. Changes to Policies, Procedures or Other Administrative Documents.** If a policy, procedure or other administrative document is changed as a result in a change in practice or a change in law, the changes shall be documented and implemented as soon as is reasonably practicable.
- D. Specifics of Requirements Related to Documentation.** Polk County will maintain the following documentation in an organized manner:
- 1) 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;
  - 2) Originals or signed copies of agreements with Business Associates referring to the use or disclosure of PHI;

- 3) All of Polk County's Policies, Procedures, and protocols required by the Privacy Rule, including policies related to the use and disclosure of PHI; and
- 4) Any and all forms related to the use or disclosure of PHI, including but not limited to the following forms:
  - a) Authorization to use or disclose PHI;
  - b) Request to Access PHI;
  - c) Request to Amend PHI;
  - d) Complaint Form; and
  - e) Notice of Privacy Practices and any changes made thereto.

**E. Security of Documentation.** Documentation shall be maintained in a secure manner, with access appropriately limited to those Polk County employees authorized to access the documentation.



## ACCOUNTING OF DISCLOSURES POLICY

### I. POLICY

Polk County recognizes that Individual rights are a critical component to maintaining quality care and service, and is committed to allowing Individuals to exercise their rights under applicable federal, state and/or local laws and regulations. To support this commitment, Polk County maintains written Policies and Procedures to provide guidance to Polk County workforce members when faced with a request by an Individual for an accounting of the uses and disclosures of PHI Polk County has made.

### II. PURPOSE

The purpose of this policy is to provide guidance in responding to an Individual's request for an accounting in accordance with the Privacy Rule and HITECH.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R §164.528](#)
- [Section 13405\(c\) of HITECH](#), 42 U.S.C. 17935

### IV. SPECIFIC ACCOUNTING OF DISCLOSURES POLICIES

#### A. Right to an Accounting

An Individual has the right to receive an accounting of disclosures of PHI made by Polk County in the 6 years prior to the date on which the accounting was requested, except for disclosures:

- 1) To carry out treatment, payment and health care operations (except, as required by HITECH);
- 2) To Individuals of PHI about them;
- 3) Incident to a use or disclosure otherwise permitted;
- 4) Pursuant to an authorization;
- 5) For national security;
- 6) To correctional institutions or law enforcement officials;
- 7) As part of a limited data set; or
- 8) If it occurred prior to the compliance date for Polk County.

Polk County shall temporarily suspend an Individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, at the request of a health oversight agency or law enforcement official, if Polk County is provided a written statement that such accounting would be reasonably likely to impede the agency's action. In addition, the

agency must also state a time for which the suspension is required. If the statement is given orally Polk County shall document the statement including the agency's or official's identity and the suspension cannot be longer than 30 days.

### **B. Content of an Accounting**

Polk County shall provide the Individual with a written accounting that includes the disclosures of PHI that occurred during the past 6 years (or shorter period if requested by the Individual) prior to the date of the request for accounting, including disclosures to or by business associates of Polk County. The accounting shall include the following for each disclosure:

- 1) Date of the disclosure;
- 2) Name of the entity or person who received the PHI and, if known, the address of such entity or person;
- 3) Brief description of the PHI disclosed; and
- 4) 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 a written request for the disclosure.

If, during the period covered by the accounting, Polk County has made multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may, with respect to such multiple disclosures, provide the information listed above for the first disclosure. In addition, Polk County shall provide the frequency, periodicity or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.

### **C. Provision of the Accounting**

The Privacy Officer shall process all accounting requests. Polk County shall act on the Individual's request for an accounting, no later than 60 days after the request is made, as follows:

- 1) Provide the Individual with an accounting; or
- 2) If Polk County is unable to provide the accounting within the 60 days, Polk County can extend the time to provide the accounting by no more than 30 days if Polk County provides the Individual with a written statement with the reason for the delay and the date by which Polk County shall provide the accounting. Polk County may only have one extension per request for accounting.

Polk County shall provide the first accounting to an Individual for any 12-month period without charge. Polk County may impose a reasonable, cost-based, fee for subsequent requests for an accounting by the same Individual within the 12-month period, provided that Polk County informs the Individual in advance of the fee and provides the Individual with an opportunity to withdraw or modify the request.

### **D. Electronic Health Records**

If and to the extent Polk County uses or maintains an Electronic Health Record, as that term is defined in [§ 13400 of HITECH](#), with respect to PHI, Polk County shall respond to requests from Individuals for an accounting of Disclosures as described in [§ 13405\(c\) of HITECH](#) if, and when required by [§ 13405\(c\) of HITECH](#).

**E. Form of Request**

Polk County shall require Individuals to direct requests for an accounting of PHI to the Department Director or their designee. The Department Director or their designee shall request that the Individual requesting access to PHI complete an appropriate form.

**F. Documentation**

Polk County shall document and retain the documentation that includes the written accounting provided to the Individual and the titles of the person or offices responsible for receiving and processing requests for an accounting.

## AMENDING PHI POLICY

### I. POLICY

Polk County recognizes that Individual rights are a critical component to maintaining quality care and service, and is committed to allowing Individuals to exercise their rights under applicable federal, state and/or local laws and regulations. To support this commitment, Polk County will maintain written Policies and Procedures to provide guidance when faced with a request by an Individual to amend his or her PHI.

### II. PURPOSE

The purpose of this policy is to provide Individuals with the right to amend PHI when such amendment is required and appropriate.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.526](#)

### IV. SPECIFIC POLICIES FOR AMENDING PHI

#### A. General Rule

An Individual has the right to request that Polk County amend PHI about the Individual that is contained in a designated record set of Polk County, for as long as the PHI is maintained by Polk County. However, Polk County has the right under certain circumstances that are further described in this policy, to deny a request for amendment.

#### B. Form of Request

Polk County shall require Individuals to direct requests for amendment of their PHI to Department Director or their designee, who shall request that the Individual requesting amendment to PHI complete an appropriate form.

#### C. Accepting an Individual's Request for Amendment

If Polk County has no grounds to deny the Individual's request for amendment, Polk County must do all of the following:

- 1) Make the appropriate amendment to the Individual's PHI or record. Polk County should, at a minimum, identify records that are affected by the amendment and append or otherwise provide a link to the location of the amendment.
- 2) Inform the Individual on a timely basis that the amendment is accepted and obtain the Individual's identification of an agreement to have Polk County notify the relevant persons with whom the amendment needs to be shared.
- 3) Make reasonable efforts to inform and provide the amendment within reasonable time to:

- a) persons identified by the Individual as having received PHI and needing the amendment; and
- b) persons, including business associates, that Polk County knows have the unamended information and may have relied, or might rely in the future, on the information to the detriment of the Individual.

#### **D. Denying an Individual's Request for Amendment**

Under certain circumstances, Polk County may deny the Individual's request for amendment to his or her PHI held by Polk County.

- 1) *Permissible Reasons for Denial.* Polk County may deny a request for amendment only for the following reasons:
  - a) The PHI was not created by Polk County unless the Individual provides a reasonable basis to believe that the originator of the PHI is no longer available to act on the requested amendment;
  - b) The PHI is not part of the Individual's Designated Record Set;
  - c) the PHI would not be available for inspection under Polk County's policy regarding the Individual's right to access records; or
  - d) The PHI is complete and accurate.
- 2) *Denial Procedures.* If Polk County denies the requested amendment, in whole or in part, Polk County must take the following steps.
  - a) Polk County must provide the Individual with a valid, written denial that explains:
    - i. the basis for the denial;
    - ii. how the Individual may file a written statement disagreeing with the denial;
    - iii. the Individual's option with respect to future disclosures of the disputed information; and
    - iv. how the Individual may make a complaint to HHS.
  - b) Polk County must permit the Individual to submit to Polk County a written statement disagreeing with the denial and the basis for the disagreement.
  - c) Polk County may prepare a written rebuttal to the Individual's statement of disagreement. If Polk County prepares a rebuttal, it must provide a copy to the Individual.
  - d) Polk County must identify, as appropriate, the information in the Individual's record that is the subject of the disputed amendment and append or otherwise link to this information the request for an amendment, Polk County's denial of this request, the Individual's statement of disagreement, and Polk County's rebuttal to the information.
  - e) Polk County must adhere to the following guidelines if it makes future disclosures of the Individual's disputed PHI:

- i. If the Individual has submitted a statement of disagreement, Polk County must include either the material appended to the record, or an accurate summary of it, with any subsequent disclosure of the PHI to which the disagreement relates.
- ii. If the Individual has not submitted a written statement of disagreement, Polk County has to include the appended information with any subsequent disclosure only if the Individual has requested that Polk County do so.

#### **E. Receiving a Notice of Amendment from Other Health Care Providers or Health Plans.**

Other health care providers or health plans may contact Polk County to let it know that they have made amendments to the Individual's PHI. When Polk County is informed by another health care provider or health plan of an amendment to an Individual's PHI, Polk County must make necessary amendments to the PHI in its records. The notice of amendment should be retained by Polk County, with a copy forwarded to the Privacy Officer.

#### **F. Time Period for Acting on Requests**

Polk County must act on an Individual's request for an amendment within 60 days of the receipt of the request, including making the requested amendment or sending a written denial. When a request for amendment is received by Polk County, that request must be forwarded immediately to the Privacy Officer. If Polk County is unable to act on the request for amendment within 60 day, the Privacy Officer shall notify the Individual, within the initial 60 day time period, that it is extending the time for response by an additional 30 days, and provide the Individual with a written statement of the reasons for the delay and the date by which Polk County will complete its action on the request. Polk County can only have one such extension per amendment request

## REQUESTS FOR PRIVACY PROTECTION FOR PHI POLICY

### V. POLICY

Polk County is committed to ensuring the confidentiality of PHI (PHI), and ensuring the rights of Individuals under HIPAA to request restrictions of uses and disclosures of their PHI and requests to receive communications of PHI by alternative means or at alternative locations.

### VI. PURPOSE

To set out procedures for Polk County workforce to follow to enable Individuals to request restrictions on uses and disclosures of their PHI and to request alternative means of communication.

### VII. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.522](#)

### VIII. SPECIFIC POLICIES ON REQUESTS FOR PRIVACY PROTECTION FOR PHI

#### A. Requesting Restrictions

Polk County shall permit an Individual to request that Polk County restrict:

- 1) Uses and disclosures of PHI about the Individual to carry out treatment, payment or health care operations; and
- 2) Disclosures made to family members or others pursuant to §164.510 under which Polk County can generally disclose PHI to family members or others who are involved in the Individual's care or payment for care.

#### B. Polk County's Response to Requests for Restriction

- 1) General Rule. Except as set forth below, Polk County is not required to agree to the requested restriction.
- 2) Voluntary Agreement to a Restriction. If Polk County does agree to restrict PHI, Polk County shall not use or disclose PHI in violation of such restriction, except if the restricted information is needed in an emergency situation. If restricted information is disclosed during an emergency situation, Polk County shall request that the health care provider not further use or disclose the restricted information. Polk County may not agree to a restriction on disclosure of PHI if the HIPAA privacy provisions require the disclosure.
- 3) Mandatory Agreement to a Restriction. Polk County must agree to the request of an Individual to restrict disclosures of such Individual's PHI, if the disclosure is to a health plan for purposes of carrying out payment or healthcare operations (and is not for treatment purposes), and the PHI pertains solely to a healthcare item or service for which Polk County was paid out of pocket in full.

### **C. Terminating a Restriction**

Polk County may terminate its agreement to a restriction, if:

- 1) the Individual agrees to or requests the termination in writing;
- 2) the Individual orally agrees to the termination and the oral agreement is documented; or
- 3) Polk County informs the Individual that it is terminating its agreement to a restriction, except that such termination is only effective with respect to PHI created or received after it has so informed the Individual, and the termination is not effective with respect to PHI that Polk County is mandated to agree to restrict upon the Individual's request, as set out in this Policy, above.

### **D. Confidential Communications.**

- 1) A Covered Entity that is a health care provider shall permit Individuals to request and shall accommodate reasonable requests by Individuals to receive communications of PHI from Polk County by alternate means or at alternate locations. Polk County cannot require an explanation from the Individual as to the basis for the request as a condition of providing communications on the confidential basis.
- 2) A Covered Entity that is a health plan shall permit Individuals to request and shall accommodate reasonable requests by Individuals to receive communications of PHI by alternate means and at alternate locations, if the Individual clearly states that the disclosure of all or part of that information could endanger the Individual.
- 3) Conditions on Providing Confidential Communications.
  - a) Polk County may require an Individual to make a request for a confidential communication in writing.
  - b) Polk County may condition the provision of a reasonable accommodation on:
    - i. When appropriate, information on how payment, if any, will be handled; and
    - ii. Specification of an alternate address or other method of contact.



## **AUTHORIZATIONS POLICY**

### **I. POLICY**

Polk County requires an Authorization to Release form be completed for all Uses and Disclosures of PHI, other than those required by law, for treatment, payment and health care operations, or as otherwise permitted without an Authorization, except for disclosure that are prohibited under law.

For any disclosures of Mental Health Information, or other information that is provided greater protection under Iowa law, Polk County requires specific processes be followed in order to comply with these Iowa laws that are more restrictive than HIPAA. See the Iowa Laws Requiring Greater Protections Policy for further information.

### **II. PURPOSE**

The purpose of this Authorizations Policy is to give workforce members guidance about the circumstances under which an Authorization must be obtained and the process to obtain an Authorization, in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) and with Iowa's Mental Health Privacy law.

### **III. REFERENCES/CROSS REFERENCES**

- [45 C.F.R. §164.502\(a\)](#)
- [45 C.F.R. §164.508](#)
- [Iowa Code §228.2](#)
- [Iowa Code §228.3](#)
- Iowa Laws Requiring Greater Protections Policy
- Overview: Handling Uses and Disclosures of PHI
- Family, Friend Involvement/Personal Representatives and Deceased Individual Policy
- Health Oversight Uses and Disclosures Policy
- Judicial or Administrative Purposes Disclosures Policy
- Law Enforcement Disclosures Policy
- Limited Data Set Policy
- Marketing Policy
- Minimum Necessary Policy
- Required By Law Disclosures Policy
- Research Uses and Disclosures Policy
- Serious Threat to Health or Safety Disclosures Policy
- Specialized Government Functions Disclosures Policy

### **IV. SPECIFIC POLICIES REGARDING AUTHORIZATIONS**

- A. General Rule for Uses and Disclosures of PHI that is Not Mental Health Information (as defined under Iowa Law).**

Polk County shall obtain a signed Authorization form from all Individuals before Using or Disclosing PHI for purposes other than treatment, payment or health care operations or unless the Use or Disclosure is otherwise permitted, required or prohibited under HIPAA or this Policy Manual.

**B. General Rule for Uses and Disclosures of Mental Health Information (as Defined under Iowa Law)**

Mental Health Information is defined as oral, written, or recorded information which indicates the identity of an Individual receiving professional services and which relates to the diagnosis, course, or treatment of the Individual's mental or emotional condition. Polk County shall not disclose Mental Health Information except as set out in this policy and in compliance with Iowa law regarding the disclosure of Mental Health Information. See the Iowa Laws Requiring Greater Protections Policy for further information.

**C. Restriction on Conditioning Treatment on Authorization**

Polk County will not condition treatment, payment, enrollment in the health plan, or eligibility for benefits, if applicable, on the provision of an Authorization except that Polk County may condition enrollment or eligibility for benefits on the provision of an authorization requested by Polk County prior to the Individual's enrollment in the health plan:

- 1) If the authorization is sought for the eligibility or enrollment determinations relating to the Individual; or
- 2) For its underwriting or risk rating determinations, and

The authorization is not for a use or disclosure of psychotherapy notes.

**D. Authorization Rules Related to Psychotherapy Notes**

Prior to any Use or Disclosure of psychotherapy notes, including for treatment, payment or health care operations, Polk County shall obtain an Authorization from the Individual, except if the Use or Disclosure is for:

- 1) The following uses to carry out treatment, payment or health care operations:
  - a) The treatment activities of the originator of the psychotherapy notes;
  - b) Polk County's own training programs in which mental health students, trainees or practitioners practice, under supervision, their skills in counseling; or
  - c) Polk County's defense in a legal action or other proceeding brought by the Individual.
- 2) A Use or Disclosure of psychotherapy notes that is required or permitted under HIPAA and applicable state law.

An authorization for a use or disclosure of psychotherapy notes may not be combined with another authorization for the disclosure of other PHI, but may be combined with another authorization for a use or disclosure of the same Individual's psychotherapy notes.

