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Roswell Park Cancer Institute Policy and Procedure	Date Issued: 2/1/1987	Number: 408.10
Title: CONFIDENTIALITY OF HEALTH-RELATED INFORMATION	Revision No:	Effective Date: 12/8/2010
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A. GENERAL STATEMENT OF POLICY

Regulations issued under the Federal Health Insurance Portability and Accountability Act (HIPAA), New York State laws, and regulations of the Department of Health mandate securing the privacy and confidentiality of each patient's health information, including information in the medical record. Information contained in a patient medical record is confidential and cannot be released to individuals without proper authorization of the patient, a subpoena or a court order. Medical records are the property of the Institute and are maintained for the benefit of the patient, the medical staff, research purposes and the hospital. Medical records are stored in a fire protective secure area. The Institute complies with HIPAA and State law in protecting and maintaining the confidentiality of patient information, and prohibiting unauthorized or otherwise impermissible disclosures of such information.

B. SCOPE

This policy and procedure applies to all Roswell Park Cancer Institute Corporation (RPCI or the Institute) personnel, students and volunteers, and those of Health Research, Inc.

C. ADMINISTRATION

This policy/procedure will be administered by RPCI Administration, through the Health Information/Medical Records Director, the RPCI Privacy Officer, all Department Heads and Supervisors.

D. POLICY / PROCEDURE

1. PROTECTED HEALTH INFORMATION:

Information, including demographic information, that is collected from the patient, and is either created or received by the Institute and relates to the past, present or future physical or mental health condition of the patient, the provision of care or treatment to the patient, or the past, present or future payment for care or treatment of the patient, and which either identifies the patient or can be used to identify the patient, is called "Protected Health Information" or "PHI". In this policy and procedure, and in others, "Protected Health Information" or "PHI" refers to the foregoing, and relates to the legally required protection and maintenance of the privacy and confidentiality of PHI.

2. REPOSITORIES OF PHI:

The medical record contains PHI, as do billing and registration records maintained by RPCI. PHI may also be located in paper or electronic records maintained in files, computer

memory, or other receptacles maintained in clinical, research or administrative locations. Any record, be it in paper or electronic format, containing PHI, shall be subject to this policy and procedure, as well as all other policies, procedures and rules of the Institute, HRI, and departments and mission areas endeavoring to govern confidentiality of and dissemination or disclosure of PHI.

3. REMOVAL OF RECORDS FROM THE HEALTH INFORMATION/MEDICAL RECORD DEPARTMENT OR FROM THE HOSPITAL:

Medical records may be removed from the Hospital's jurisdiction and safekeeping only in accordance with a court order, subpoena, or statute. Medical records shall not be removed from the Department except as necessary for the readmission of the patient, Medical Staff Committee meetings, or in the transaction of business of the Institute. There is a method to track when a record is removed, by whom and the location of that record.

4. TELEPHONE REQUESTS:

- a) PHI may be given out over the phone only after verification of the caller's identity and verification that the caller is allowed access to the PHI requested.
- b) Messages may be left on a patient's answering machine, such as for an appointment reminder. However, since our facility name implies a patient diagnosis, our facility name MUST NOT be used as part of the message.

5. CONFIDENTIALITY:

PHI, including information in the medical record concerning the condition of a patient, is confidential and should be discussed only to the minimum extent necessary to provide for the care and treatment of the patient. The Institute is responsible for preventing access to a patient's confidential record/treatment by non-authorized persons from the time the medical record is initiated and during hospitalization as well as after. PHI may be used or disclosed for purposes of treatment, for billing of the patient, and for purposes of necessary hospital operations, without written patient authorization.

Confidentiality Statement: All employees sign a confidentiality statement upon hiring at RPCI.

6. REQUESTS FOR HEALTH INFORMATION:

- a. All requests for information from the medical record will be made to the Health Information/Medical Record Department, in writing, by a qualified person. Exceptions to this policy include the following departments who routinely send out health-related information pertinent to their services according to their department policy. The departments include: Laboratory Medicine, Radiation Medicine, Pathology, Psychology, Employees' Clinic, Nuclear Medicine, Diagnostic Imaging and Screening Clinic and Dental Department that routinely handle requests pertinent to their services according to their department policy. An Additional exception is the nursing

supervisor acting in the absence of Health Information Medical Record personnel. A "qualified person" is a person either (I) authorized in writing by the patient to receive PHI or (II) having a valid reason to need the PHI for purposes of the treatment or billing of the patient or for necessary hospital operations.

