

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

<b>Policy: HPP 1.1</b>	<b>Effective Date:</b> January 15, 2015
<b>Glossary of Terms- HIPAA</b>	<b>Last Revision Date:</b> January 17, 2023
<b>References:</b> <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>	

### Policy Statement

The purpose of this policy is to provide definitions for variety of terms referenced in HIPAA

### Scope

This policy applies to all healthcare service areas owned and/or operated by TTUHSC El Paso

### Policy

**Affiliated Entities** means covered entities that are legally separate entities but share common ownership (5 percent or more) or control. Entities that share such a relationship may designate themselves as a single entity for purposes of complying with the privacy and security rule. 45 CFR 164.504.

**Allegations of wrongdoing** means a reasonable belief that there is or has been a potential or actual violation of applicable federal or state laws, regulations, rules, Regents' rules and/or TTUHSC El Paso policies and procedures.

**Authorization** means an individual allows for the use and disclosure of protected health information (PHI) for purposes other than those permitted under HIPAA.

**Authorized Access, Use, or Disclosure of PHI** means access, use, or disclosure of protected health information (PHI) that is necessary to support treatment, payment, or TTUHSC El Paso healthcare operations, or is otherwise authorized by the patient or his/her personal representative or required or allowed by law.

**Breach (aka HIPAA Breach)** means an unauthorized acquisition, access, use, or disclosure of protected health information that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. 45 CFR 164.402.

**Business Associate (BA)** means a person or entity other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involves access by the business associate to protected health information. This includes create, receives, maintains or transmits protected health information. A member of TTUHSC El Paso's workforce is not a business associate. 45 CFR 160.103.

**Business Associate Agreement (BAA)** is an agreement that regulates how protected health information (PHI) is used and protected. The BAA is often between a covered entity and the business associate but may also be between the business associate and a subcontractor of the business associate.

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**Confidentiality** means that data or information is not made available or disclosed to unauthorized persons or processes. In other words, confidentiality is when protected health information (PHI) is not made available or disclosed to those persons or processes unauthorized to receive such information under federal or state law. 45 CFR 164.304.

**Consent to Treatment** means a patient has given permission for treatment or care from a health care provider.

**Contracts** mean written contracts or agreements which shall be executed whenever TTUHSC El Paso enters into a binding agreement with another party that involves any material consideration. Contracts are construed to include, but not be limited to agreements, cooperative agreements, memorandums of understanding, interagency contracts, grants, loans, easements, licenses, leases, permits and restrictions on acceptances of gifts and bequests. Other parties include, but are not limited to: federal, state and local agencies, nonprofit organizations, private businesses, partnership and individuals. All contractual arrangements (verbal or written) must be documented and processed for signature in accordance with HSCEP OP 54.01, Contracting Authority and Policy, and HSCEP OP 54.02, Contracting Procedures.

**Covered Entity (CE)** means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction. TTUHSC El Paso is a covered entity. 45 CFR 164.504; 45 CFR 160.103.

Under Texas Health and Safety Code 181.001, Covered Entity also means any person who:

- 1) For commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, non-profit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;
- 2) Comes into possession of protected health information.
- 3) Obtains or stores protected health information; or
- 4) Is an employee, agent, or contractor of a person described in Paragraph (1), (2), or (3) above in so far as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits Protected Health Information.

**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. 45 CFR 164.103.

**Designated Record Set** means a group of records maintained by or for a covered entity that is used, in whole or part, to make decisions about individuals, or that is a provider's medical and billing records about individuals or a health plan's enrollment, payment, claims adjudication, and case or medical management record systems. 45 CFR 164.501.

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**Disclosure or to** Disclose means, with respect to protected health information, the release or transfer of, provision of access to, or divulging in any other manner such information outside the entity holding the information. 45 CFR 160.103.

**Electronic Protected Health Information” (ePHI)** means any electronic individually identifiable health information in any electronic form, including information related to payment for health services provided by Covered Entity. 45 CFR 160.103.

**Harm** is reputational (e.g. embarrassment), financial, mental, emotional or physical hardship or damage.

**Health Care Component** means the health care component of an entity that performs functions covered by HIPAA. Hybrid entities will designate which operations of the entity are considered “health care components”. For hybrid entities, such operations may be a small part of the hybrid entity’s activities. 45 CFR 164.103. The component or combination of components includes the following:

- Any component of the covered entity that engages in covered functions;
- Any component that engages in activities that would make such component a business associate of a component that performs covered functions, if the two components were legal entities; or
- Any component that would meet the definition of a covered entity if it were a separate legal entity.

**Health Care Operations** includes, but is not limited to, medical staff, risk or quality improvement management, or members of the quality improvement team who assess the care and outcomes of individual cases. 45 CFR 164.501 and 45 CFR 164.506.

**Health Insurance Portability and Accountability Act of 1996 (HIPAA)** means a federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title 11, Subtitle F of HIPAA gives DHHS the authority to mandate the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans) and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. 45 CFR Parts 160,162,164.

