EFFECTIVE DATE: August 1, 2018

PROCEDURE TITLE:
Use and Disclosure of Protected Health Information

To be reviewed every three years by: 
Information Security and Privacy Council

REVIEW BY: September 1, 2021

PROCEDURE

This Procedure implements the requirements of Integrity & Compliance Policy No. 1 Integrity and Compliance Program which requires Trinity Health to establish a Privacy program to, among other things, protect the use and disclosure of Protected Health Information consistent with requirements of law or regulation.

1. Appropriate Safeguards
   a. The Ministry will have in place appropriate administrative, technical, and physical safeguards to protect the privacy of Protected Health Information (PHI). Also, please refer to the Enterprise Information Security procedures intended to implement the safeguards.

2. Use or Disclosures of Protected Health Information Permitted by HIPAA
   a. The Ministry will Use or Disclose PHI in accordance with HIPAA, consistent with the following permitted Uses or Disclosures:
      i. Uses or Disclosures not requiring patient authorization;
      ii. Uses or Disclosures requiring patient authorization; and
      iii. Miscellaneous / Additional authorization requirements for records containing PHI (e.g., deceased individuals, minors, personal representatives).

3. Use or Disclosure Not Requiring a Patient Authorization
   a. The Ministry is not required to obtain an authorization (but must confirm the requestor's identity (See Integrity & Compliance Procedure ICP.16)) for the following Use or Disclosure purposes:
      i. To carry out treatment, payment or health care operations (excluding agreed upon restrictions);
ii. Required by law;
iii. For public health activities;
iv. To a government authority regarding victims of abuse, neglect, or domestic violence;
v. For health oversight purposes;
vi. For judicial and administrative proceedings;
vii. For law enforcement purposes (plus refer to the permitted disclosures related to limited information for identification and location purposes below);
viii. For organ donation and transplantation;
ix. For certain research purposes;
x. To avert a serious threat to health or safety;
xi. For specialized government functions;
xii. To comply with workers compensation laws;
xiii. To the Food and Drug Administration (FDA) for public health purposes;
xiv. For specified purposes regarding decedents;
xv. Ministry’s own defense in a legal action or other proceeding brought by the individual; and
xvi. For incidental disclosures.

b. For organized health care arrangements purposes as described in the Ministry’s Notice of Privacy Practices.
c. For another HIPAA covered entity’s treatment, payment and /or HIPAA approved operations for shared patients (i.e., quality review, etc.).
d. For patients requesting their own records, Integrity & Compliance Services Procedure No. 3b applies.

4. Permitted Disclosures Not Requiring a Patient Authorization - Limited Information for Identification and Location Purposes:

a. Except for disclosures otherwise required by law, a Ministry may disclose Protected Health Information (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 persons, provided that:
i. The PHI disclosed is limited to the following information:
   1. Name and address of the suspect;
   2. Date and place of birth;
   3. Social security number;
   4. ABO blood type and rh factor;
   5. Type of injury suspect has;
   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.

5. Use or Disclosure Requiring Patient Authorization (Including the Contents Thereof)
a. The Privacy Official, with assistance from Trinity Health System Office/IAS, will educate its Ministry’s respective workforce members regarding instances where patient authorization is required to Use or Disclose PHI. (See 45 CFR 164.508 for when an authorization is required.)
b. The Privacy Official will ensure that the Ministry, in cases where a patient authorization is required, receives a signed HIPAA compliant authorization form before Disclosing PHI.
c. The HIPAA compliant authorization:
   i. Must be written in plain language;
   ii. Must contain the following:
      1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
      2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested Use or Disclosure;
      3. The name or other specific identification of the person(s), or class of persons, to whom the Ministry may disclose the PHI to;
      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 an expiration event that relates to the individual or the purpose of the use or disclosure. Authorizations may permit the Disclosure of subsequent / future medical records, although the Ministry may limit the time frame (i.e., Disclosure of all medical records related to an individual’s disability claim);
      6. A statement regarding the individual’s right to revoke the authorization in writing and the exceptions to the right to revoke;
      7. A description on how the individual may revoke the authorization;
      8. A statement that the Ministry will not condition treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except as permitted by law;
      9. A statement that information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer protected by HIPAA;
      10. The signature of the individual and date. In the event that the authorization is signed by a personal representative of the individual, the authorization will contain a description of the representative’s authority to act on behalf of the individual. HIPAA allows for the signature of a personal representative if the Ministry would recognize the personal representative as an individual the individual would like to authorize to receive PHI (e.g., health care power of attorney, court appointed legal guardian, a parent, etc.).
d. The Disclosure of PHI must not exceed the scope of the authorization and comply with the terms of the authorization (i.e., who may disclose, who may receive, etc.).
e. The Ministry will ensure that it obtains a signed authorization from all individuals before Using or Disclosing their PHI in accordance with restrictions agreed upon by the Organization (e.g., facility directory)

f. The Ministry will ensure that it obtains a signed authorization from all individuals before Disclosing their PHI to a health plan for purposes of payment or operations if the individual has paid in full, out-of-pocket, for the item or service.