**E. Authorization Needed for Marketing use of PHI**

Polk County shall obtain an Individual's Authorization prior to any Use or Disclosure for marketing purposes. Refer to the Marketing Policy for further details on the restrictions of the use of PHI for marketing purposes.

**F. Authorization Needed for Sale of PHI**

Polk County shall obtain an Individual's Authorization prior to receiving any direct or indirect payment in exchange for PHI. Refer to the Sale of PHI Policy for further details on the restrictions related to the sale of PHI.

**G. Circumstances Under Which No Authorization is Required**

With the exception of Mental Health Information and other information that is afforded greater protection under Iowa law, Polk County is not required to obtain Authorization for the following purposes (which are described in greater detail in the Overview: Handling Uses and Disclosures of PHI, and in the applicable policies in this Privacy Manual):

- 1) To carry out treatment, payment or health care operations;
- 2) Uses and Disclosures required by law;
- 3) Uses and Disclosures for public health activities;
- 4) Disclosures about victims of abuse, neglect or domestic violence;
- 5) Uses and Disclosures for health oversight activities;
- 6) Disclosures for judicial and administrative proceedings;
- 7) Disclosures for law enforcement purposes;
- 8) Disclosing PHI about decedents;
- 9) Uses and Disclosures for cadaveric organ, eye or tissue donation purposes;
- 10) Uses and Disclosures for research purposes;
- 11) Uses and Disclosures to avert a serious threat to health or safety;
- 12) Uses and Disclosures for specialized government functions; and
- 13) Disclosures for workers' compensation.

Iowa's Mental Health Privacy Law is very restrictive regarding disclosures of mental health information without a signed voluntary authorization from the Individual or the Individual's legal representative. Contact the Privacy Officer any time that a request is made to disclose mental health information without a signed authorization form. Additionally, review the Iowa Laws Requiring Greater Protections Policy for further information on additional protections under Iowa law for various information.

#### **H. Core Elements for Authorizations**

An Authorization will contain the following core elements (note that a Mental Health Authorization must have additional elements, as listed below):

- 1) Specific and meaningful description of the information to be used or disclosed;
- 2) Name or other specific identification of the person(s) or class of persons, authorized to make the requested use or disclosure;
- 3) Name or other specific identification of the person(s), or class of persons, to whom Polk County may make the requested use or disclosure;
- 4) A description of each purpose of the requested use or disclosure. The statement "at the request of the Individual" is a sufficient description of the purpose when an Individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;
- 5) An expiration date or expiration event that relates to the Individual for the purpose of the use or disclosure;
- 6) Signature of the Individual and date. If the Individual's personal representative signs the authorization, a description of the representative's authority to act for the Individual must be provided.

In addition to the above core elements, the authorization shall also contain the following statements that adequately put the Individual on notice:

- 1) the Individual's right to revoke the authorization in writing;
- 2) the exceptions to the right to revoke or a reference to Polk County's Notice of Privacy Practices;
- 3) the ability of Polk County to condition treatment, payment, enrollment and/or eligibility for benefits on the authorization by stating the consequences to the Individual of a refusal to sign the authorization; and
- 4) The potential for information disclosed to be subject to re-disclosure by the recipient.

Further, the authorization will be written in plain language and a copy of the signed authorization must be given to the Individual.

## **I. Additional Elements for Disclosures of Mental Health Information**

The following additional rules apply to disclosures of Mental Health Information:

An Individual eighteen years of age or older, or an Individual's legal representative, may consent to the disclosure of mental health information relating to the Individual by signing an authorization form. The authorization shall:

- 1) Specify the nature of the mental health information to be disclosed;
- 2) State the persons or type of persons authorized to disclose the information;
- 3) State the purposes for which the information may be used both at the time of the disclosure and in the future;
- 4) Advise the Individual of the Individual's right to inspect the disclosed mental health information at any time;
- 5) State that the authorization is subject to revocation and state the conditions of revocation;
- 6) Specify the length of time for which the authorization is valid; and
- 7) Contain the date on which the authorization was signed.

A copy of the authorization shall be provided to the Individual or to the legal representative of the Individual authorizing the disclosure, and must be included in the Individual's record of mental health information.

Upon the disclosure of mental health information for any reason, the person disclosing the mental health information shall enter a notation on and maintain the notation with the Individual's record of mental health information, stating the date of the disclosure and the name of the recipient of mental health information.

Further, the person disclosing the mental health information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an Individual or an Individual's legal representative, or as otherwise provided under state and federal law, that the unauthorized disclosure of mental health information is unlawful, and that civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information.

A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure. However, mental health information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the Individual or the Individual's legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of this policy regarding the disclosure of mental health information shall be followed.

An Individual or an Individual's legal representative may revoke a prior authorization by providing a written revocation to the recipient named in the authorization and to the Individual/entity previously authorized to disclose the mental health information. The revocation is effective upon receipt of the written revocation by the person previously authorized to disclose the mental health information. After the effective revocation date, mental health information shall not be disclosed pursuant to the revoked authorization. However, mental health information previously disclosed pursuant to the revoked authorization may be used for the purposes stated in the original written authorization.

#### **J. Defective Authorization**

An authorization will not be valid if it passes the expiration date; if it has not been filled out completely; if revoked or if any material information is known by Polk County to be false. In addition, Polk County will not combine authorizations for psychotherapy notes with any other document to create a compound authorization.

#### **K. Revocation of Authorization**

An Individual may revoke an authorization at any time, provided that the revocation is in writing, except, to the extent that:

- 1) Polk County has taken action in reliance on the authorization, or
- 2) The authorization was a condition of obtaining insurance coverage.

#### **L. Record Retention**

Polk County will document and retain any signed authorization for a period of six (6) years.

## **FAMILY, FRIEND INVOLVEMENT/PERSONAL REPRESENTATIVES AND DECEASED INDIVIDUAL POLICY**

### **I. POLICY**

When Polk County provides services to Individuals, employees may receive inquiries from Individuals, family members, friends or personal representatives to disclose a particular Individual's PHI for various purposes. To comply with the provisions of HIPAA, employees will ensure that appropriate steps are taken to verify the identity and authority of Individuals and entities requesting PHI, as required by the Privacy Rule and other federal, state and/or local laws and regulations.

### **II. PURPOSE**

This Policy provides guidance to employees on handling inquiries from family members, friends or personal representatives in a manner that complies with the requirements of the Privacy Rule.

### **III. REFERENCES/CROSS-REFERENCES**

- [45 C.F.R. §164.510\(b\)](#)
- [45 C.F.R. §164.502\(g\)](#)

### **IV. SPECIFIC POLICIES REGARDING FAMILY, FRIEND INVOLVEMENT/PERSONAL REPRESENTATIVES AND DECEASED INDIVIDUAL**

#### **A. Uses and Disclosures for Involvement in the Individual's Care and Notification Purposes**

In accordance with the following procedures, Polk County may disclose to an Individual's family member, close personal friend or any other person identified by the Individual only the PHI that is directly related to that person's involvement in the Individual's care or payment for care. Further, in accordance with the following procedures, Polk County may disclose to a family member, a personal representative of the Individual, or another person responsible for the care of the Individual, PHI to notify or assist in notifying (including identifying or locating) such family, friend or personal representative of the Individual's location, general condition, or death.

- 1) *Individual Present and Has Capacity.* If the Individual is present for, or otherwise available prior to, a use or disclosure permitted under this section, and has the capacity to make health care decisions, Polk County may use or disclose the PHI to the Individuals described above if Polk County:
  - a) Obtains the Individual's agreement;
  - b) Provides the Individual with an opportunity to object and the Individual does not express an objection to the disclosure; or
  - c) Reasonably infer from the circumstances, based on the exercise of professional judgment, that the Individual does not object to the disclosure.

- 2) *Individual Not Present or Lacks Capacity.* If the Individual is not present or the Individual lacks capacity to consent (due to an emergency condition or otherwise), Polk County may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the Individual, and, if so, disclose only the PHI that is directly relevant to the person's involvement with the Individual's care or payment related to the Individual's care or needed for notification purposes. A Covered Entity may use professional judgment and its experience with common practice to make reasonable inferences of the Individual's best interests in allowing a person to act on behalf of the Individual to pick up certain medical records or discuss billing or payment matters.
- 3) *Deceased Individual.* If the Individual is deceased, Polk County may disclose to the persons identified above who were involved in the Individual's care or payment for health care prior to the Individual's death, PHI of the Individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the Individual that is known to Polk County.
- 4) *Disaster Relief.* Polk County may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted under this section.

**B. Family Members.** With the exception of the circumstances described above, if Polk County receives an inquiry from a family member regarding an Individual's PHI, Polk County shall inform the Individual that the Individual must authorize the disclosure. The employee may then forward an Authorization form to the Individual.

### **C. Personal Representatives**

- 1) General Rules. Except as provided in Paragraphs 2 and 3 below, the personal representative of an Individual shall have the same rights as the Individual and shall be treated as the Individual for purposes of Polk County's Policies and Procedures and the Privacy Rules.
  - a) A person who has authority to make health care related decisions on behalf of another adult or emancipated minor shall be treated as a personal representative of such Individual.
  - b) An executor, administrator or other person authorized to act on behalf of a deceased Individual or the Individual's estate shall be treated as a personal representative of such Individual.
  - c) If an employee questions, to any extent, whether a person is a personal representative of an Individual, the Privacy Officer should be consulted.
- 2) Abuse, Neglect and Endangerment. Polk County may elect not to treat a person as a personal representative of an Individual if there is a reasonable basis for believing that the Individual has been or may be the subject of domestic violence, abuse or neglect by such person or treating such person as the personal representative may



endanger the Individual. If abuse, neglect or endangerment is suspected, an employee shall immediately consult with the Privacy Officer for a determination as to whether or not to treat the person as a personal representative of the Individual.

3) Minor Children.

- a) Payment Purposes. For purposes of payment, the parent, guardian or other person acting in a parental capacity (e.g., foster parent or step-parent) (collectively referred to herein as “Parent”) shall be authorized to act and shall be treated as the personal representative of an unemancipated minor child.
- b) All other Purposes. For all other purposes, unless applicable state law (including case law) specifically permits or prohibits disclosure to or access by the Parent to the PHI of such minor child, a Parent shall be authorized to act and shall be treated as the personal representative of an unemancipated minor child under Polk County’s Policies and Procedures, except to the extent that:
  - i. the minor has consented to the health care, no other consent is required by law, and the minor has not requested that the Parent be treated as a personal representative;
  - ii. the minor child may lawfully consent to the health care provided without the consent of a Parent and the minor (or a court or other legally authorized person) has provided such consent; or
  - iii. the Parent assents to an agreement of confidentiality.

For purposes other than Payment, an employee shall consult immediately with the Privacy Officer with respect to whether a Parent will be treated as the personal representative of an unemancipated minor.

## HEALTH OVERSIGHT USES AND DISCLOSURES POLICY

### I. POLICY

For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the Individual's Authorization before using or disclosing the Individual's PHI. However, Polk County may use or disclose PHI without an Authorization, for health oversight activities pursuant to the Privacy Rule.

### II. PURPOSE

The purpose of this policy is to provide guidance and to ensure that any use or disclosure of PHI for health oversight activities is in compliance with all applicable laws and regulations.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.512\(d\)](#)

### IV. SPECIFIC POLICIES REGARDING HEALTH OVERSIGHT USES AND DISCLOSURES

- A. Health Oversight Agency** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.
- B. General Rule Regarding Use or Disclosure of PHI for Purposes Other Than Treatment, Payment or Health Care Operations.** Under the Privacy Rule, Polk County may not disclose an Individual's PHI for purposes other than treatment, payment or health care operations or other permitted uses and disclosures, without obtaining the Individual's prior written Authorization.
- C. Exceptions to General Rule.** In some situations, Polk County may have an obligation to disclose PHI to a Health Oversight Agency, if the conditions set forth in this Policy are met prior to the use or disclosure. In these circumstances, PHI may be disclosed without obtaining the written Authorization of the Individual, and without providing the opportunity for the Individual to agree or object.
- D. General Requirements for Use or Disclosure of PHI to a Health Oversight Agency.** From time to time, a Health Oversight Agency will request PHI from Polk County. Polk County may disclose PHI for health oversight activities in accordance with the following guidelines:

- 1) Polk County may disclose PHI to a Health Oversight Agency for health oversight activities including:
  - a) audits;
  - b) civil, administrative or criminal investigations;
  - c) inspections;
  - d) licensure or disciplinary actions;
  - e) civil, administrative or criminal proceedings; or
  - f) other activities necessary for appropriate oversight of the following:
    - 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;
    - iv. entities subject to civil rights laws for which health information is necessary for determining compliance.
  
- 2) If a health oversight activity or investigation is conducted in conjunction with an oversight or investigation relating to a claim for public benefits unrelated to health, Polk County considers the joint activity to be a health oversight activity and will disclose PHI.
  
- 3) Polk County shall not disclose PHI without an Authorization in cases where an Individual is the subject of an investigation or other activity, if such investigation or other activity does not arise out of and is not directly related to:
  - a) The receipt of health care;
  - b) A claim for public benefits related to health; or
  - c) Qualification for or receipt of public benefits or services when an Individual's health is integral to the claim for public benefits or services.

**E. Privacy Officer.** When Polk County is presented with a request for PHI from a Health Oversight Agency, the employee will confer with the Privacy Officer prior to making any such use or disclosure. The Privacy Officer will evaluate the proposed use or disclosure. No Polk County employee may make such a use or disclosure prior to conferring with the Privacy Officer. At times, state law may prohibit such disclosure even though it would otherwise be permitted under HIPAA (e.g., disclosure of Mental Health Information- See the Iowa Laws Requiring Greater Protections Policy).

**F. Response to a Request for Disclosure from a Health Oversight Agency.** Polk County personnel will confer with the Privacy Officer and shall follow the following guidelines:

- 1) Polk County personnel will follow appropriate policies and procedures for verifying the identity and authority of Individuals requesting PHI. See separate Policy, "Verification".

- 2) If the identity and authority of the Individual requesting access to PHI cannot be verified, Polk County personnel will refer the issue to the Privacy Officer for immediate action.
- 3) Once the request for access and the verification of the Health Oversight Agency representative's identity and authority have been verified, a decision will be made whether or not the disclosure is appropriate and may be made. Once it is determined that use or disclosure is appropriate, Polk County personnel with appropriate access clearance will access the Individual's PHI using proper access procedures.
- 4) The requested PHI will be delivered to the Health Oversight Agency requesting it in a secure and confidential manner, such that the information cannot be accessed by employees or other persons who do not have appropriate access clearance to that information.
- 5) The Privacy Officer will appropriately document the request and delivery of the PHI.

## JUDICIAL OR ADMINISTRATIVE PURPOSES DISCLOSURES POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations Polk County must obtain the Individual's Authorization before using or disclosing the Individual's PHI.

### II. PURPOSE

The purpose of this policy is to provide Individuals with guidance about Polk County's rights and obligations in response to a request for access to PHI through the judicial or an administrative process.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.512\(e\)](#)

### IV. SPECIFIC POLICIES REGARDING JUDICIAL OR ADMINISTRATIVE PURPOSES DISCLOSURES

- A. General Rule Regarding Use or Disclosure of PHI for Purposes Other Than Treatment, Payment or Health Care Operations.** Under the Privacy Rule, Polk County may not disclose an Individual's PHI for purposes other than treatment, payment or health care operations or other permitted uses and disclosures without the Individual's prior written Authorization.
- B. Exceptions to General Rule.** In some situations, PHI may be disclosed pursuant to a judicial or administrative process without obtaining written Authorization of the Individual, or the opportunity for the Individual to agree or object. From time to time, Polk County may receive a request to disclose PHI through a court order or an order from an administrative tribunal. In such a situation, the Privacy Officer must be immediately notified.
- C. General Requirements for Judicial and Administrative Release.** Polk County shall comply with all lawful and appropriate requests from regulatory and judicial authorities and disclose PHI necessary to respond to a subpoena, grand jury subpoena, discovery request, or other lawful process, whether or not accompanied by the order of a court or administrative tribunal. Only the information that is responsive to the request may be disclosed.
- D. Receipt of a Request for PHI from a Judicial or Administrative Tribunal.** When a Polk County employee is in receipt of a request for PHI pursuant to a judicial or administrative process, the employee must immediately forward the request to the Privacy Officer. The Privacy Officer will evaluate the request, in consultation with legal counsel. No Polk County employee, regardless of title and/or position is authorized to respond to

such a request or to release information prior to forwarding the request on to the Privacy Officer.