**HIPAA Authorization** means an individual’s signed permission to allow a covered entity (TTUHSC El Paso) to use or disclose the individual’s protected health information (PHI) described in the authorization for the purpose(s) and to the recipient(s) stated in the authorization.

**HIPAA Privacy and Security Committee-** HIPAA privacy and security committee is an Institutional Committee established by the President to provide oversight of TTUHSC El Paso’s compliance with HIPAA and applicable state laws governing the use, storage and disclosure of protected health information (PHI).

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**HIPAA Violation** means unauthorized access, use or disclosure of paper or electronic PHI.

**HITECH-** Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009. It is a federal law that affects the health care industry that provides expanded reach of HIPAA. Section 13400 and 13423 Subtitle D- Privacy. 45 CFR Parts 160, 162 and 164.

**Hybrid Entity** means a single legal entity that is a covered entity whose business activities include both covered and non-covered functions and that designates certain units as health care components.

**HHS** means the U.S. Department of Health & Human Services.

**Images** means likeness or image(s) including, but not limited to, photographs, video images, audio recordings, and digital or other images of any kind or nature.

**Individual** means the person who is the subject of protected health information as defined in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g) and applicable Texas law.

**Individually Identifiable Health Information** means health information collected from an individual that is created or received by a health care provider, a health plan, a health care clearinghouse or an employer and that does all of the following. 45 CFR 160.103.

- Involves the past, present, or future physical or mental health, or condition of an individual; the providing of health care to an individual; or the past, present or future payment for the providing of health care to an individual.
- Identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

**Institutional Privacy Officer (IPO)** is the individual responsible for overseeing compliance with the privacy provisions of HIPAA (Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164) and applicable state laws.

**Information Security Officer (ISO)** is the individual appointed under HSCEP OP 56.01 who is responsible for overseeing compliance with the security provisions of HIPAA (Security Standards for the Protection of Electronic Protected Information, 45 CFR Parts 160, 162 and 164) and applicable state laws.

**Limited Data Set** means data with all direct identifiers removed, including name; social security number; street address; postal address information, other than town or city, State and zip code; email address; telephone and fax numbers; certifications/license numbers; vehicle identifiers; vehicle license tag and serial numbers; URLs and IP addresses; full face photos and other comparable images; medical record numbers; health plan beneficiary numbers and other account numbers; device identifiers and serial numbers; biometric identifiers, including finger and voice prints. Limited Data Set may include patient admission, discharge and service dates; dates of birth and death; age; five digit zip codes, state, county, city.

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Limited Data Set is still PHI 45 CFR 164.514(e).

**Organized Health Care Arrangement (OHCA)** means a clinically integrated care setting in which individuals typically receive health care from more than one health care provider; and an organized system of health care in which more than one covered entity participates and in which the participating covered entities hold themselves out to the public as participating in a joint arrangement; and participate in joint activities that include at least one of the following: utilization review, quality assessment and improvement activities; or payment activities. 45 CFR 160.103.

**Minor-** Under Texas law, a minor is any individual who is under the age of 18 years of age who:

- Is not or has not been married; or
- Has not been emancipated through court order

A minor who is married or emancipated by court order is considered an “adult” for purposes of this policy. A minor does not become emancipated (i.e., treated as an adult) merely because he/she is the unmarried parent of a minor child.

**Mental Health Professional** means any person authorized to practice medicine in any state or nation and any person licensed or certified by the State of Texas to diagnose, evaluate, or treat any mental or emotional condition or disorder.

**Minimum Necessary Standard** means reasonable efforts are made to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose. The minimum necessary standard should not impede essential treatment, payment, or health care operations activities of TTUHSC El Paso and does not apply to any use or disclosure for which TTUHSC El Paso has authorization. 45 CFR 164.502.

**Notice of Privacy Practices** is required under HIPAA for covered entities (CE) to provide a notice to patients that describes how the CE may use and disclose protected health information (PHI), the patient’s rights under HIPAA, and other information on how PHI will be maintained and protected. The notice must be prominently posted and made available. 45 CFR 164.520.

**Payment** includes any activities undertaken by TTUHSC El Paso to obtain or provide reimbursement for the provision of health care. 45 CFR 164.501.

**Personal Representative** is a person who has authority under Texas law to make health care decisions on behalf of adults, decedents and/or emancipated minors. A personal representative for patients can be any of the following:

- Parent or legal guardian of a minor patient;
- Legal guardian if the patient has been found by a court to be incapacitated to manage the individual’s personal affairs.
- The agent of the patient authorized under a written durable power of attorney for health care;
- Attorney appointed by a court for the patient as evidenced by a written court order;

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- Guardian appointed by a court for the patient as evidenced by a written court order;
- A personal representative or statutory beneficiary of a deceased patient; or
- An attorney retained by the patient or by the personal representative of the patient.