**NOTE:** For example, Uses or Disclosures of PHI requiring a signed HIPAA authorization include (i) certain Uses and Disclosures for marketing and fundraising purposes (ii) certain Uses of disclosures for research purposes; and (iii) Disclosures of psychotherapy notes.

g. Disclosures made pursuant to authorizations are exempt from the minimum necessary standard.

h. The Ministry will have a process regarding tracking and complying with revoked or expired authorizations.

6. **Miscellaneous / Additional Requirements for Records Containing PHI (Uses or Disclosures of PHI Regarding Deceased Individuals, Minors, Incapacitated Adults, and/or to Personal Representatives of Patients)**

a. Ministries will abide with applicable state law and HIPAA in determining who has the authority to act on behalf of a deceased individual or deceased individual’s estate, an adult (i.e., incapacitated adult), an emancipated minor, or an unemancipated minor, including authority to provide an authorization.

b. Ministries will verify the identity and authority of the person who is acting on behalf of the individual in accordance with its policy and procedures on Verification of Individuals Requesting PHI.

c. Ministries will obtain a signed authorization from an authorized person requesting PHI before Disclosing the same to the authorized person.

d. Ministries will maintain a process to address general exceptions that permit the Ministry to Disclose PHI of an individual other than the patient without an authorization if written documentation supports the Disclosure of PHI (e.g., Michigan Medical Records Act permits heirs at law or life insurance beneficiaries’ access to a deceased patient’s medical records). This process should be approved by assigned local legal counsel.

e. Ministries will maintain a process to protect the rights of the unemancipated minor with respect to those health care decisions for which the unemancipated minor has the independent authority to act on his or her own behalf.

f. Ministries will maintain a process to address situations when it does not recognize the authority asserted by the personal representative, including the person’s right to appeal the decision.

This Procedure is to ensure Use and Disclosure of Protected Health Information is consistent with HIPAA.
SCOPE/APPLICABILITY

This Procedure is intended to apply to Trinity Health and all Ministries when performing functions that are regulated by HIPAA either directly as covered entities, or indirectly as Business Associates, and all members of the Trinity Health workforce. Each Ministry may adopt mirror procedures substantially similar to these procedures.

DEFINITIONS

Business Associate means a person or entity who is not a member of Trinity Health’s Workforce and performs or assists in the performance of a function or activity for or on behalf of Trinity Health regarding treatment, healthcare operations or payment purposes or for any other function or activity involving PHI.

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

HIPAA means the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations, 45 CFR Parts 160 and 164, as they are amended from time to time.

Individually Identifiable Health Information means information that is a subset of health information, including demographic information collected from an individual, and:

- Is created or received by a health care provider, health plan, employer, or health care clearing house; and
- 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.

Ministry means a first tier (direct) subsidiary, affiliate, or operating division of Trinity Health that maintains a governing body that has day-to-day management oversight of a designated portion of Trinity Health System operations. A ministry may be based on a geographic market or dedication to a service line or business. Ministries include Mission Health Ministries, National Health Ministries, and Regional Health Ministries.

Policy means a statement of high-level direction on matters of strategic importance to Trinity Health or a statement that further interprets Trinity Health’s governing documents. System Policies may be either stand alone or Mirror Policies designated by the approving body.

Procedure means a document designed to implement a Policy or a description of specific required actions or processes.
**Protected Health Information** means Individually Identifiable Health Information subject to the exceptions and exclusions in HIPAA.

**Use (or Uses)** 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.

**RESPONSIBLE DEPARTMENT**

Further guidance concerning this Procedure may be obtained from the System Office Integrity and Compliance Department.

**RELATED PROCEDURES AND OTHER MATERIALS**

- Integrity and Compliance Program Policy No. 1
- Privacy Compliance Procedures
- Enterprise Information Security Procedures
- Resources for Privacy Officials

**APPROVALS**

**Initial Approval:** 08/15/2002

**Subsequent Review/Revision(s):**
- 09/15/2011
- 07/17/2013
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- 07/31/2018