**E. Response to Request for PHI from a Judicial or Administrative Tribunal.** Upon receipt of a request for PHI from a judicial or administrative tribunal, the Privacy Officer shall consult legal counsel. PHI may only be released in such a situation where either of the following have occurred:

- 1) Polk County has received satisfactory assurances from the party seeking the information that reasonable efforts have been made by such party to ensure that the Individual who is the subject of the PHI that has been requested has been given notice of the request, which meets certain requirements as follows; or
  - a) Polk County shall obtain a written statement and accompanying documentation from the requestor, demonstrating that a notice has been given to the Individual, which contained sufficient information about the litigation or proceeding in which the PHI is requested to permit the Individual to raise an objection to the court or administrative tribunal.
  - b) In the event that reasonable efforts have been made to ensure that the Individual was given notice of the request, Polk County shall obtain from the requesting party a written statement and accompanying documentation that:
    - i. time for raising objections to the court or administrative tribunal has elapsed; and
    - ii. no objections were filed; or
    - iii. the court has resolved all objections filed by the Individual or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- 2) Polk County received satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets certain requirements as follow:
  - a) Where reasonable efforts have been made to secure a qualified protective order, Polk County shall obtain from the requesting party a written statement and accompanying documentation demonstrating that:
    - i. the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
    - ii. the party seeking the PHI has requested a qualified protective order from such a court or administrative tribunal.

**F. Verification.** Polk County will follow Policies and Procedures for verifying the identity and authority of Individuals requesting PHI. No PHI shall be released in the absence of proper verification. See separate Policy and Procedure entitled “Verification of Identity”.

**G.** Once it is determined that disclosure is appropriate, the Privacy Officer will access the PHI and shall deliver it to the Individual in a secure and confidential manner.

## LAW ENFORCEMENT DISCLOSURES POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the Individual's Authorization before using or disclosing the Individual's PHI. However, pursuant to a law enforcement process, and subject to the requirements set forth in this Policy, PHI may be disclosed without the Authorization of the Individual, or the opportunity for the Individual to agree or object.

### II. PURPOSE

The purpose of this policy is to provide guidance and to ensure that any use or disclosure of PHI for law enforcement purposes is in compliance with all applicable laws and regulations.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.512\(f\)](#)

### IV. SPECIFIC POLICIES REGARDING LAW ENFORCEMENT DISCLOSURES

#### A. Definition

Law Enforcement Official means an officer or employee or any agency or authority of the United States, a State, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to investigate or conduct an official inquiry into a potential violation of law; or prosecute or otherwise conduct a criminal, civil or administrative proceeding arising from an alleged violation of law.

**B. General Rule Regarding Use or Disclosure of PHI for Purposes Other Than Treatment, Payment or Health Care Operations.** Under the Privacy Rule, Polk County may not disclose an Individual's PHI for purposes other than treatment, payment or health care operations without prior obtaining the Individual's Authorization.

**C. Exceptions to General Rule.** In some situations, Polk County may have an obligation to disclose PHI to a Law Enforcement Official, if the conditions set forth in this Policy are met prior to the use or disclosure. In these circumstances, PHI may be disclosed without obtaining the written Authorization of the Individual, and without providing the opportunity for the Individual to agree or object.

**D. General Requirements for Use or Disclosure of PHI for Law Enforcement Purposes.** From time to time, a law enforcement agency or Law Enforcement Official may request PHI. Polk County's legal counsel should to be immediately consulted in connection with such a request.



- 1) *Mandatory Reporting of Wounds of Other Injuries.* Polk County may disclose PHI as required by law, such as laws that require the reporting of criminal wounds or other physical injuries.
- 2) *Limited Disclosures.* Polk County may disclose PHI to a Law Enforcement Official in compliance with and as limited by the following conditions:
  - a) Polk County may disclose PHI without Individual Authorization in compliance with and as limited by the relevant requirements of a court order, court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena;
  - b) Polk County may disclose requested PHI pursuant to an administrative request made by a Law Enforcement Official, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, under the following conditions:
    - i. Polk County determines, in conjunction with the requesting party, that the information sought is relevant and material to a legitimate law enforcement inquiry;
    - ii. Polk County determines, in conjunction with the requesting party, that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
    - iii. Polk County determines, in conjunction with the requesting party, that de-identified information could not reasonably be used.
- 3) *Identification and Location Purposes.* Other than stated in this Policy, Polk County shall not disclose PHI related to an Individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissues in response to a Law Enforcement Official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. However, Polk County may disclose the following PHI in response to a Law Enforcement Official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person:
  - a) name and address;
  - b) date and place of birth;
  - c) social security number;
  - d) ABO blood type and rh factor;
  - e) type of injury;
  - f) date and time of treatment;
  - g) date and time of death, if applicable; and
  - h) a description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos.

- 4) *Crime on the Premises.* Polk County may disclose to a Law Enforcement Official PHI that Polk County believes in good faith constitutes evidence of criminal conduct that occurred in the premises of Polk County.
- 5) *Reporting Crime in Emergencies.* Polk County may, in providing emergency health care in response to a medical emergency, other than emergency care provided on the premises of Polk County, disclose PHI to a Law Enforcement Official if such disclosure appears necessary to alert law enforcement to:
  - a) The commission and nature of a crime;
  - b) The location of such crime or of the victim(s) of such crime; and
  - c) The identity, description, and location of the perpetrator of such crime.
- 6) *Reporting Regarding Decedents.* Polk County may disclose PHI about an Individual who has died to a Law Enforcement Official for the purpose of alerting law enforcement of the death of the Individual if Polk County has a suspicion that such death may have resulted from criminal conduct.
- 7) *Reporting Regarding Victims of Crime.* Polk County may disclose PHI in response to a Law Enforcement Official's request for such information about an Individual who is or is suspected to be a victim of a crime if the Individual agrees to the disclosure.
  - a) In cases where the Individual is suspected to be a victim of a crime and where Polk County is unable to obtain the Individual's agreement because of incapacity or other emergency circumstance, Polk County will:
    - i. Obtain representation from the requesting Law Enforcement Official that such information is needed to determine whether a violation of law by a person other than the victim occurred and that such information is not intended to be used against the victim;
    - ii. Obtain representation from the Law Enforcement Official that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the Individual is able to agree to the disclosure; and
    - iii. In the exercise of professional judgment, make a determination that the disclosure is in the best interest of the Individual before disclosing the PHI.

**E. Privacy Officer.** When a Polk County employee is presented with a request for PHI from a Law Enforcement Official, the employee will confer with their HIPAA Liaison or the HIPAA Privacy Officer, prior to making any such use or disclosure. The HIPAA Liaison or the HIPAA Privacy Officer will evaluate the proposed use or disclosure. No Polk County employee may make such a use or disclosure prior to conferring with their HIPAA Liaison or the HIPAA Privacy Officer.

**F. Response to a Request to Disclosure from a Law Enforcement Official.** When a Polk County employee is presented with a request for PHI from a Law Enforcement Official, the employee will verify the identity and authority of the Law Enforcement Office, and then confer with their HIPAA Liaison or the HIPAA Privacy Officer prior to making any such use or disclosure. The HIPAA Liaison or the HIPAA Privacy Officer will evaluate the proposed use or disclosure. No Polk County employee may make such a use or disclosure prior to conferring with their HIPAA Liaison or the HIPAA Privacy Officer. Polk County personnel shall follow the following guidelines:

- 1) Polk County personnel will follow appropriate policies and procedures for verifying the identity and authority of Individuals requesting PHI. See separate Policy, “Verification of Identity”.
- 2) If the identity and authority of the Individual requesting access to PHI cannot be verified, Polk County personnel will refer the issue to their HIPAA Liaison or the Privacy Officer for immediate action.
- 3) Once the request for access and the verification of the Law Enforcement Official’s identity and authority have been forwarded to their HIPAA Liaison or the Privacy Officer, a decision will be made whether or not the disclosure is appropriate and may be made. Once it is determined that use or disclosure is appropriate, Polk County personnel with appropriate access clearance will access the Individual’s PHI using proper access procedures.
- 4) The requested PHI will be delivered to the Law Enforcement Official requesting it in a secure and confidential manner such that the information cannot be accessed by employees or other persons who do not have appropriate access clearance to that information.
- 5) The HIPAA Liaison shall report the disclosure to the Privacy Officer, who will appropriately document the request and delivery of the PHI.

## REQUIRED BY LAW DISCLOSURES POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the Individual's Authorization before using or disclosing the Individual's PHI. On occasion, however, Polk County makes disclosures of PHI, without an Authorization when Polk County is required by law to do so.

### II. PURPOSE

The purpose of this policy is to provide employees with guidance about Polk County's rights and obligations in disclosing PHI in response to various obligations under federal, state and local law.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.512\(a\)](#)

### IV. SPECIFIC POLICIES REGARDING DISCLOSURES REQUIRED BY LAW

- A. Required by Law** refers to a mandate contained in law, and enforceable by a court, that compels Polk County to use or disclose PHI. This includes, but is not limited to, court orders, subpoenas issues by a court, grand jury, or administrative body authorized to require the production of information, and civil or investigative demands.
- B. General Rule Regarding Use or Disclosure of PHI for Purposes Other Than Treatment, Payment or Health Care Operations.** Under the Privacy Rule, Polk County may not disclose an Individual's PHI for purposes other than treatment, payment or health care operations without prior obtaining the Individual's prior written Authorization.
- C. Exceptions to General Rule.** In some situations, Polk County may have an obligation to disclose PHI pursuant to a federal, state or local law. PHI may be disclosed when required by one of these laws without obtaining the written Authorization of the Individual, and without providing the opportunity for the Individual to agree or object.
- D. General Requirements for Use or Disclosure of PHI When Required By Law.** Polk County may use or disclose PHI to the extent that such use or disclosure is Required by Law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- E. Examples of Disclosures Required By Law.** Polk County may use or disclose PHI to the extent that such use or disclosure is required by law, including, but not limited to:
- 1) for public health activities Required by Law;
  - 2) for disclosures about victims of abuse, neglect, or domestic violence;

- 3) in order to comply with a judicial or administrative request;
- 4) for health release;
- 5) to avert a serious threat to health or safety;
- 6) to comply with special government functions or requests.

**F. Privacy Officer.** When a Polk County employee believes that a use or disclosure of an Individual's PHI is Required by Law, the employee will confer with the Privacy Officer prior to making any such use or disclosure. The Privacy Officer will evaluate the proposed use or disclosure, in consultation with Polk County's legal counsel. No Polk County employee, regardless of title and/or position is authorized to use or disclose respond to such a request or to release information prior to forwarding the request on to the Privacy Officer.

**G. Response to Request for Disclosure as Required By Law.** Polk County personnel will refer or forward a request for disclosure of an Individual's PHI to the Privacy Officer after verifying the identity and authority of the requestor.

- 1) Prior to forwarding the request, the employee will verify the identity and authority of the Individual requesting PHI. No PHI shall be released in the absence of proper verification. See separate Policy and Procedure entitled "Verification of Identity". This information will be forwarded to the Privacy Officer along with the request for access.
- 2) If the identity and authority of the Individual requesting access to PHI cannot be verified, Polk County personnel will refer the issue to the Privacy Officer for immediate action.
- 3) Once the Privacy Officer has determined that use or disclosure of the PHI is appropriate, designated Polk County personnel with appropriate access clearance will be authorized to provide the requested PHI.
- 4) The requested PHI will be delivered to the requestor in a secure and confidential manner, such that information cannot be accessed by employees or other persons who do not have appropriate access clearance for the information provided.

**H.** The Privacy Officer will appropriately document the request for access and the delivery of the requested information.

## RESEARCH USES AND DISCLOSURES POLICY

### I. POLICY

Polk County shall comply at all times with the rules governing the Use or Disclosure of PHI for Research purposes. PHI may be Used or Disclosed for Research purposes only if either: (1) the Individual(s) who are the subject of the PHI provide Polk County with an appropriate Authorization for the Use or Disclosure; or (2) an Institutional Review Board or Privacy Board has approved a waiver of the need to obtain Authorization from the individual(s). Polk County personnel involved in Research must comply with this Policy at all times.

### II. PURPOSE

The purpose of this Policy is to ensure that all Research conducted at Polk County facilities is performed in a manner that protects individual privacy and complies with all rules governing the Use or Disclosure of PHI in Research.

### III. REFERENCES/CROSS REFERENCES

- [45 C.F.R. § 164.512\(i\)](#)

### IV. SPECIFIC POLICIES REGARDING RESEARCH USES AND DISCLOSURES

**A. Use of PHI for Research Purposes.** Polk County personnel may not Use or Disclose PHI about an individual for Research purposes unless Polk County obtains either:

- 1) an Authorization from the individual covering the Research Uses and Disclosures. (For explanation about how to obtain an appropriate Authorization, please refer to Polk County Privacy Policy entitled Authorization or entitled Use and Disclosure of Protected Health Information); or
- 2) a waiver of the need for individual Authorization from an Institutional Review Board, in accordance with all of the requirements in Section B below.

In nearly all clinical trial research projects, in which the researcher has contact with the patient and the patient signs an informed consent, the researcher should obtain a separate Authorization for the Use or Disclosure of PHI regarding the subject. In other words, if Polk County can obtain Authorization to Use and Disclose PHI for Research Purposes, Polk County must obtain such Authorization. However, if it is not practicable to obtain Authorizations, the procedures described in Section B below are available.

**B. Waiver of Authorization to Use and Disclose PHI for Research Purposes.** Under some circumstances, Polk County may Use or Disclose PHI about an individual for Research without having an Authorization from that individual. Use or Disclosure of PHI for Research without an Authorization is permitted only if all of the following requirements of this Section B are met.

- 1) Waiver Approval by an Institutional Review Board. Any Use or Disclosure of PHI without an individual Authorization may be carried out only after a waiver of the need for Authorization has been approved by one of the following Boards:
  - a) An Institutional Review Board (“IRB”) established in accordance with the federal Common Rule set forth at [45 C.F.R. Part 46](#); or
  - b) A Privacy Board that meets the following criteria:
    - i. the Board has members with varying backgrounds and appropriate professional competency to review the effect of the Research protocol on the privacy rights and interests of the Research subjects;
    - ii. the Board includes at least one member who is not affiliated with Polk County or any entity conducting or sponsoring the Research, and not related to any person who is affiliated with any of such entities; and
    - iii. the Board does not have any member participating in a review of any Research project in which the member has a conflict of interest.

In addition to approving a waiver of Authorization entirely, an IRB or Privacy Board may approve a waiver only in part or may approve only an alteration in the Authorization needed. In those circumstances, Polk County must obtain Authorizations to the extent needed to comply with the Board’s partial waiver approval.

This IRB or Privacy Board review is in addition to any IRB approval that a Research protocol may need for purposes of human subject protection.

- 2) Documentation Requirements. To permit the Use or Disclosure of PHI pursuant to an IRB or Privacy Board waiver, Polk County must maintain the following documentation from the Board:
  - a) a written statement identifying the IRB or Privacy Board that approved the waiver and the date of the approval;
  - b) a written statement that the IRB or Privacy Board has determined that the waiver satisfies all of the following criteria:
    - i. the Use or Disclosure of PHI involves no more than minimal risk to privacy of the Research subjects, based on at least the presence of the following elements: (a) there is an adequate plan to protect Research subject identifying information from improper Use and Disclosure; (b) there is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the Research, unless there is a health or Research justification for retaining the identifiers or such retention is otherwise required by law; and (c) there are adequate written assurances that the PHI will not be reused or further Disclosed;

- ii. the Research could not practicably be done without the waiver, i.e., it is not practicable to obtain Authorization; and
    - iii. the Research could not practicably be done without access to and Use of the PHI.
  - c) a brief description of the PHI that is necessary to be Used or Disclosed in order to practicably perform the Research;
  - d) a statement that the waiver has been approved under either normal or expedited procedures; and
  - e) the waiver must be signed by the chair of the IRB or Privacy Board, or another member of the IRB or Privacy Board as designated by the chair.
- 3) Normal and Expedited Review Procedures. An IRB or Privacy Board may approve a waiver under either: (1) normal review procedures; or (2) expedited review procedures, depending on the nature of the Research.

If the researcher uses an IRB established under the federal Common Rule, then the expedited and normal review procedures are governed by federal regulations at [45 C.F.R. §§46.108\(b\)](#) and [46.110](#).

