

NOTICE OF PRIVACY PRACTICES A Checklist for Providers

The HIPAA Privacy regulations create the right for patients to receive adequate written notice of: (1) the uses and disclosures of protected health information (PHI) that may be made by a provider; (2) the individual's rights; and, (3) the provider's legal duties with respect to PHI.

The regulations establish the following requirements for the content of the Notice of Privacy Practices.

The Notice of Privacy Practices must:

_____ Be in writing.

_____ Be in plain language.

The Notice of Privacy Practices must contain:

_____ The following statement as a header or otherwise prominently displayed:

"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."

_____ A description, including at least one example, of the types of uses and disclosures that the provider is permitted to make for each of the following purposes: treatment, payment, and health care operations. The description must include sufficient detail to place the individual on notice of such uses and disclosures.

_____ A description of each of the other purposes for which the covered entity is permitted or required to use or disclose PHI without the individual's written authorization. The description must include sufficient detail to place the individual on notice of such uses and disclosures.

Note: If a use or disclosure described above is prohibited or materially limited by other applicable law, the description of such use or disclosure must reflect the more stringent law.

_____ A statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization in writing unless the provider has taken action in reliance on it.

_____ If the provider intends to do so, separate statements that the provider may contact the individual to:

- Provide appointment reminders.
- Provide information about treatment alternatives or other health-related services that may be of interest to the individual.
- Raise funds for the provider.

_____ A statement of the individual's rights with respect to PHI and a brief description of how the individual may exercise these rights, as follows:

- The right to request restrictions on certain uses and disclosures of PHI, including a statement that the provider is not required to agree to a requested restriction [Note: a covered entity may require the individual to submit the request in writing];
- The right to request to receive confidential communications of PHI at an alternative location or by alternative means [Note: a covered entity may require the individual to submit the request in writing];
- The right to inspect and copy PHI;
- The right to request amendment to PHI [Note: a covered entity may require the individual to submit the request in writing];
- The right to receive an accounting of disclosures of PHI [Note: a covered entity may require the individual to submit the request in writing]; and,
- The right to obtain a paper copy of the Notice.

_____ A statement of the provider's duties, including the requirements to:

- Maintain the privacy of PHI;
- Provide individuals with notice of the provider's legal duties and privacy practices; and,
- Abide by the terms of the Notice currently in effect.

_____ A statement that the provider reserves the right to change the terms of its Notice and to make the new Notice provisions effective for all PHI that it maintains.

_____ A description of how the provider will provide individuals with a revised Notice.

_____ A statement that individuals may complain to the provider and to the Secretary of the Department of Health and Human Services if they believe their privacy rights have been violated.

_____ A brief description of how the individual may file a complaint with the provider.

_____ A statement that the individual will not be retaliated against for filing a complaint.

_____ The name, or title, and telephone number of a person or office to contact for further information about the Notice.

_____ The date on which the Notice is first in effect.

Note: This date may not be earlier than the date on which the Notice is printed or otherwise published.

The Notice of Privacy Practices may contain:

_____ If the provider elects to limit the uses and disclosures that it is permitted to make by the Privacy regulations, a description of the more limited uses and disclosures of PHI.

Note: A provider may not include a limitation affecting its right to make a use or disclosure that is required by law or is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

The regulations establish the following requirements for the maintenance and distribution of the Notice of Privacy Practices.

The provider must:

_____ Promptly revise and distribute its Notice whenever there is a material change to:

- The uses and disclosures;
- The individual's rights;
- The provider's legal duties; or,
- Other privacy practices stated in the Notice.

_____ Make the Notice of Privacy Practices available to any person.

_____ Make a good faith effort to have the patient sign an acknowledgement of receipt of a Privacy Notice.

_____ If the provider has a direct treatment relationship with an individual (as defined in Section 164.501 of the Privacy regulations):

- Provide the Notice to the individual no later than the date of the first delivery of service, including service delivered electronically or by phone;
- Have the Notice available at the service delivery site for individuals to take with them;
- Post the Notice in a clear and prominent location at service delivery sites; and,
- Whenever the Notice is revised, make it available, upon request, on or after the effective date of the revision.

_____ Retain copies of Notices issued for six years from the date they were last in effect.

The regulations establish the following specific requirements for electronic Notice of Privacy Practices.

_____ If the provider maintains a website that provides information about the provider's services, it must prominently post the Notice on the website and make it available electronically through the website.

_____ A provider may provide the Notice by e-mail, if the individual agrees to electronic notice. If the provider knows that the e-mail has failed, a paper copy of the Notice must be provided.

_____ An individual who is a recipient of an electronic Notice retains the right to obtain a paper copy, upon request.

_____ If the first service delivery is delivered electronically, the provider must provide electronic Notice automatically and contemporaneously in response to a first request for service.

Note: Additional requirements apply to joint Notices of Privacy Practices for providers that participate in organized health care arrangements. See Section 164.520(d) of the Privacy regulations for details.

THIS DOCUMENT SHOULD BE CONSIDERED ONE EXAMPLE OF HOW AN ORGANIZATION CAN START THEIR COMPLIANCE EFFORTS-IT IS INTENDED TO BE USED SOLELY AS A VEHICLE FOR DISCUSSION TO HELP COMPANIES DEVELOP THEIR OWN COMPLIANCE MATERIAL. THIS DOCUMENT IS PROVIDED AS GENERAL GUIDENCE AND DOES NOT CONSTITIUT LEGAL ADVICE. COMPANIES SHOULD CONTACT THEIR OWN LEGAL COUNSEL TO TAILOR THE DOCUMENT TO MEET THEIR SPECIFIC NEEDS.