NYU Langone Health

Issuing Department: Internal Audit, Compliance, and Enterprise Risk Management

Effective/Reissue Date: 10/5/2016
Current Version: 4/1/2024

Sensitive PHI

Policy

NYU Langone Health is committed to maintaining the privacy and confidentiality of its patients' Protected Health Information ("PHI"). This includes extra protection for sensitive health information, including: Confidential HIV-Related Information, Psychotherapy Notes, alcohol and substance abuse treatment information, and genetic information.

In most circumstances other than for Treatment, Payment, or Health Care Operation purposes, a patient's written Authorization is required before Disclosing these types of sensitive PHI. Use and Disclosure is permitted whenever a proper Authorization is signed. However, there are exceptions for when sensitive PHI may be Used and Disclosed without an Authorization.

1. Confidential HIV-Related Information

Use and Disclosure is permitted without an Authorization, including but not limited to, the following circumstances:

- to provide a patient with direct care or treatment,
- to process billing or reimbursement records, including third party payors,
- to monitor or evaluate the quality of care,
- to another health facility or provider that requires the information in order to provide appropriate care or treatment to the patient,
- to the patient's Personal Representative or someone who is legally authorized to consent for the patient, when the patient lacks capacity, *and* the information is relevant to that person fulfilling such a health care decision making role,
- to an organization that procures body parts for transplantation, medical education, therapy, or research,
- when required by law or court order, including to a health officer,
- for certain public health purposes, and
- to an employee or agent of a correctional facility.

Disclosures, except as listed below, of Confidential HIV-Related Information must be accompanied by a statement prohibiting the redisclosure of such information. Exceptions include Disclosures to (i) the patient, (ii) by a physician to a public health officer, or (iii) by a physician to a person authorized to consent to health care for a patient.

All Disclosures of Confidential HIV-Related Information must include a notation in the medical record, except for the following:

- only initial Disclosures to insurance institutions must be noted,
- Disclosures to NYU Langone Health Workforce Members as permitted, and
- Disclosures to persons engaged in quality assurance, program monitoring or evaluation, or for governmental payment agents acting pursuant to contract or law.

2. Psychotherapy Notes

Psychotherapy Notes are distinguished from other mental health records. Use and Disclosure of Psychotherapy Notes are permitted without Authorization, in the following circumstances:

- for Use by the originator of the note for treatment,
- to share with students, trainees, or practitioners in mental health who are learning under the supervision of notes' author, to practice or improve their skills in a group, joint, family, or individual counseling,
- to medical examiners and coroners, if necessary to determine cause of death,
- to the U.S. Department of Health and Human Services, if the agency requests them in order to investigate compliance with privacy and confidentiality laws and regulations,
- to defend the notes' author, NYU Langone Health, or affiliate in a legal proceeding, initiated by the patient,
- as required by law and limited to the relevant requirements of such law, and
- to avert a serious and imminent threat to the health or safety of the patient or another person.

In general, a patient does not have a right of access to inspect and obtain a copy of Psychotherapy Notes. See *Right to Inspect and Obtain PHI* policy for additional information.

3. Alcohol and Substance Abuse Treatment Information

Use and Disclosure is permitted without an Authorization in the following circumstances:

- within NYU Langone Health, to provide a patient with diagnosis, Treatment, or referral for alcohol or substance abuse Treatment,
- within NYU Langone Health to process billing or reimbursement records,
- to monitor or evaluate the quality of care provided,
- when required by a court order, and
- in a medical emergency, to medical personnel.

Unlike Confidential HIV-Related Information, Disclosure is **NOT** permitted to a third party payor until a proper Authorization is signed for alcohol and substance abuse treatment information.

4. Genetic Information

Use and Disclosure is only permitted in the following circumstances:

- for providing Treatment,
- pursuant to a valid Authorization, and
- if required by law, including but not limited to:

- to establish parentage,
- to determine metabolic disorders in a newborn,
- to furnish information related to a decedent to the blood relatives for the purpose of medical diagnosis,
- in connection with a criminal investigation or prosecution,
- for identifying the individual or human remains, or
- if otherwise required by a specific state or federal court order.

All other Uses and Disclosures of these types of Sensitive PHI must be made only pursuant to a valid Authorization.

Related Documents

General Uses and Disclosures of PHI
HIPAA Privacy Policies, Procedures, and Documentation
HIPAA Privacy Policies and Procedures Definitions
Minimum Necessary Standard for Uses and Disclosures of PHI
Right to Inspect and Obtain PHI
Uses and Disclosures of PHI Required or Permitted by Law
Uses and Disclosures of PHI Requiring Patient Authorization

Legal Reference

Genetic Information Nondiscrimination Act (GINA)
New York State Public Health Law §18
New York State Mental Hygiene Law §33.16
New York Public Health Law §2782
45 C.F.R.§164.508
45 C.F.R.§164.524

This version supersedes all NYU Langone Health (as defined in this Policy) previous policies, including but not limited to NYU Hospitals Center, New York University School of Medicine, Lutheran Medical Center, and Winthrop University Hospital.