However, if a Privacy Board is used, then under normal procedures the Research must be reviewed at a meeting of the Privacy Board at which a majority of the Board members are present, including at least one member not affiliated with Polk County, not affiliated with any entity conducting or sponsoring the Research, and not related to any person who is affiliated with any of such entities. A majority of the members present at the meeting must approve the waiver.

Expedited procedures may be used only when the Research involves no more than minimal risk to the privacy of the Research subjects. If the Privacy Board elects to use expedited procedures, the waiver approval may be carried out by the Privacy Board chair, or by one or more members of the Privacy Board as designated by the chair.

All waiver approvals must include a statement indicated whether the approval was granted under normal or expedited review procedures.

**C. Review Preparatory to Research.** Researchers may have a need to review PHI in preparation for Research (such as for purposes of recruiting patients in a study), before a protocol or Research proposal is ready for submission to the IRB or Privacy Board. In these situations, Polk County may Use or Disclose PHI to a researcher without individual Authorization, so long as Polk County obtains from the researcher a written statement making the following representations:

- 1) the Use or Disclosure of PHI is sought solely to review Protected Health Information as necessary to prepare a Research protocol or for similar purposes preparatory to Research;



- 2) no PHI is to be removed from Polk County premises by the researcher in the course of the review; and
- 3) the PHI sought is necessary for the Research purposes.

**D. Research Involving Deceased Individuals.** Polk County may Use or Disclose PHI involving a deceased individual, so long as the researcher provides Polk County with the following:

- 1) a written representation that the Use or Disclosure of PHI is sought solely for Research involving the decedents;
- 2) documentation of the death of decedents; and
- 3) a written representation that the PHI sought is necessary for the Research purposes.

## **SPECIALIZED GOVERNMENT FUNCTIONS DISCLOSURES POLICY**

### **I. POLICY**

Polk County is committed to ensuring the privacy and security of Individuals' PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the patient's Authorization before using or disclosing the patient's PHI. However, pursuant to certain specialized government functions, and subject to the requirements set forth in this Policy, PHI may be disclosed without the Authorization of the individual, or the opportunity for the individual to agree or object.

### **II. PURPOSE**

The purpose of this policy is to provide guidance and ensure that any use or disclosure of PHI based on certain specialized government functions is in compliance with all applicable laws and regulations.

### **III. REFERENCES/CROSS REFERENCES**

- [45 C.F.R. § 164.512\(k\)](#)
- [National Security Act, 50 U.S.C. § 3001, et seq.](#) (transferred and reclassified from 50 U.S.C. § 401, et. Seq.)
- [Executive Order 12333](#)
- [18 U.S.C. § 3056](#)
- [22 U.S.C. § 2709\(a\)\(3\)](#)
- [18 U.S.C. § 871](#)
- [18 U.S.C. § 879](#)
- [Executive Order 10450](#)
- [Executive Order 12968](#)
- [Foreign Service Act](#)

### **IV. SPECIFIC POLICIES REGARDING SPECIALIZED GOVERNMENT FUNCTIONS DISCLOSURES**

#### **A. Public Benefits**

- 1) Eligibility or Enrollment Information. Polk County may disclose PHI relating to eligibility for or enrollment in its health plan to another agency administering a government program providing health benefits if the sharing of eligibility or enrollment information among Polk County and the other agency or the maintenance of such information in a single combined data system accessible to all such government agencies is required or expressly authorized by a statute or regulation.
- 2) Same or Similar Populations. Polk County may disclose PHI relating to its health benefit program to another covered entity that is a government agency administering a government program providing public benefits if the programs

serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

## **B. Other Specialized Government Functions**

- 1) Military and Veterans Activities. Polk County may use and disclose PHI of individuals who are Armed Forces personnel or foreign military personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published the following information in the Federal Register: the appropriate military command authorities and the purposes for which the PHI may be used or disclosed.
- 2) National Security and Intelligence. Polk County may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the [National Security Act, 50 U.S.C. § 3001, et seq.](#) (transferred and reclassified from 50 U.S.C. § 401, et. Seq.) and implementing authority (e.g., [Executive Order 12333](#)).
- 3) Protective Services for the President and Others. Polk County may disclose PHI to authorized Federal officials for the provision of protective services to the President or other persons authorized by [18 U.S.C. 3056](#) or to foreign heads of state or other persons authorized by [22 U.S.C. 2709\(a\)\(3\)](#), or for the conduct of investigations authorized by [18 U.S.C. 871](#) and [879](#).
- 4) Medical Suitability Determinations. Polk County may use PHI to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:
  - i. For the purpose of a required security clearance conducted pursuant to [Executive Orders 10450](#) and [12968](#);
  - ii. As necessary to determine worldwide availability or availability for mandatory service abroad under Sections 101(a) and 504 of the [Foreign Service Act](#); or
  - iii. For a family to accompany a Foreign Service member abroad, consistent with Sections 101(b)(5) and 904 of the [Foreign Service Act](#).
- 5) Law Enforcement Custodial Situations.
  - a) Disclosure to Correctional Institution. Polk County may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about that inmate or individual, if the

correctional institution or law enforcement official represents that the PHI is necessary for:

- i. Provision of health care to such individuals;
- ii. The health and safety of such individual or other inmates;
- iii. The health and safety of the officers or employees of or others at the correctional institution;
- iv. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- v. Law enforcement on the premises of the correctional institution; or
- vi. The administration and maintenance of the safety, security, and good order of the correctional institution.

- b) Serving as a Correctional Institution. When Polk County serves as a correctional institution, it may use PHI of individuals who are inmates for any purpose for which such PHI may be disclosed.
- c) Application after Release. For the purposes of this Section, Polk County will not consider an individual to be an inmate when released on parole, probation, supervised release, or when the individual is otherwise no longer in lawful custody.

## **SERIOUS THREAT TO HEALTH OR SAFETY DISCLOSURES POLICY**

### **I. POLICY**

Polk County is committed to ensuring the privacy and security of Individual's PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the patient's Authorization before using or disclosing the patient's PHI. However, pursuant to serious threat to health or safety, and subject to the requirements set forth in this Policy, PHI may be disclosed without the Authorization of the individual, or the opportunity for the individual to agree or object.

### **II. PURPOSE**

The purpose of this policy is to provide guidance and ensure that any use or disclosure of PHI based on a serious threat to health or safety is in compliance with all applicable laws and regulations.

### **III. REFERENCES/CROSS REFERENCES**

- [45 C.F.R. § 164.512\(j\)](#)
- [45 C.F.R. § 164.501](#)
- [45 C.F.R. § 164.512\(f\)\(2\)\(i\)](#)

### **IV. SPECIFIC POLICIES REGARDING SERIOUS THREATS TO HEALTH OR SAFETY DISCLOSURES**

#### **A. General Rule Regarding Use or Disclosure of PHI Based on a Serious Threat to Health or Safety.**

From time to time, Polk County may be requested to disclose PHI based on a serious threat to public health or safety.

Generally, Polk County may disclose PHI if Polk County, in good faith, believes the use or disclosure:

- 1) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- 2) Is necessary for law enforcement authorities to identify or apprehend an individual:
  - a) Because of a statement by an individual admitting participation in a violent crime that Polk County believes may have caused serious harm to the victim; or
  - b) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in [45 C.F.R. § 164.501](#).

#### **B. Exceptions to General Rule.**

Polk County may not disclose PHI in the event of a serious threat to health or safety if the information described in Section A of this policy is learned by Polk County:

- 1) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure, or counseling, or therapy; or
- 2) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy.

**C. Limitation on Information Disclosed.**

When disclosing information based on a serious threat to health or safety, Polk County shall only disclose the information described in Section A of this Policy and the following:

- 1) Name and address;
- 2) Date and place of birth;
- 3) Social Security Number;
- 4) ABO blood type and rh factor;
- 5) Type of injury;
- 6) Date and time of treatment;
- 7) Date and time of death, if applicable; and
- 8) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

**D. Good Faith Requirement.**

Polk County must only disclose information based on a serious threat to health or safety based on actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

## **BREACH NOTIFICATION POLICY**

### **I. POLICY**

Polk County recognizes that Individual rights are a critical component to maintaining quality care and service, and is committed to complying with the breach notification requirements of HIPAA. To support this commitment, Polk County maintains written Policies and Procedures to provide guidance to employees who are monitoring and reporting incidents of unauthorized Uses or Disclosures of Unsecured PHI.

### **II. PURPOSE**

The purpose of this policy is to provide employees with guidance when monitoring and reporting incidents of unauthorized Use or Disclosure of Unsecured PHI.

### **III. REFERENCES/CROSS-REFERENCES**

- [45 C.F.R. §164.402 \(Subpart D\)](#)

### **IV. SPECIFIC POLICIES REGARDING BREACH ASSESSMENT AND NOTIFICATION**

#### **A. Definition of a Breach and Unsecured PHI**

Breach means the acquisition, access, Use, or Disclosure of unsecured PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI. Breach in all cases excludes:

- 1) Any unintentional acquisition, access, or Use of PHI by a workforce member or person acting under the authority of Polk County or a Business Associate, if such acquisition, access, or Use was made in good faith and within the scope of authority and does not result in further Use or Disclosure in a manner not permitted under the Privacy Rule.
- 2) Any inadvertent Disclosure by a person who is authorized to access PHI at Polk County or Business Associate to another person authorized to access PHI at Polk County or Business Associate, or organized health care arrangement in which Polk County participates, and the PHI received as a result of such Disclosure is not further Used or Disclosed in a manner not permitted under the Privacy Rule.
- 3) A Disclosure of PHI where Polk County or Business Associate has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such PHI.

Unsecured PHI means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified in Department of Health and Human Services guidance, as updated from time to time (e.g., encryption, shredding).

## **B. Presumption of Breach and Risk Assessment Necessary to Demonstrate Low Probability of a Breach**

If an acquisition, access, Use, or Disclosure of PHI in a manner not permitted by the Privacy Rule does not fall within any of the three exceptions set out in the definition of “Breach” above, then it is **presumed** to be a Breach unless Polk County or its Business Associate demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

- 1) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification.
- 2) The unauthorized person who Used the PHI or to whom the Disclosure was made.
- 3) Whether the PHI was actually acquired or viewed.
- 4) The extent to which the risk to the PHI has been mitigated.

## **C. Notification Procedures**

- 1) Monitoring and Reporting Incidents of Unauthorized Acquisition, Access, Use or Disclosure of Unsecured PHI. Polk County will take reasonable steps to monitor the unauthorized acquisition, access, Use or Disclosure of Unsecured PHI. All workforce members shall be required to immediately report all suspected unauthorized acquisition, access, Uses or Disclosures to the Privacy Officer. Polk County will rely on its Business Associates to monitor and report incidents of unauthorized acquisition, access, Use or Disclosure of Unsecured PHI with respect to PHI the Business Associates acquires, accesses, Uses or Discloses, in accordance with the Breach Notification Requirements.
- 2) Determination Whether Unauthorized Acquisition, Access, Use or Disclosure Constitutes Breach. Upon receiving a report of unauthorized acquisition, access Use or Disclosure, the Privacy Officer, or their designee(s), will undertake a risk assessment to determine whether the unauthorized acquisition, access, Use or Disclosure constitutes a Breach of Unsecured PHI. Polk County will make and retain records of such risk assessment and determinations, including the basis for determinations that unauthorized acquisition, access, Uses or Disclosures are not Breaches of Unsecured PHI. Polk County will rely on its Business Associates to determine whether incidents of unauthorized acquisition, access, Use or Disclosure of Unsecured PHI constitute a Breach with respect to PHI the Business Associate or one of its subcontractors acquires, accesses, Uses or Discloses, in accordance with the Breach Notification Requirements.
- 3) Notice to Affected Individuals of Breach. If the unauthorized acquisition, access, Use or Disclosure of Unsecured PHI is determined to constitute a Breach, the Privacy Officer, or their designee(s), will notify the Individual(s) whose Unsecured PHI was acquired, accessed, Used or Disclosed improperly in accordance with the



Breach Notification Requirements via written notice, substitute notice or notice in urgent situations, as appropriate.

a) Written Notice:

- i. Written notices will be written in plain language and will include, to the extent possible:
  - 1) a brief description of what happened, including the date of the Breach and the date of discovery of the Breach;
  - 2) a description of the types of Unsecured PHI involved (without, however, including specific PHI);
  - 3) any steps Individuals should take to prevent potential harm resulting from the Breach;
  - 4) a brief description of what Polk County is doing (i) to investigate the Breach, (ii) to mitigate harm to Individuals and (iii) to protect against further Breaches; and
  - 5) contact procedures for Individuals to ask questions or learn additional information, including a toll-free telephone number, e-mail address, web site, or postal address.

- b) Timing for Written Notice. Unless there is a law enforcement delay, such notification will be provided without unreasonable delay and in no case later than 60 calendar days after discovery of the Breach.

A Breach shall be treated as “discovered” by Polk County as of the first day on which such breach is known to Polk County, or, by exercising reasonable diligence would have been known to Polk County. Polk County shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or an agency of Polk County.

- c) Form of Notice. Notice required under this section to be provided to an Individual, with respect to a breach, shall be provided promptly and in the following form:

- i. *First Class Notice.* Written notification by first-class mail to the Individual (or the next of kin of the Individual if the Individual is deceased) at the last known address of the Individual or the next of kin, respectively, or, if specified as a preference by the Individual, by electronic mail. The notification may be provided in one or more mailings as information is available.
- ii. *Notice in the Care of Insufficient or Out-of-Date Contact Information.* In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct

written (or, if specified by the Individual, electronic) notification to the Individual, a substitute form of notice shall be provided. In the case when there are 10 or more Individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period of ninety (90) days on the home page of the Web site of Polk County or conspicuous notice in major print or broadcast media, including major media in geographic areas where the Individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number that remains active for at least ninety (90) days, where an Individual can learn whether or not the Individual's unsecured PHI is possibly included in the breach.

- iii. *Additional Notice in Urgent Situations.* In any case deemed by Polk County to require urgency because of possible imminent misuse of unsecured PHI, Polk County, in addition to notice provided under subparagraph (A), may provide information to Individuals by telephone or other means, as appropriate.
- 4) Notice to Media of Breaches Involving More Than 500 Residents of the Same State or Jurisdiction. If a Breach involves more than 500 residents of the same State or jurisdiction, the Privacy Officer, or their designee(s), will notify the media in accordance with the Breach Notification Requirements. Such notification will be provided without unreasonable delay and in no case later than 60 calendar days after discovery of the Breach.
- 5) Notice to Department of Health and Human Services of Breaches Involving 500 or More Individuals. If a Breach involves 500 or more Individuals, the Privacy Officer, or their designee(s), will notify the Department of Health and Human Services in the manner specified in the Breach Notification Requirements on the Department of Health and Human Services website. Such notification will be provided without unreasonable delay and in no case later than 60 calendar days after discovery of the Breach.
- 6) Maintenance of Log and Annual Notice to Department of Health and Human Services of Breaches Involving Less than 500 Individuals. The Privacy Officer, or their designee(s), shall maintain a log of Breaches involving less than 500 Individuals and, not later than 60 days after the end of each calendar year, shall notify the Department of Health and Human Services in the manner specified in the Breach Notification Requirements and on the Department of Health and Human Services website.
- 7) Breaches by Business Associates. Polk County may, as permitted by the Breach Notification Requirements, contract with Business Associates for Business Associates to undertake the notification requirements of this Policy and Procedure with respect to PHI acquired, accessed, Used or Disclosed by the Business Associate relating to Polk County, in addition to the obligations directly applicable to the Business Associates under the Breach Notification Requirements (including

the obligations with respect to monitoring unauthorized Uses or Disclosures of PHI and making determinations whether such unauthorized Uses or Disclosures constitute a Breach.) If the Business Associate Agreement does not so provide, however, upon notification by a Business Associate of a Breach, the Privacy Officer, or their designee(s), shall undertake the notification requirements under this Policy to the extent necessary.

- 8) Law Enforcement Delay. If a law enforcement official determines that a notification, notice, or posting required under HIPAA would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed as follows:
  - a) If law enforcement provides a written statement and specifies the time for which a delay is required, Polk County or Business Associate shall delay such notification, notice or posting for the time period specified in writing.
  - b) If the statement provided by law enforcement is only verbal, Polk County or Business Associate must document the statement, and delay the notification, notice or posting temporarily and no longer than thirty (30) days from the date of the verbal statement, unless the law enforcement official provides a written statement.