**Personal Identifiable Information (PII)** is information or data about an individual that may be used to distinguish or track the individual's identity or that may be linked to the individual, including, but not limited to, the individual's name, social security number, date of birth, location of birth, mother's maiden name, biometric records, medical information, educational information, financial information, and employment information.

**Protected Health Information (PHI)** means individually identifiable health information maintained or transmitted by TTUHSC El Paso or any other covered entity in any form or medium, including information transmitted orally, or in written or electronic form. Except as otherwise permitted or required herein, TTUHSC El Paso may not use or disclose PHI without a valid authorization that meets the elements set forth herein. PHI does NOT include employment records held by TTUHSC El Paso in its role as employer or education records covered by the Family Educational Rights and Privacy Act (FERPA). 45 CFR 160.103.

**Psychotherapy notes** mean notes recorded (in any medium) by a mental health professional documenting or analyzing the contents of conversation during a private individual, group, joint, or family counseling session that are separated from the rest of the individual's medical record. 45 CFR 164.501. The following are NOT psychotherapy notes:

- a. Medication prescription and monitoring;
- b. Start and stop times of counseling sessions;
- c. Modalities and frequencies of treatment furnished;
- d. Results of clinical tests; and
- e. Any summary of the following items;
  - 1) Diagnosis,
  - 2) Functional status,
  - 3) Treatment plan,
  - 4) Symptoms,
  - 5) Prognosis, and
  - 6) Progress to date.

**Required by Law** means a mandate contained in law that compels an entity to make use or disclosure of protected health information (PHI) and that is enforceable in a court of law. 45 CFR 164.103 and/or applicable Texas laws and regulations.

**Secretary** means the Secretary of the U.S. Department of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated. 45 CFR 160.103.

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**Secure Area** is a location that is accessed only by TTUHSC El Paso faculty and staff (e.g. offices, areas designated as “staff only”, etc.). Does not include waiting rooms or hallways, other areas that can be accessed by visitors or patients or any non-workforce members.

**Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. 45 CFR 164.304.

**Security Rule** -The HIPAA Security Rule establishes national standards to protect individuals’ electronic personal health information that is created, received, used, or maintained by a covered entity. The Security rule requires appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information. 45 CFR Part 160, 162, and Subparts A and C of Part 164.

**Sensitive Protected Health Information (Sensitive PHI)** means protected health information that pertains to (i) an individual's HIV status or treatment of an individual for an HIV-related illness or AIDS, (ii) an individual's substance abuse condition or the treatment of an individual for a substance abuse disorder or (iii) an individual's mental health condition or treatment of an individual for mental illness.

**Subcontractor** creates, receives, maintains, or transmits protected health information on behalf of the business associate, other than in the capacity of a member of the workforce of such business associate. 45 CFR 160.103; 45 CFR 164.502(e)(1)(ii); 164.308(b)(2).

**Transaction** means the transmission of information between two parties to carry out financial or administrative activities related to health care. 45 CFR 160.103. It includes the following types of information transmissions:

- Health care claims or equivalent encounter Information;
- Health care payment and remittance advice;
- Coordination of benefits;
- Health care claim status;
- Enrollment and disenrollment in a health plan;
- Eligibility for a health plan;
- Health plan premium payments;
- Referral certification and authorization;
- First report of injury;
- Health claims attachments; or
- Other transactions that the Secretary of Health and Human Services may prescribe by regulation.

**Treatment** includes the use and disclosure of PHI to provide, coordinate, or manage Health care and related services of a patient. This also may include the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. 45 CFR 164.501.

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**Unsecured Protected Health Information** means PHI (in any medium, i.e., electronic, paper or oral) that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary. 45 CFR 164.402

NOTE: De-identified PHI is not PHI and would not be subject to this provision. Limited Data Set is considered PHI. PHI is defined as unsecured if it is NOT encrypted or destroyed.

**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. 45 CFR 160.103

**Workforce Member** means employees, residents, students, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate. 45 CFR 160.103.

**Workforce Members TTUHSC El Paso** means faculty, employees, residents, students, volunteers, and other persons whose conduct, in performance of work for TTUHSC El Paso, is under the direct control of TTUHSC El Paso, whether or not they are paid by TTUHSC El Paso. It does not include business associates or their employees and agents.

This policy and procedure will be documented and retained for a period of 6 years from the date of its creation or the date when it last was in effect, whichever is later.

Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or to Fraud and Misconduct hotline at 866-294-9352 or [www.ethicspoint.com](http://www.ethicspoint.com) under Texas Tech University System.

### **Frequency of Review**

This policy will be reviewed on each odd-numbered year (ONY) by the Institutional Privacy Officer and the HIPAA Privacy and Security Committee, but may be amended or terminated at any time.

Questions regarding this policy may be addressed to the Institutional Privacy Officer or Institutional Compliance Officer

**Review Date:** January 9, 2023

**Revision Date:** July 17, 2018, September 21, 2021, January 17, 2023