## **BUSINESS ASSOCIATE ASSURANCES POLICY**

### **I. POLICY**

Polk County may disclose PHI to a Business Associate and may allow a Business Associate to create or receive PHI on its behalf. This Policy has been developed to ensure the privacy and security of PHI when Polk County is disclosing PHI to its Business Associates.

### **II. PURPOSE**

The purpose of this Policy is to provide guidance to employees on the requirements of HIPAA as it relates to the Disclosure of PHI to Business Associates to ensure compliance with HIPAA.

### **III. REFERENCES/CROSS-REFERENCES**

- [45 C.F.R. §164.502\(e\)](#)
- [45 C.F.R. §164.504\(e\)](#)
- [45 C.F.R. §164.308\(b\)](#)
- [45 C.F.R. §164.314\(a\)](#)

### **IV. SPECIFIC POLICIES REGARDING BUSINESS ASSOCIATES**

#### **A. Definition of Business Associate**

Business Associate means any entity or person who, on behalf of Polk County (but other than in the capacity of a member of Polk County's workforce), creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, including claims processing or administration, data analysis, processing, or administration, utilization review, quality assurance, Individual safety activities, billing, benefit management, practice management, and repricing, or uses PHI to provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for Polk County. It includes a health information organization, e-prescribing gateway or other entity or person who provides data transmission services with respect to PHI and that requires access on a routine basis to such PHI. It does not, however, include an officer, director, or employee of Polk County. It includes a person that offers a personal health record on behalf of Polk County. It includes a subcontractor that creates, receives, maintains, or transmits PHI on behalf of the business associate.

#### **B. Business Associate Contracts.**

Polk County shall ensure contracts or other arrangements between Polk County and its Business Associates comply with the Policies and Procedures described herein and pursuant to the HIPAA. Specifically:

- 1) Polk County shall document satisfactory assurances of compliance with the Policies and Procedures herein through a written contract or other written agreement or arrangement with the Business Associate that establishes permitted and required Uses and Disclosures of PHI.

- 2) Written contracts or agreements between Polk County and a Business Associate shall provide that the Business Associate shall:
- a) not Use or further Disclose PHI other than as permitted or required by the contract or as required by law;
  - b) use appropriate safeguards and comply with Security Rule with respect to PHI in electronic form to prevent Use or Disclosure of PHI other than as provided for by its contract;
  - c) report to Polk County any Use or Disclosure of PHI not provided for by its contract of which it becomes aware, including security incidents and breaches of unsecured PHI as required by [45 C.F.R. § 164.410](#);
  - d) ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such PHI by entering into a contract or other arrangement that complies with HIPAA;
  - e) make available PHI in accordance with the Individual's right to access such information, including to incorporate any amendments to PHI and to provide an accounting of disclosures in accordance with the Individual's right to request an amendment to PHI or an accounting of disclosures;
  - f) to the extent the Business Associate is to carry out Polk County's duties under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Polk County in the performance of such duties;
  - g) make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by the Business Associate on behalf of Polk County available to the Department of Health and Human Services for purposes of determining Polk County's compliance with the Privacy Rule;
  - h) at termination of the contract, if feasible, return or destroy all PHI received from, created, or received by the Business Associate on behalf of Polk County that the business associate maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, extend the protections of the contract to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the PHI infeasible.
  - i) authorize termination of the contract by Polk County if Polk County determines that the Business Associate has violated a material term of the contract.
- 3) Use of PHI by Business Associate. At the sole discretion of Polk County, contracts or agreements between Polk County and a Business Associate may permit the Business Associate to do the following:
- a) provide data aggregation services relating to the health care operations of Polk County;
  - b) Use the PHI received in its capacity as a Business Associate to Polk County, if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate;

- c) Disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate if the Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially and Used or further Disclosed only as required by law or for the purpose for which it was Disclosed. The person to whom the PHI is Disclosed must notify the Business Associates of any instances of which it is aware that the confidentiality of the information has been breached; and
  - d) Disclose PHI if law requires the Disclosure.
- 4) Obligation To Cure Breach. Polk County, upon learning that a pattern of activity or practice of a Business Associate constitutes a material breach or violation of the Business Associate's obligation under the contract or other arrangement, will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible.
- 5) Entering into Business Associate Agreements. No employee is authorized to enter into an agreement with a Business Associate. Any employee who is in receipt of such an agreement from a Business Associate will forward the same to their Department Director and HIPAA Liaison immediately. Unless otherwise designated, only the Polk County Board of Supervisors shall execute a Business Associate Agreement.
- 6) When Both Entities are Governmental Entities. If Polk County and Business Associate are both governmental entities, Polk County may enter into a memorandum of understanding with the business associate that contains the same terms and objectives as set out in this Policy.

## COMPLAINTS, NON-RETALIATION AND WAIVER OF RIGHTS POLICY

### I. POLICY

Polk County recognizes that Individual rights are a critical component to maintaining quality care and service, and is committed to allowing Individuals to exercise their rights under applicable federal, state and/or local laws and regulations. To support this commitment, Polk County maintains written Policies and Procedures to provide guidance to Polk County's employees when faced with a complaint by an Individual regarding Polk County's use or disclosures of the Individual's PHI.

### II. PURPOSE

HIPAA requires Polk County to have a mechanism for receiving complaints from Individuals regarding Polk County's compliance with the Privacy Rule. We are required to accept complaints about any aspect of our practices regarding PHI. The purpose of this Policy is to provide guidance to employees when faced with an Individual wishing to make a complaint. Another purpose of this Policy is to ensure that no employee engages in intimidating, threatening coercive or discriminatory against any Individual for exercising their rights under HIPAA, including the filing of a complaint. A further purpose of this policy is to inform employees that Individuals cannot be required to waive their rights under HIPAA as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.530\(d\)](#)

### IV. SPECIFIC POLICIES REGARDING COMPLAINTS, NON-RETALIATION AND WAIVER OF RIGHTS

**A. Individual's Right to File a Complaint.** Under the Privacy Rule, the Individual has a right to file a complaint with Polk County regarding Polk County's use or disclosure of the Individual's PHI.

- 1) *Form of Complaint.* An Individual desiring to file a complaint should be provided with Polk County's Complaint Form.
- 2) *Verbal Complaint.* If an Individual refuses to complete the Complaint form, but wishes to make a complaint, the employee shall give the Individual the name, or title, and telephone number of the Privacy Officer, or designee.
- 3) *No Waiver.* Polk County shall not require Individuals to waive their right to file a complaint with the Department of Health and Human Services as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

**B. Report of Concern by Workforce Members and Agents of Polk County.** Polk County believes that an effective system of communication is important in identifying compliance

violations of the privacy standards adopted by Polk County to protect PHI. To encourage communication of compliance concerns by members of the workforce and other agents doing business with Polk County, Polk County has implemented a reporting system that permits the workforce and other agents to report concerns openly or anonymously, verbally or in writing, in accordance with established procedures.

Polk County will make every reasonable effort to protect the identity of a reporting employee, unless the employee permits Polk County to reveal their identity. However, no guarantee of anonymity can be assured. No disciplinary action or retaliation will be taken against an employee who makes a good faith report of a compliance concern.

A report of concern may be made by anyone having knowledge or information about a known or suspected violation of Polk County's privacy standards or the laws and regulations governing Polk County. Reports may be made verbally or in writing to Polk County's Privacy Officer or to Office for Civil Rights, U.S. Department of Health and Human Services:

U.S. Department of Health and Human Services

Office for Civil Rights

Centralized Case Management Operations

200 Independence Ave., S.W.

Suite 515F, HHH Building

Washington, D.C. 20201

Customer Response Center: (800) 368-1019

Fax: (202) 619-3818

TDD: (800) 537-7697

Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

An online complaint form package is located on the U.S. [Department of Health and Human Services website](#). The U.S. Department of Health and Human Services also has on [online Complaint Portal](#) for filing complaints electronically.

All reports, whether verbal or written, will be documented on the Polk County Confidential Report of Concern.



Following the filing of a Confidential Report of Concern, the Privacy Officer, or designee, shall investigate, and will complete the Polk County Investigation Report.

**C. Non-Retaliation.** Polk County will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against anyone for: (i) exercising any right under, or participating in any process established by the Privacy Rule or this Policy; (ii) filing a complaint with the Privacy Officer and/or the Department of Health and Human Services; (iii) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or (iv) opposing in good faith any act or practice made unlawful by the Privacy Rule, provided that the manner of the opposition is reasonable and does not itself involve disclosure of PHI in violation of the applicable law.

## **DE-IDENTIFIED INFORMATION AND RE-IDENTIFICATION POLICY**

### **I. POLICY**

Polk County is committed to ensuring the privacy and security of Individuals' PHI. Federal law allows use and disclosure of PHI for the purpose of creating de-identified information. De-identified information is information which has been stripped of any elements that may identify an Individual, such as name, birth date or social security number. Polk County may, from time to time, use de-identified data for various purposes. In doing so, Polk County will ensure that the appropriate administrative and technical processes are in place to properly de-identify PHI, as well as to secure any methods of re-identification, as required by the Privacy Rule and other applicable federal, state and/or local laws and regulations.

### **II. PURPOSE**

The purpose of this policy is to provide guidance and ensure compliance with provisions of the Privacy Rule related to the de-identification of PHI.

### **III. REFERENCES/CROSS-REFERENCES**

- [45 C.F.R. §164.514](#)

### **IV. SPECIFIC POLICIES REGARDING DE-IDENTIFIED INFORMATION AND RE-IDENTIFICATION**

**A. De-Identified Information.** Health information that does not identify an Individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an Individual is not Individually identifiable health information and therefore is not considered PHI under HIPAA. As such, it may be used or disclosed by Polk County without Authorization and for a purpose other than treatment, payment or health care operations, as long as the procedures set forth below are followed.

**B. Requirements for De-Identification of PHI.** Health Information may be deemed de-identified only under very specific circumstances, in accordance with the Privacy Rule.

- 1) The Privacy Officer shall make all decisions about whether PHI should be de-identified or if information received from another entity qualifies as de-identified information.
- 2) Information may be considered de-identified only if the following elements are removed or otherwise concealed from the PHI, and when Polk County does not have actual knowledge that the information could be used along or in combination with other information to identify an Individual who is a subject of the information:
  - a) name;
  - b) all elements of dates (except year) for dates directly related to an Individual, including: birth date, date of death, all ages over 89; all elements of dates

(including year) indicative of age 89, except that such ages and elements may be aggregated into a single category of age 90 or older;

- c) telephone number;
  - d) fax number;
  - e) electronic mail address;
  - f) social security number;
  - g) medical record number;
  - h) health plan beneficiary number;
  - i) account number;
  - j) certificate/license number;
  - k) vehicle identifiers and serial numbers, including license plates;
  - l) device identifiers and serial number;
  - m) web Universal Resource Locators (URL);
  - n) Internet Protocol (IP) address number;
  - o) biometric identifiers, including finger and voice prints;
  - p) full face photographic image and any comparable image;
  - q) all geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code or equivalent geocode; and
  - r) any other unique identifying number, characteristic or code, other than a code assigned to a record to permit Polk County to re-identify the information.
  - s) The initial three digits of a zip code may be used if, according to the current publicly available data from the Bureau of the Census:
    - i. the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and
    - ii. the initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
- 3) Polk County shall adopt a uniform process for purposes of removing identifying elements from PHI.
- 4) If any of the identifiers listed above are not removed, then the information will only be disclosed when the Privacy Officer determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an Individual who is a subject of the information, and documents the methods and results of the analysis that justify that determination.

**C. Re-identification.** Polk County may assign a code or other means of record identification to allow information that is de-identified under this Policy to be re-identified by Polk County, as long as the following standards are met:

- 1) The code or other means of record identification used to re-identify information will not be derived from or related to information about the Individual and should not otherwise be capable of being translated so as to identify the Individual; and

- 2) Polk County 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.

## LIMITED DATA SET POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI. For most disclosures other than in the usual course of treatment, payment, or health care operations, Polk County must obtain the Individual's Authorization before using or disclosing the Individual's PHI. However, Polk County may create and use a limited data set under certain circumstances. A limited data set contains information from which all direct identifiers, such as name, have been removed, but which may contain some indirect identifiers. Polk County will, from time to time, use or disclose limited data sets for purposes of research, public health and health care operations.

### II. PURPOSE

The purpose of this policy is to provide guidance and to ensure that the creation, use and disclosure of limited data sets are in compliance with all applicable laws and regulations.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.514\(e\)](#)

### IV. SPECIFIC POLICES OF LIMITED-DATA SETS

- A. General Rule Regarding Use or Disclosure of PHI for Purposes Other Than Treatment, Payment or Health Care Operations.** Under the Privacy Rule, Polk County may not disclose an Individual's PHI for purposes other than treatment, payment or health care operations or other permitted uses and disclosures without obtaining the Individual's prior written Authorization.
- B. Exceptions to General Rule.** In some situations, Polk County may create de-identified information or limited data sets from PHI, without an Individual's Authorization, provided all of the requirements of the Privacy Rule have been met.
- C. General Requirements for the Use or Disclosure of PHI to Create a Limited Data Set.** Polk County may use PHI to create, or may disclose PHI to a Business Associate to create, a limited data set for the purposes of research, public health or health care operations. The following guidelines apply to the use or disclosure of PHI for the creation, use and disclosure of a limited data set:
- 1) The reason for creating and/or disclosing a limited data set must be documented and maintained. The Privacy Officer shall be consulted prior to the creation and/or disclosure of a limited data set.
  - 2) The following Individually identifying elements of an Individual, relatives, employers and household providers of the Individual will be removed or otherwise excluded from PHI in order to create a limited data set:

- a) name;
  - b) postal address information, other than town or city, state and zip code;
  - c) telephone number;
  - d) fax number;
  - e) electronic mail address;
  - f) social security number;
  - g) medical record number;
  - h) health plan beneficiary number;
  - i) account number;
  - j) certificate/license number;
  - k) vehicle identifiers and serial numbers, including license plates;
  - l) device identifiers and serial number;
  - m) web Universal Resource Locators (URL);
  - n) Internet Protocol (IP) address number;
  - o) biometric identifiers, including finger and voice prints; and
  - p) full face photographic image and any comparable image.
- 3) Polk County will adopt processes for purposes of removing identifying elements from PHI to create a limited data set.
  - 4) Polk County must enter into a data use agreement with any proposed recipients of a limited data set before disclosing any information contained in such limited data set to the recipient. This agreement must be reviewed by the Privacy Officer prior to use.
  - 5) If Polk County is in receipt of a limited data set, Polk County will enter into and comply with the terms of a data use agreement. If the person or entity sending the limited data set to Polk County has not provided such an agreement, Polk County shall not use or disclose the information and shall promptly notify the Privacy Officer. If a data use agreement accompanies a limited data set received by Polk County, the employee will promptly forward the agreement to the Privacy Officer.
  - 6) The data use agreement between Polk County and any other entity with which it will share the information contained in the limited data set, shall establish:
    - a) Who is permitted to use or receive the limited data set; and
    - b) The permitted uses and disclosures of such information by the recipient consistent with the limited purposes of research, public health and health care operations.
  - 7) The data use agreement shall provide Polk County with adequate assurances that the recipient of the limited data set will:
    - a) Not attempt to re-identify or contact the Individuals whose information is contained in the limited data set;
    - b) Use appropriate safeguards to prevent uses or disclosures outside the terms of the data use agreement;

- c) Ensure that any subcontractors or other tertiary recipients of the data agree to and abide by the terms of the data use agreement; and
- d) Report any breaches of information or agreement to Polk County in a timely manner.

## GROUP HEALTH PLAN POLICY

### I. POLICY

Polk County is committed to complying with HIPAA requirements related to group health plans. Group health plans are prohibited from disclosing PHI with their plan sponsor unless the group health plan ensures that the plan documents restrict uses and disclosures of PHI by the plan sponsor. This policy applies to the health care component of Polk County that is a group health plan.

### II. PURPOSE

The purpose of this policy is to ensure that the group health plan of Polk County understands its obligations to amend its plan document related to uses and disclosures of PHI.

### III. REFERENCES/CROSS-REFERENCES

- [45 CFR §164.504\(f\)](#)

### IV. SPECIFIC POLICIES REGARDING GROUP HEALTH PLANS

**A. General Rule.** The Group Health Plan, in order to disclose PHI to the plan sponsor, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the following

- 1) *Summary Health Information.* The group health plan may disclose summary health information to the plan sponsor if the plan sponsor requests the summary health information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the group health plan, or for the purpose of modifying, amending, or terminating the group health plan.
- 2) *Enrollment Information.* 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 unenrolled from a health insurance issuer or HMO offered by the plan.
- 3) *Requirements for Amendment to Plan Documents.* The plan documents of the group health plan must be amended to incorporate provisions to:
  - a) Establish the permitted and required uses and disclosures of PHI by the plan sponsor.
  - b) Provide that the group health plan will disclose PHI to the plan sponsor only upon receipt of the certification by the plan sponsor that the plan documents have been amended to incorporate certain HIPAA-mandated provisions.
  - c) Provide for adequate separation between the group health plan and the plan sponsor, including certain required provisions in the plan document amendment describing those classes of persons of the plan sponsor who have access to PHI, restricting the access to and use by such workforce



members, and providing an effective mechanism for resolving issues of noncompliance with the plan document amendment provisions required under HIPAA.

**B. Uses and Disclosures.** A group health plan may:

- 1) Disclose PHI to a plan sponsor to carry out plan administration functions that the plan sponsor performs, only consistent with the Amendment to Plan Documents described above, available upon request from Polk County.
- 2) Not permit a health insurance issuer or HMO with respect to the group health plan to disclose PHI to the plan sponsor except as permitted under HIPAA as described in this policy.
- 3) Not disclose (and may not permit a health insurance issuer or HMO to disclose) PHI to a plan sponsor in any event, unless certain required provisions are included in the notice of privacy practices.
- 4) Not disclose PHI 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.

## MARKETING POLICY

### I. POLICY

Polk County is committed to protecting the privacy of Individuals' PHI in compliance with all applicable laws and regulations. To achieve this commitment, Polk County has adopted a Privacy Program to help employees understand and recognize their responsibilities to protect the health information of Individuals, including in the context of the use of PHI for marketing purposes.

### II. PURPOSE

The purpose of this Policy is to provide guidance regarding the privacy limitations on marketing communications and communications subsidized by manufacturers or other parties.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.501](#)
- [45 C.F.R. §164.508\(a\)\(3\)](#)

### IV. SPECIFIC MARKETING POLICIES

#### A. Definition.

Marketing means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service. Marketing does not include a communication made:

- 1) To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the Individual, only if any financial remuneration received in exchange for making the communication is reasonably related to the cost of making the communication. For purposes of this Marketing Policy, the term "financial remuneration" means direct or indirect payment from or on behalf of a third party whose product or service is being described.
- 2) For the following purposes, except where Polk County receives financial remuneration in exchange for making the communication:
  - a) For treatment of an Individual, including case management or care coordination for the Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Individual;
  - b) To describe a health-related product or service (or payment for such product or service) that is provided by Polk County; or
  - c) For case management or care coordination, contacting of Individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

#### B. Marketing Restrictions

Polk County must obtain an Individual's authorization to use or disclose PHI for Marketing, except for face-to-face communications made by Polk County to the Individual, or for promotional gifts of nominal value. If Polk County would receive financial remuneration from a third party for the communication, the authorization must state that such remuneration is involved.

## MINIMUM NECESSARY POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individual health information. While Individual information must be available to health care professionals in the process of ensuring proper care or other professional services, workforce members should avoid disclosing more Individual information than needed to perform our respective duties. To support our commitment to Individual confidentiality, Polk County will ensure that the appropriate steps are taken to disclose only the minimum amount of PHI necessary to accomplish the particular use or disclosure, as required under HIPAA.

### II. PURPOSE

The purpose of this policy is to provide employees with guidance on restricting the use and disclosure of PHI to the minimum necessary to achieve the purpose of the use or disclosure.

### III. REFERENCE/CROSS-REFERENCE

- [45 C.F.R. §164.502\(b\)](#)
- [45 C.F.R. §164.514\(d\)](#)

### IV. SPECIFIC MINIMUM NECESSARY STANDARD POLICIES

- A. General Rule.** The minimum necessary standard applies to all of Polk County's Uses and Disclosures of PHI except to (1) Disclosures to or requests by a health care provider when the PHI will be Used for Treatment purposes; (2) Disclosures to the Individual who is the subject of the PHI; (3) Uses or Disclosures made pursuant to an Authorization requested by the Individual; (4) Disclosures made to the Secretary under HIPAA; (5) Uses or Disclosures that are required by law under [45 CFR 164.512\(a\)](#); and (6) Uses and Disclosures that are required for compliance with the Privacy Rule.

Polk County employees shall follow proper procedures to ensure that only the minimum amount of PHI necessary to accomplish the specific purpose of a use or disclosure is actually used or disclosed. Polk County employees shall request only the minimum amount of PHI necessary to accomplish the specific purpose of the request.

- B.** When Using or Disclosing PHI, or when requesting PHI from another entity, Polk County must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure or request for health information. Polk County must implement the following requirements after assessing their own unique circumstances. The requirements do not require limiting PHI Use or Disclosure to only what is absolutely the minimum necessary amount, but rather to what may reasonably be necessary to accomplish the purpose of the Use or Disclosure.

- 1) Polk County personnel's access to PHI. Polk County has identified those persons or classes of persons in its workforce who need access to PHI to carry out their duties. For each such person or class of persons, Polk County has identified the

category or categories of PHI to which access is needed, and any appropriate conditions to such access. Polk County must make reasonable efforts to limit the access to PHI of such identified persons or classes of persons to the identified categories of PHI. See Workforce Designation in this Manual.

- 2) Review of Requests. All proposed uses or disclosures of PHI shall be reviewed by persons having an understanding of Polk County's privacy policies and practices, and sufficient expertise to understand and weigh the necessary factors.
- 3) Entire Record. Polk County shall only use, disclose, or request an entire medical record when the entire medical record is specifically justified as being reasonably necessary to accomplish the purpose of the use, disclosure, or request.
- 4) Criteria. The following criteria will be used in limiting the amount of PHI requested or disclosed by Polk County's personnel:

***Does the Individual who is requesting (disclosing) the PHI have complete understanding of the purpose for the use or disclosure of the PHI?***

***Are all of the Individuals identified for whom the requested use or disclosure of the PHI is required?***

- 5) Minimum Necessary Disclosure of PHI.
  - a) For Disclosures made on a routine and recurring basis, Polk County must implement a standard protocol that limits the Disclosure to PHI reasonably necessary to achieve the purpose of the Disclosure.
  - b) For non-routine Disclosures, Polk County must develop criteria for determining and limiting such Disclosure to the minimum necessary PHI to accomplish the purpose of the non-routine Disclosure. Such Disclosures must be reviewed on a case-by-case basis in accordance with these criteria.
- 6) Minimum Necessary Requests for PHI.
  - a) For requests for PHI made on a routine and recurring basis, Polk County must implement a standard protocol that limits the Disclosure to PHI reasonably necessary to achieve the purpose of the Disclosure.
  - b) For non-routine requests, Polk County must develop criteria for determining and limiting Disclosure to the minimum necessary PHI to accomplish the purpose of the non-routine Disclosure. Such requests must be reviewed on a case-by-case basis in accordance with these criteria.
- 7) Reasonable Reliance. Polk County may rely on a requested Disclosure for PHI as being the minimum necessary for a stated purpose when the request is made by:
  - a) A public health official or agency for a Disclosure permitted under the Privacy Rule;
  - b) Another Covered Entity;

- c) A professional who is a workforce member or Business Associate of Polk County holding the PHI; or
- d) A researcher with appropriate documentation from an Institutional Review Board or Privacy Board.

## NOTICE OF PRIVACY PRACTICES POLICY

### I. POLICY

Polk County shall comply with the Privacy Rule governing the provision of a Notice of Privacy Practices to Individuals seeking Polk County services and to health plan beneficiaries and new enrollees. As set forth in this Policy, Individuals have the right to adequate notice by Polk County of the uses and disclosures of their PHI permitted or required by Polk County, and of their rights and Polk County duties under HIPAA with respect to PHI. Further, Polk County shall make a good faith effort to obtain a written acknowledgement from each Individual seeking treatment or other health care services.

### II. PURPOSE

The purpose of this Policy is to ensure that Polk County complies with the rules governing the provision of a Notice of Privacy Practices, and to ensure that employees are familiar with the general rules concerning the timing and distribution of the Notice. Another purpose of this Policy is to provide guidance to employees about the process by which an acknowledgment of receipt of Polk County's Notice of Privacy Practices must be obtained from Individuals presenting for services and from beneficiaries and enrollees in the health plan.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.520](#)

### IV. SPECIFIC NOTICE OF PRIVACY PRACTICES POLICIES

#### A. Notice of Privacy Practices for Health Care Provider.

- 1) General Rules. Each Individual seeking health care from Polk County, except for inmates, must receive a Notice. If a material change is made to the Notice, the Notice shall be revised under the direction of the Privacy Officer and shall be redistributed according to the distribution of Notice provisions contained in this Policy.
- 2) Distribution of Notice.
  - a) *General Rule.* Each Individual shall receive a Notice not later than the first date of service delivery, including service delivered electronically.
  - b) *Electronic Distribution.* The Notice also shall be available electronically, for viewing only, through Polk County's website at <https://www.polkcountyiowa.gov/human-resources/internal-policies/>
  - c) *Upon Request.* A paper copy of the Notice shall be provided upon request to any Individual seeking health care services from Polk County, regardless of whether the Individual has agreed to receive the Notice electronically.
  - d) *Service Delivery Site.* If Polk County maintains a physical service delivery site, Polk County must have the Notice available at the service delivery site for Individuals to request to take with them and must post the Notice in a

clear and prominent location where it is reasonable to expect Individuals seeking services from Polk County to be able to read the Notice.

## **B. Notice of Privacy Practices for Health Plan**

- 1) General Rule. To the extent required by the Privacy Rule, the Polk County Health Plan, as currently administered by Wellmark, shall provide a Privacy Notice to Covered Employees. If a material change is made to the Privacy Notice, the Privacy Notice shall be revised under the direction of the Privacy Officer and shall be redistributed according to the distribution of Privacy Notice provisions of this Policy.
- 2) Distribution of Notice
  - a) Each Covered Employee enrolled in a Plan will receive a Privacy Notice. Covered spouses and dependents shall not be entitled to separate notification apart from what is provided to the Covered Employee, unless a copy of the Privacy Notice is requested by such Individual.
  - b) Privacy Notices shall be provided: (i) at the time of enrollment, to each newly eligible Covered Employee; and (ii) if the Privacy Notice is not posted on the Plan's website, within 60 days of a material revision of the Privacy Notice, or if the Privacy Notice is posted on the Plan's website, the change shall be posted on the website by the effective date of the change and the revised Privacy Notice shall be included in its next annual mailing to all then Covered Employees. Every three years each Covered Employee shall either (i) be informed that the Privacy Notice is available upon request and provided with directions as to how to obtain the Privacy Notice; or (ii) be provided with the Privacy Notice itself. The Privacy Notice also shall be available electronically to all Covered Employees.
  - c) The Privacy Notice may be distributed electronically at the discretion of the Plans, within the time frames provided above, if the following requirements are met: (i) the recipients have agreed in advance to receive the Notice electronically; and (ii) such agreement has not been withdrawn. To the extent Polk County has knowledge that an electronic transmission of the Privacy Notice has failed, a paper copy of the Privacy Notice shall be provided.
  - d) A paper copy of the Privacy Notice shall be provided upon request to any Individual enrolled in the Plan, regardless of whether the Individual has agreed to receive the Privacy Notice electronically.

## **C. Content of the Notice of Privacy Practices**

- 1) Required Elements. Polk County must provide a Notice that is written in plain language and that contains the following elements:



- a) Header: “This Notice Describes How Medical Information About You May Be Used and Disclosed and How You Can Get Access to This Information. Please Review It Carefully.”
- b) A description, including at least one example, of the types of uses and disclosures that Polk County is permitted to make for treatment, payment and health care operations.
- c) A description of each of the other purposes for which Polk County is permitted to use or disclose PHI without the Individual’s written authorization.
- d) If a use or disclosure is prohibited or materially limited by other applicable law, the description of the use or disclosure shall reflect the more stringent law.
- e) A description of the types of uses and disclosures that require an authorization under the HIPAA provisions governing psychotherapy notes, marketing and sales of PHI, a statement that other uses and disclosures not described in the Notice will be made only with the Individual’s written authorization, and a statement that the Individual may revoke such authorization. If Polk County contacts Individuals to remind them of appointments or to provide them with other information, Polk County shall describe that on the notice.
- f) A statement of the Individual’s rights with respect to PHI and a brief description of how the Individual may exercise these rights.
  - i. The right to request restrictions on certain uses and disclosures and that Polk County is not required to agree to a requested restriction except in the case of mandatory disclosure restrictions to health plans when the Individual paid for the cost of the service in full.
  - ii. The right to receive confidential communications of PHI.
  - iii. The right to inspect and copy PHI.
  - iv. The right to amend PHI.
  - v. The right to receive an accounting of PHI disclosures.
  - vi. The right to obtain a paper copy of the notice from Polk County.
- g) A statement that Polk County is required to maintain the privacy of PHI and to provide the Individual with notice of its legal duties and privacy practices with respect to PHI, and to notify the Individual following a breach of unsecured PHI.
- h) A statement that Polk County is required to abide by terms of the notice currently in effect.
- i) A statement that Polk County reserves the right to change the terms of its notice and to make the new notice provisions effective for all PHI that it maintains. The statement shall also describe how it will provide Individuals with the revised notice.
- j) A statement that the Individual may complain to Polk County and to the Secretary if they believe their privacy rights have been violated, a brief description of how the Individual may file a complaint and a statement that the Individual will not be retaliated against for filing a complaint.

- k) The name or title and telephone number of the person or office to contact for further information.
  - l) A date on which the notice is first in effect.
- 2) **Optional Elements.** If Polk County intends to engage in any of the following, the Notice must include a separate statement informing the Individual of such activities, as follows:
- a) If Polk County engages in fundraising activities, a statement that Polk County may contact the Individual to raise funds for Polk County and the Individual has a right to opt out of receiving such communications.
  - b) A group health plan may disclose PHI to the sponsor of the plan.
  - c) A health plan that intends to use or disclose PHI for underwriting purposes must include a statement that Polk County is prohibited from using or disclosing PHI that is genetic information of an Individual for such purposes.

#### **D. Obtaining Acknowledgement of Receipt of Notice for Health Care Providers**

- 1) **General Rule.** Polk County must make a good faith effort to obtain an Individual's acknowledgment that he or she has received the Notice no later than the first date of service delivery.
- 2) **Exceptions.** In emergency situations, Polk County may wait to obtain the acknowledgment until reasonably practicable.
- 3) **Refusal.** If an Individual refuses or otherwise fails to provide an acknowledgment, Polk County must document its good faith effort to obtain the acknowledgment and the reason why the acknowledgment was not obtained (e.g., the Individual refused to sign the acknowledgment after being requested to do so). Polk County is not prohibited from providing treatment or otherwise using or disclosing PHI as permitted by law if the Individual does not sign an acknowledgment after being asked to do so.
- 4) **One Acknowledgment.** Polk County only needs to obtain one signed acknowledgment per Individual. Polk County is not required to collect an acknowledgment every time the Individual obtains services. Even if Polk County's Notice is revised, Polk County is not required to ask the Individual to sign a new acknowledgment.
- 5) **Process for Obtaining Acknowledgments.** Polk County shall provide each Individual seeking treatment from Polk County with a Notice on the first date of service. Each Individual must be provided with a paper copy to take with them if requested.
  - a) Employees of Polk County, after providing the Individual an opportunity to review the Notice, shall request that the Individual sign the

acknowledgment, which shall be captured by electronic or manual signature for documentation purposes.

- b) If an Individual refuses to sign an acknowledgment after having been asked to do so, the employee must document the refusal and the reason for the refusal using Polk County's designated form, and forward the refusal to Polk County's Privacy Officer.

- 6) Separate Signature Requirement. If Polk County is required to collect an Individual signature for another purpose, the signature obtained for the acknowledgment must be separate and the language must indicate the Individual knows what he or she is signing.

## **PRIVACY OFFICER DESIGNATION POLICY**

### **I. POLICY**

In order to manage the facilitation and implementation of activities related to the privacy and security of PHI, Polk County has appointed and will maintain a Privacy Officer position.

The Privacy Officer will be responsible and shall serve as the focal point for all privacy compliance-related activities. In general, the Privacy Officer is charged with implementing Polk County's HIPAA Privacy Policies and Procedures, conducting educational programs, and administering reviews relating to privacy and confidentiality Policies and Procedures.

The Director of the Polk County Health Department, currently Helen Eddy, has been designated the Privacy Officer of Polk County.

### **II. PURPOSE**

The purpose of this Policy is to set forth the responsibilities of the Privacy Officer.

### **III. REFERENCES/CROSS-REFERENCES**

- [45 C.F.R. §164.530\(a\)](#)

### **IV. DUTIES OF THE PRIVACY OFFICER**

**A. General Rule.** The Privacy Officer must demonstrate familiarity with the legal requirements relating to privacy and health care operations, as well as the ability to communicate effectively with and coordinate the efforts of medical, technical, management and clerical personnel.

**B. Responsibilities.** The Privacy Officer:

- 1) Provides leadership to Polk County's committees, work groups, and task forces charged with creating and implementing an enterprise-wide privacy program.
- 2) Develops Polk County's privacy Policies and Procedures consistent with applicable laws, rules, and regulations.
- 3) Ensures that processes are implemented to maintain compliance with Federal and State laws related to privacy, security, confidentiality, and protection of information resources and health care information. This includes coordination with the Security Officer in evaluating and monitoring operations and systems development for security and privacy requirements.
- 4) Develops, implements, and administers Polk County's authorization procedures for access to, use, and disclosure of PHI.
- 5) Develops, implements, and administers a Polk County procedure to allow Individuals to exercise their rights to PHI under applicable State and Federal Laws.

- 6) Develops and implements Polk County's privacy training programs and, in conjunction with the Security Officer, a security awareness and training program.
- 7) Coordinates with the other leaders, such as a compliance officer and human resources staff to develop appropriate sanctions for employees or business partners that fail to comply with Polk County's privacy Policies and Procedures.
- 8) Coordinates with other Polk County programs to measure effectiveness, performance and quality of Polk County's privacy program.
- 9) Coordinates with other leaders such as a compliance officer regarding complaints and information relating to Polk County's privacy program and regarding investigation of all allegations of non-compliance with Polk County's Privacy Policies.
- 10) Coordinates with the Security Officer and other applicable leaders and departments regarding the mitigation of the effects of any unauthorized or otherwise inappropriate released of health information.
- 11) On a periodic basis reports the status of the privacy program to the Board or other governance body.
- 12) Serves as resource to Polk County's designated liaisons to regulatory and accrediting bodies for matters relating to privacy and security.

## SAFEGUARDS POLICY

### I. POLICY

Polk County shall implement reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of PHI.

### II. PURPOSE

The purpose of this Policy is to ensure that Polk County complies with rules governing the Use or Disclosure of PHI, and to ensure that Polk County workforce members are familiar with the general rules.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.530\(c\)](#)

### IV. SPECIFIC POLICIES OF ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS

Polk County's protocol for safeguarding PHI takes into account Polk County's computer equipment and computer security options, physical layout, staffing level and Individual population, in order to protect, to the greatest extent possible, any incidental Uses and Disclosures of PHI that could occur. The protocol will be based on the following principles:

- A. General Rule.** PHI may be Used or Disclosed only as allowed by the Privacy Rule, regardless of whether that Use or Disclosure occurs in person, electronically or through a workstation.
- B. Workstation.** Polk County may Use or Disclose PHI by way of a workstation only in a manner that reasonably safeguards the PHI from unintentional Disclosure to or Use by anyone other than the intended user or recipient. Reasonable safeguards may include:
  - 1) Ensuring that workstations are not positioned in a manner that allows others to easily view the workstation screen.
  - 2) Ensuring that workstations are equipped with password protection and other reasonable security measures so that unauthorized persons cannot access PHI on an unattended workstation or through Polk County's server or network; and
  - 3) Restricting access to the workstations to the designated Polk County workforce who have a legitimate need to have such access.
- C. Oral Communications.** Polk County staff shall use reasonable safeguards to protect Individual privacy during all interactions with Individuals or other Individuals, related to PHI. The safeguards Polk County staff use shall be tailored to the particular facts and circumstances of each interaction, depending on the physical layout of Polk County facilities, the proximity to other Individuals in the area, the content of the interaction with the Individual, and other conditions or circumstances that may affect the privacy of Polk

County workforce interactions regarding PHI. It is the responsibility of each Polk County workforce member to determine, in each circumstance, the reasonable safeguards to employ in order to protect Individual privacy to the greatest extent possible, while considering the potential effects on Individuals. Reasonable safeguards may include:

- 1) Keeping voices low during all interactions regarding PHI so that others cannot hear the conversation;
- 2) Taking steps to ensure that discussions involving PHI are not overheard. Persons will be trained on the following safeguards to protect oral communications: (i) conducting conversations in a room with a door if necessary, (ii) lowering speaking voice when discussing PHI, (iii) using the handset of the telephone instead of the speakerphone, (iv) when speaking to an Individual about PHI keeping a distance from surrounding Individuals; and (v) being sure to Disclose only the minimum necessary amount of PHI.
- 3) Persons will verify that the person with whom he or she is speaking is the actual Individual who is the subject of the PHI or the authorized representative of such Individual (e.g., requesting social security number or date of birth, or other identifying information).
- 4) Restricting the type and amount of information left on an Individual's home or work voicemail or answering machine.

**D. Disposal of PHI.** PHI must not be discarded in unsecured trash bins, unsecured bags or other publicly-accessible locations. Instead, all PHI, such as paper records including PHI and labeled prescription bottles, shall be discarded in secured trash receptacles or other non-publicly-accessible locations, or shredded, burnt, pulped, or pulverized so that PHI is rendered essentially unreadable, indecipherable, and otherwise cannot be reconstructed.

## SALE OF PHI POLICY

### I. POLICY

Polk County is committed to protecting the privacy and security of PHI and shall not, without the Individual's prior written authorization, exchange remuneration for an Individual's PHI.

### II. PURPOSE

The purpose of this Policy is to ensure that Polk County workforce members are aware of the prohibition on the sale of PHI without an authorization from the Individual.

### III. REFERENCE/CROSS-REFERENCE

- [45 C.F.R. §164.508\(a\)\(4\)](#)

### IV. SPECIFIC POLICIES REGARDING THE SALE OF PHI

**A. General Rule.** Except as set forth below, Polk County shall not directly or indirectly receive payment in exchange for PHI of an Individual unless the Individual provided to Polk County a valid authorization in accordance with [45 C.F.R. § 164.508](#) that specifically authorizes Polk County to exchange the PHI for payment.

**B. Exceptions to Prohibition of Sale of PHI.** Paragraph A above does not prohibit payment in exchange for PHI in the following circumstances:

- 1) The purpose of the exchange is for public health activities (as described in [45 C.F.R. § 164.512\(b\)](#) or [§ 164.514\(e\)](#)).
- 2) The purpose of the exchange is for research (pursuant to [45 C.F.R. § 164.514\(e\)](#) or [§ 164.512\(i\)](#)) and the payment received is a reasonable cost-based fee to cover costs of preparation and transmittal of the PHI for such purpose.
- 3) The purpose of the exchange is for the treatment of the Individual or for payment purposes pursuant to [45 C.F.R. § 164.506\(a\)](#).
- 4) The purpose of the exchange is to facilitate the sale, transfer, merger, or consolidation of all or part of Polk County, and due diligence related to such activity.
- 5) The purpose of the exchange is for activities that a Business Associate undertakes on behalf of Polk County, and the payment is provided to the Business Associate solely for the performance of those activities.
- 6) The purpose of the exchange is to provide an Individual with a copy of the Individual's PHI pursuant to [45 C.F.R. § 164.524](#) or [§ 164.528](#).
- 7) The exchange is required by law as permitted under [45 C.F.R. § 164.512\(a\)](#).



- 8) The exchange is for any other purpose permitted by the Privacy Rule when the only payment received is a reasonable, cost-based fee to cover costs of preparation and transmittal of the PHI for such purpose or a fee otherwise expressly permitted by law.

## SANCTIONS POLICY

### I. POLICY

Polk County has established and will apply appropriate sanctions against members of its workforce, as well as other agents and contractors, who fail to comply with its HIPAA policies and procedures.

### II. PURPOSE

This Policy is designed to give guidance and ensure compliance with all applicable laws and regulations related to sanctions for violating Polk County's HIPAA policies and procedures. Under the Privacy Rule, penalties for misuse or misappropriation of health information include both civil monetary penalties and criminal penalties.

Civil penalties range from \$100 for each violation to a maximum of \$1,500,000 per year for the same violations.

Criminal penalties vary from fines of not more than \$50,000 and/or one year imprisonment, to fines of not more than \$250,000 and/or ten years imprisonment, ([42 U.S.C. §§ 1320d 5](#) and [1320d 6](#)).

### III. REFERENCE/CROSS-REFERENCE

- [45 C.F.R. §164.530\(e\)](#)

### IV. SPECIFIC SANCTIONS POLICIES

- A. General Rule Regarding Sanction.** All workforce members shall comply with the written policies and procedures included in this Privacy Manual as amended from time to time, and such compliance shall be a factor considered in each employee's evaluation. In addition, Polk County shall apply appropriate sanctions or discipline against every member of its workforce that fails to comply with Polk County's Policies and Procedures. Such sanctions or discipline shall be applied in compliance with Polk County's human resources policies and procedures and applicable collective bargaining agreements. The type and severity of the sanction applied shall depend on whether the violation was intentional or unintentional, whether the violation indicates a pattern or practice of improper access, use or disclosure of health information, and similar factors. Sanctions could range from verbal reprimand to termination.

Employees, agents, and other contractors should be aware that violations may result in notification to law enforcement officials, Individuals whose PHI is inappropriately access, acquired, used or disclosed, as well as to regulatory, accreditation, and/or licensure organizations.

**B. General Process for Responding to Possible Violations.**

- 1) Members of Polk County's workforce are encouraged to report possible Privacy Violations to Polk County's Privacy Officer.

- 2) Whenever possible Privacy Violations arise, the Privacy Officer shall conduct an investigation and determine whether a violation has occurred.
- 3) A record of the event and any discipline imposed shall be maintained by the Privacy Officer.

**C. Mitigation.** Polk County shall mitigate, to the extent practicable, any harmful effect known to Polk County of a use or disclosure of PHI in violation of its policies and procedures by Polk County workforce members or by its business associates.

**D. Examples of HIPAA Violations Which May Result in Sanctions**

- Accessing information that you do not need to know to do your job;
- Sharing your computer access codes (user name & password)/ Using another person's computer access codes (user name & password);
- Leaving your computer unattended while you are logged into a PHI program;
- Sharing PHI with another employee without authorization;
- Copying PHI without authorization;
- Changing PHI without authorization;
- Discussing confidential information in a public area or in an area where the public could overhear the conversation;
- Discussing confidential information with an unauthorized person;
- Failure to cooperate with Polk County's Privacy Officer;
- Any unauthorized use or disclosure of PHI;
- Failure to comply with a mitigation decision;
- Obtaining PHI under "false pretenses"; or
- Using and/or disclosing PHI for commercial advantage, personal gain or malicious harm.

## TRAINING POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individual health information. Federal, state, and/or local laws and regulations have established standards with which we must comply to ensure the security and confidentiality and use and disclosure of PHI. Polk County also recognizes that Individual rights are a critical aspect of maintaining quality care and service, and is committed to allowing Individuals to exercise their rights under HIPAA and other applicable federal, state, and/or local laws and regulations

### II. PURPOSE

The purpose of this Policy is to provide guidance to personnel as to the training requirements imposed by the Privacy Rule.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.530\(b\)](#)

### IV. SPECIFIC TRAINING POLICIES

- A. General Requirement.** All members of Polk County's workforce will be trained, as appropriate for their jobs, on Polk County's Policies and Procedures regarding Individuals' PHI. These Policies pertain to use and disclosure of, and access to Individual's PHI. All workforce members shall comply with the written policies and procedures included in the HIPAA Policies and Procedures Manual, as amended from time to time, and such compliance shall be a factor considered in each employee's evaluation. In addition, Polk County shall apply appropriate sanctions or discipline in compliance with Polk County's human resources policies and procedures (and applicable collective bargaining agreements) against every provider of its workforce that fails to comply with Polk County's Privacy Policies and Procedures.
- B. Timing.** Training will occur within a reasonable period of time upon initial employment or when the new workforce member joins Polk County's workforce, and thereafter on a regular basis and as necessary to reflect any changes in the Privacy Rule or changes in Polk County's Policies and Procedures within a reasonable period of time after the material change becomes effective.
- C. Individual Rights.** Workforce members shall undergo training regarding Individuals' PHI and use and disclosure of, and access to, their PHI and this training will include, where appropriate, the following:
- 1) allowing Individuals to file complaints concerning Polk County's Policies and Procedures required by HIPAA and its compliance with such Policies and Procedures;

- 2) allowing Individuals to receive an appropriate Accounting of disclosures of their PHI;
- 3) allowing Individuals to access, inspect, and/or obtain a copy of their PHI maintained in a Designated Record Set;
- 4) denying a request from an Individual to access, inspect, and/or obtain a copy of their PHI;
- 5) providing an Individual with a written statement for the reason of a denial to inspect and copy his/her PHI;
- 6) allowing Individuals to request confidential communications of PHI;
- 7) allowing Individuals to request restriction of the uses and disclosures of their PHI;
- 8) allowing Individuals to request an amendment or correction to their PHI that is erroneous or incomplete;
- 9) denying a request from an Individual to amend or correct to their PHI that is erroneous or incomplete.

**D. Privacy and Confidentiality.** Training regarding the privacy and confidentiality of Individual health information will include the following:

- 1) uses and disclosure of PHI for treatment, payment, and health care operations;
- 2) uses and disclosure of PHI pursuant to Individual Authorization;
- 3) uses and disclosure of PHI pursuant to the Individual's opportunity to agree or disagree with the use or disclosure;
- 4) uses and disclosure of PHI that do not require Individual Authorization, or opportunity to agree or disagree;
- 5) Individuals' rights concerning their PHI;
- 6) any other information as necessary for the respective providers of the workforce to carry out their duties and responsibilities with respect to the proper use or disclosure of PHI.

**E. Use and Disclosure.** Employee training regarding use and disclosure of PHI will include the following:

- 1) the process by which an Individual may request access to PHI;
- 2) the documents to be used for Individuals to request access to PHI;

- 3) the process by which Polk County may request the use or disclosure of an Individual's PHI;
- 4) the documents to be used for Polk County to solicit a request for an Individual's PHI;
- 5) the right of an Individual to revoke an Authorization;
- 6) the identification of defective Authorizations;
- 7) the recognition of when Polk County may condition the provision to an Individual of treatment, payment, enrollment, or eligibility for benefits on the provision of obtaining an Authorization.

**F. Privacy Officer.** Training will be conducted by the Privacy Officer or designee.

**G. Execution of Employee Confidentiality Agreement.** The execution of an employee confidentiality agreement is required as a condition of employment/contract/association/appointment with Polk County. All Polk County employees and persons associated with Polk County are to sign the confidentiality agreement at the commencement of their relationship with Polk County if they come into contact with PHI. See Polk County Employee Confidentiality Agreement.

**H. Documentation.** All training shall be documented and retained in accordance with the Record Retention Policy.

## VERIFICATION OF IDENTITY POLICY

### I. POLICY

Polk County is committed to ensuring the privacy and security of Individuals' PHI. In the normal course of business and operations, Polk County will receive requests to disclose PHI for various purposes. To support our commitment to confidentiality, Polk County will ensure that appropriate steps are taken to verify the identity and authority of Individuals and entities requesting PHI, as required by HIPAA and other federal, state and/or local laws and regulations.

### II. PURPOSE

The purpose of this policy is to provide guidance and ensure compliance with provisions of the Privacy Rule related to verifying the identity and authority of persons requesting disclosure of PHI.

### III. REFERENCES/CROSS-REFERENCES

- [45 C.F.R. §164.514\(h\)](#)

### IV. SPECIFIC POLICIES TO VERIFY IDENTITY

- A. General Rule Regarding Use or Disclosure of PHI.** In general, Polk County may not use or disclose PHI, without an Individual's prior Authorization, unless the use or disclosure is for treatment, payment or health care operations purposes, or otherwise expressly permitted under the Privacy Rule.
- B. Exceptions to the General Rule.** There are circumstances under which Polk County may disclose PHI, without an Authorization, in response to requests from various entities, including but not limited to public health authorities, law enforcement, courts of law and administrative tribunals. In these situations, Polk County must verify the identity and authority of the person or entity making the request if the identity or any such authority of such person is not known to Polk County.
- C. Reasonable Reliance.** If Polk County conditions disclosure on particular documentation for verification, Polk County may rely, if such reliance is reasonable under the circumstances, on documentation that, on its face, meet the requirements. Verification may be satisfied by, for example, an administrative subpoena or a written statement that demonstrates that the requirement has been satisfied. However, the documentation must be signed and dated.
- D. Procedures for Verification of Identity and Authority of Public Officials.** In verifying the identity and legal authority of a public official or a person acting on behalf of the public official requesting disclosure of PHI:
- 1) Polk County personnel may rely on the following, if such reliance is reasonable under the circumstances, when disclosing PHI:

- a) Documentation, statements, or representations that, on their face, meet the applicable requirements for a disclosure of PHI;
  - b) Presentation of an agency identification badge, other official credentials, or other proof of government status, if the request is made in person;
  - c) A written statement on appropriate government letterhead that the person is acting under the government's authority;
  - d) Other evidence or documentation from an agency, such as a contract for services, a memorandum of understanding that establishes that the person is acting on behalf of a public official;
  - e) A written statement of the legal authority under which the information is requested or if a written statement would be impracticable, an oral statement of such legal authority;
  - f) A request that is made pursuant to a warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal that is presumed to constitute a legal authority.
- 2) Whenever possible, a copy of the applicable identification and/or evidence of legal authority should be made for retention in Polk County's files.
- E.** Polk County personnel may rely on the exercise of professional judgment and follow the requirements of applicable state law and other law, in consultation with legal counsel, in making the following uses or disclosures of PHI:
- 1) Use or disclosure to others for involvement in the Individual's care or payment for care; or
  - 2) Disclosure to avert a serious threat to health and safety.
  - 3) Prior to a disclosure being made under these circumstances, Polk County personnel should contact the Privacy Officer and/or the HIPAA Legal Counsel.
    - a) Personnel will document the identity of the Individual, the authority under which he or she is requesting information, the information requested and the date of the request. This information will be forwarded, along with the request, to the Privacy Officer.
    - b) Once it is determined that the use or disclosure is appropriate, Polk County personnel with appropriate access clearance will access the Individual's PHI using proper procedures.
    - c) The requested PHI will be delivered in a secure and confidential manner, such that the information cannot be accessed by employees or other persons who do not have authorization to access that information.
    - d) The Privacy Officer will appropriately document the request and delivery of PHI.
    - e) If the identity and legal authority of an Individual or entity requesting PHI cannot be verified, employees may not disclose the requested information and will report the case to the Privacy Officer in a timely manner.



## APPENDIX A GLOSSARY

**Act** means the Social Security Act.

**ANSI** stands for the American National Standards Institute.

**Business associate:** means any entity or person who, on behalf of Covered Entity (but other than in the capacity of a member of the Covered Entity's workforce), creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, including claims processing or administration, data analysis, processing, or administration, utilization review, quality assurance, Individual safety activities, billing, benefit management, practice management, and repricing, or Uses PHI to provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the Covered Entity. It includes a health information organization, e-prescribing gateway or other entity or person who provides data transmission services with respect to PHI and that requires access on a routine basis to such PHI. It does not, however, include an officer, director, or employee of Covered Entity. It includes a person that offers a personal health record on behalf of the Covered Entity. It includes a subcontractor that creates, receives, maintains, or transmits PHI on behalf of the business associate.

**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 or entities possess an ownership or equity interest of 5 percent or more in another entity.

**Compliance date** means the date by which a covered entity must comply with a standard, implementation specification, requirement, or modification adopted under this subchapter.

**Contrary**, when used to compare a provision of State law to a standard, requirement, or implementation specification adopted under this subchapter, means:

- (1) A covered entity would find it impossible to comply with both the State and federal requirements; or
- (2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 264 of Pub. L. 104-191, as applicable.

**Correctional institution** means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons

committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

**Covered entity** means:

- (1) A health plan.
- (2) A health care clearinghouse.
- (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

**Covered functions** means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.

**Data aggregation** means, with respect to PHI created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such PHI by the business associate with the PHI received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**De-identification of PHI.** A covered entity may determine that health information is not Individually identifiable health information only if:

- (1) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not Individually identifiable:
  - (i) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an Individual who is a subject of the information; and
  - (ii) Documents the methods and results of the analysis that justify such determination; or
- (2) (i) The following identifiers of the Individual or of relatives, employers, or household members of the Individual, are removed:
  - (A) Names;
  - (B) All geographic subdivisions smaller than a State, including street address, city, County, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:
    - (1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and
    - (2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
  - (C) All elements of dates (except year) for dates directly related to an Individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
  - (D) Telephone numbers;
  - (E) Fax numbers;
  - (F) Electronic mail addresses;

- (G) Social security numbers;
  - (H) Medical record numbers;
  - (I) Health plan beneficiary numbers;
  - (J) Account numbers;
  - (K) Certificate/license numbers;
  - (L) Vehicle identifiers and serial numbers, including license plate numbers;
  - (M) Device identifiers and serial numbers;
  - (N) Web Universal Resource Locators (URLs);
  - (O) Internet Protocol (IP) address numbers;
  - (P) Biometric identifiers, including finger and voice prints;
  - (Q) Full face photographic images and any comparable images; and
  - (R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and
- (ii) The covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an Individual who is a subject of the information.

**Designated record set** refers to (1) the medical records and billing records about Individuals maintained by or for Covered Entity, or (2) any item, group, or collection of information that includes PHI and is used in whole or in part by or for Covered Entity to make decisions about Individuals.

**Direct treatment relationship** means a treatment relationship between an Individual and a health care provider that is not an indirect treatment relationship.

**Disclosure** means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

**EIN** stands for the employer identification number assigned by the Internal Revenue Service, U.S. Department of the Treasury.

The EIN is the taxpayer identifying number of an Individual or other entity (whether or not an employer) assigned under one or the following:

- (1) 26 U.S.C. 6011(b), which is the portion of the Internal Revenue Code dealing with identifying the taxpayer in tax returns and statements, or corresponding provisions of prior law.
- (2) 26 U.S.C. 6109, which is the portion of the Internal Revenue Code dealing with identifying numbers in tax returns, statements, and other required documents.

**Employer** is defined as it is in 26 U.S.C. 3401(d).

**Group health plan** (also see definition of health plan in this section) means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg-91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

- (1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or
- (2) Is administered by an entity other than the employer that established and maintains the plan.

**HCFA** stands for Health Care Financing Administration within the Department of Health and Human Services.

**HHS** stands for the Department of Health and Human Services.

**Health care** means care, services, or supplies related to the health of an Individual.

Health care includes, but is not limited to, the following:

- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an Individual or that affects the structure or function of the body; and
- (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

**Health care clearinghouse** means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that does either of the following functions:

- (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
- (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

**Health care component** means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with paragraph (c)(3)(iii) of this section.

**Health care operations** means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

- (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and Individuals with information about treatment alternatives; and related functions that do not include treatment;
- (2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

- (3) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;
- (4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
- (5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
- (6) Business management and general administrative activities of the entity, including, but not limited to:
  - (i) Management activities relating to implementation of and compliance with the requirements of this subchapter;
  - (ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer.
  - (iii) Resolution of internal grievances;
  - (iv) the sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and
  - (v) Consistent with the applicable requirements of § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

**Health care provider** means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

**Health information** means any information, whether oral or recorded in any form or medium, that:

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual.

**Health insurance issuer** (as defined in section 2791(b)(2) of the PHS Act, 42 U.S.C. 300gg-91(b)(2) and used in the definition of health plan in this section) means an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

**Health maintenance organization (HMO)** (as defined in section 2791(b)(3) of the PHS Act, 42 U.S.C. 300gg-91(b)(3) and used in the definition of health plan in this section) means a federally

qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

**Health oversight agency** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

**Health plan** means an Individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).

- (1) Health plan includes the following, singly or in combination:
  - (i) A group health plan, as defined in this section.
  - (ii) A health insurance issuer, as defined in this section.
  - (iii) An HMO, as defined in this section.
  - (iv) Part A or Part B of the Medicare program under title XVIII of the Act.
  - (v) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et seq.
  - (vi) An issuer of a Medicare supplemental policy (as defined in section 1882(g) (1) of the Act, 42 U.S.C. 1395ss (g) (1)).
  - (vii) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.
  - (viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.
  - (ix) The health care program for active military personnel under title 10 of the United States Code.
  - (x) The veterans' health care program under 38 U.S.C. chapter 17.
  - (xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in 10 U.S.C. 1072(4)).
  - (xii) The Indian Health Service program under the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.
  - (xiii) The Federal Employees Health Benefits Program under 5 U.S.C. 8902, et seq.
  - (xiv) An approved State child health plan under title XXI of the Act, providing benefits for child health assistance that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397, et seq.
  - (xv) The Medicare + Choice program under Part C of title XVIII of the Act, 42 U.S.C. 1395w-21 through 1395w-28.
  - (xvi) A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible Individuals.
  - (xvii) Any other Individual or group plan, or combination of Individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).
- (2) Health plan excludes:

- (i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(c)(1); and
- (ii) A government-funded program (other than one listed in paragraph (1) (i)-(xvi) of this definition):
  - (A) Whose principal purpose is other than providing, or paying the cost of, health care; or
  - (B) Whose principal activity is:
    - (1) The direct provision of health care to persons; or
    - (2) The making of grants to fund the direct provision of health care to persons.

**Hybrid entity** means a single legal entity:

- (1) That is a covered entity;
- (2) Whose business activities include both covered and non-covered functions; and
- (3) That designates health care components in accordance with paragraph (c) (3) (iii) of this section.

**Implementation specification** means specific requirements or instructions for implementing a standard.

**Individually identifiable health information** is information that is a subset of health information, including demographic information collected from an Individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and
  - (i) That identifies the Individual; or
  - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

**Indirect treatment relationship** means a relationship between an Individual and a health care provider in which:

- (1) the health care provider delivers health care to the Individual based on the orders of another health care provider; and
- (2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the Individual.

**Individual** means the person who is the subject of PHI.

**Inmate** means a person incarcerated in or otherwise confined to a correctional institution.

**Law enforcement official** means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

**Limited data set:** A limited data set is PHI that excludes the following direct identifiers of the Individual or of relatives, employers, or household members of the Individual:

- (i) Names;
- (ii) Postal address information, other than town or city, State, and zip code;
- (iii) Telephone numbers;
- (iv) Fax numbers;
- (v) Electronic mail addresses;
- (vi) Social security numbers;
- (vii) Medical record numbers;
- (viii) Health plan beneficiary numbers;
- (ix) Account numbers;
- (x) Certificate/license numbers;
- (xi) Vehicle identifiers and serial numbers, including license plate numbers;
- (xii) Device identifiers and serial numbers;
- (xiii) Web Universal Resource Locators (URLs);
- (xiv) Internet Protocol (IP) address numbers;
- (xv) Biometric identifiers, including finger and voice prints; and
- (xvi) Full face photographic images and any comparable images.

**Marketing** means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service. Marketing does not include a communication made:

- (i) To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the Individual, only if any payment received in exchange for making the communication is reasonably related to the cost of making the communication.
- (ii) For the following purposes, except where [INSERT NAME] receives payment in exchange for making the communication:
  - (A) For treatment of an Individual, including case management or care coordination for the Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Individual;
  - (B) To describe a health-related product or service (or payment for such product or service) that is provided by [INSERT NAME]; or
  - (C) For case management or care coordination, contacting of Individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

**Modify or modification** refers to a change adopted by the Secretary, through regulation, to a standard or an implementation specification.

**More stringent** means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:



- (1) With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is:
  - (i) Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or
  - (ii) To the Individual who is the subject of the Individually identifiable health information.
- (2) With respect to the rights of an Individual, who is the subject of the Individually identifiable health information, regarding access to or amendment of Individually identifiable health information, permits greater rights of access or amendment, as applicable.
- (3) With respect to information to be provided to an Individual who is the subject of the Individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.
- (4) With respect to the form, substance, or the need for express legal permission from an Individual, who is the subject of the Individually identifiable health information, for use or disclosure of Individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.
- (5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.
- (6) With respect to any other matter, provides greater privacy protection for the Individual who is the subject of the Individually identifiable health information.

**Organized health care arrangement** means:

- (1) A clinically integrated care setting in which Individuals typically receive health care from more than one health care provider;
- (2) An organized system of health care in which more than one covered entity participates, and in which the participating covered entities:
  - (i) Hold themselves out to the public as participating in a joint arrangement; and
  - (ii) Participate in joint activities that include at least one of the following:
    - (A) Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;
    - (B) Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or
    - (C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if PHI created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.
- (3) A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to PHI created or received by such health insurance issuer or HMO that relates to Individuals who are or who have been participants or beneficiaries in such group health plan;
- (4) A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or

(5) the group health plans described in paragraph (4) of this definition and health insurance issuers or HMOs with respect to such group health plans, but only with respect to PHI created or received by such health insurance issuers or HMOs that relates to Individuals who are or have been participants or beneficiaries in any of such group health plans.

**Payment** means:

- (1) The activities undertaken by:
  - (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or
  - (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
- (2) The activities in paragraph (1) of this definition relate to the Individual to whom health care is provided and include, but are not limited to:
  - (i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;
  - (ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;
  - (iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;
  - (iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
  - (v) Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and
  - (vi) Disclosure to consumer reporting agencies of any of the following PHI relating to collection of premiums or reimbursement:
    - (A) Name and address;
    - (B) Date of birth;
    - (C) Social security number;
    - (D) Payment history;
    - (E) Account number; and
    - (F) Name and address of the health care provider and/or health plan.

**Plan administration functions** means administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

**Plan sponsor** is defined as defined at section 3(16) (B) of ERISA, 29 U.S.C. 1002(16) (B).

**PHI** refers to any information, whether transmitted or maintained in electronic, written, oral, or any other form or medium, that relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (i) identifies the Individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual..

**Psychotherapy notes** means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the Individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**Public health authority** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

**Qualified protective order** means, with respect to PHI requested under paragraph (e) (1) (ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

- (1) Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and
- (2) Requires the return to the covered entity or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

**Relates to the privacy of Individually identifiable health information** means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

**Required by law** refers to a mandate contained in law, and enforceable by a court, that compels Covered Entity to use or disclose PHI. This includes, but is not limited to, court orders, subpoenas issued by a court, grand jury, or administrative body authorized to require the production of information, and civil or investigative demands.

**Research** means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

**Secretary** means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.

**Small health plan** means a health plan with annual receipts of \$5 million or less.

**Standard** means a rule, condition, or requirement:

- (1) Describing the following information for products, systems, services or practices:
  - (i) Classification of components.
  - (ii) Specification of materials, performance, or operations; or
  - (iii) Delineation of procedures; or
- (2) With respect to the privacy of Individually identifiable health information.

**Standard setting organization (SSO)** means an organization accredited by the American National Standards Institute that develops and maintains standards for information transactions or data elements, or any other standard that is necessary for, or will facilitate the implementation of, this part.

**State** refers to one of the following:

- (1) For a health plan established or regulated by Federal law, State has the meaning set forth in the applicable section of the United States Code for such health plan.
- (2) For all other purposes, State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

**State law** means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.

**Summary health information** means information, that may be Individually identifiable health information, and:

- (1) That summarizes the claims history, claims expenses, or type of claims experienced by Individuals for whom a plan sponsor has provided health benefits under a group health plan; and
- (2) From which the information described at § 164.514(b) (2) (i) has been deleted, except that the geographic information described in § 164.514(b) (2) (i) (B) need only be aggregated to the level of a five-digit zip code.

**Trading partner agreement** means an agreement related to the exchange of information in electronic transactions, whether the agreement is distinct or part of a larger agreement, between each party to the agreement. (For example, a trading partner agreement may specify, among other things, the duties and responsibilities of each party to the agreement in conducting a standard transaction.)

**Transaction** means the transmission of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information transmissions:

- (1) Health care claims or equivalent encounter information.
- (2) Health care payment and remittance advice.
- (3) Coordination of benefits.
- (4) Health care claim status.
- (5) Enrollment and disenrollment in a health plan.
- (6) Eligibility for a health plan.
- (7) Health plan premium payments.
- (8) Referral certification and authorization.
- (9) First report of injury.
- (10) Health claims attachments.
- (11) Other transactions that the Secretary may prescribe by regulation.

**Treatment** means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to an Individual; or the referral of an Individual for health care from one health care provider to another.

**Use** means, with respect to Individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

**Workforce** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.