1. All requests to obtain copies of medical records must be in writing and accompanied by an appropriate authorization.
2. Attorneys requesting to review records in the Health Information/Medical Record Department must do so in writing and the request must be dated. The request, along with the patient authorization, must be sent to the Health Information/Medical Record Department prior to the review.
3. Qualified persons shall receive no more than the minimum amount of PHI necessary to address the legitimate purpose to be served, or such greater amount as the patient has authorized in writing.

b. AUTHORIZATION:

All requests, including personal requests, should be forwarded to the Health Information/Medical Record Department for handling. All authorizations:

1. Must be in writing, but must not be dated prior to the period of hospitalization, unless the periods of hospitalization are related to previous visits.
2. Must specifically describe the PHI requested to be disclosed, must identify the entity authorized to make the disclosure (i.e. the RPCI Health Information/Medical Records Department), and the identity of the authorized recipient.
3. Must have the date upon which, or the event triggering expiration or termination of the authorization, and a description of the procedure by which the authorization may be revoked.
4. Must be signed by the patient, and the signature requirement is subject to the following:
 - i. If the patient is a minor (under age 18), the authorization must be signed by a parent or legal guardian.

Exception: If the minor's records pertain to treatment for history of abortion treated elsewhere, venereal disease, or if the minor is emancipated, the minor may sign the authorization to release records. An emancipated minor is any person who has married or is the parent of a child. A minor who is pregnant does not become emancipated until she gives birth.

- ii. If the patient has died, the authorization must be signed by the next of

kin. If a legal representative has been appointed, a certificate from Surrogate's Court showing appointment of the representation shall be submitted. (When the spouse is also expired and only children are surviving, the attorney should provide an Executor or Administration of Estate form from Surrogate court for release of medical records.)

- iii. Any requests for information from a medical record that contains HIV or AIDS related information should be forwarded to the Health Information/Medical Record Department. A special authorization form from the State must be completed and State mandates must be followed (see Policy No. 434.1).
- iv. If an inquiry is received from the news media about the condition of a patient, the caller shall be referred to the Communications Department (refer to Policy No. 408.8).
- v. Statements indicating that (a) the patient understands that the PHI, once used or disclosed pursuant to the authorization, could be redisclosed by the recipient and lose its confidential status; and (b) that the individual may inspect or copy the PHI to be used; the individual may refuse to sign the authorization; that treatment, payment or enrollment may not be conditioned on authorization; and whether RPCI will be receiving compensation from a third party for disclosing the PHI.

c. PATIENT ACCESS:

- 1. The patient may have access to review or obtain copies of his or her PHI, including the medical record. Access may only be denied where the PHI is psychotherapy notes, or where the attending physician has determined that access will endanger the patient or another individual. The Health Information/Medical Record Department will notify the attending physician involved in the patient's care that the request has been made. Unless the attending physician indicates within five days of this notice that he/she feels that this review would be detrimental to the patient or to another individual, it will be considered that he/she does not object. A denial of access is subject to appeal.
- 2. If copies are to be made, the patient or his/her representative will be subject to the same fees for copying set forth for attorneys, insurance companies, etc. The fee is \$.75 per page. Prepayment will be required for all copies.
- 3. The procedure to be used for PHI access is as follows:
 - i. RPCI's Health Information/Medical Record Department requires requests to be in writing. The Health Information/Medical Record Department must act on requests within 30 days, but may take up to 60 days if the PHI is not maintained on site or is not readily accessible. An additional 30 days may be taken as long as the individual is notified within the applicable response time and is given a date when a

response will be made. An opportunity to inspect PHI must be afforded to the patient/authorized representative within 10 days of a request.

- ii. Access must be provided in the form requested, including inspection and/or copies, unless the form is not readily available. In that case, A readable hard copy must be produced unless the parties agree otherwise.
 - iii. The Health Information/Medical Record Department may provide a summary of the PHI in lieu of access, if the individual agrees and agrees to pay any fee charged for the summary.
- d. DENIAL OF PHI ACCESS TO A PATIENT OR A "QUALIFIED PERSON":

Denials: If access is denied, access must be readily permitted to any PHI that such denial does not apply to. A denial must be timely, written, and in plain language, and must contain explanations of appeal rights and rights to complain to the Privacy Officer (including name, telephone) and to the Center for Medicare Services. On appeal, the licensed health care professional must respond within a reasonable period of time, and covered entity must notify the individual of the decision in writing.

In case of denial of access, a "qualified person" has the right to obtain a review by a licensed physician or nurse designated by RPCI to review such denials and who did not participate in the original denial. The qualified person will be informed of his or her rights and will be given information as to how to pursue the review committee. If, following review, the reviewer determines that the PHI should be turned over to the subject, the practitioner and hospital will comply. If the reviewer agrees with the hospital or practitioner that the material should be denied, the qualified person may seek judicial review of that determination. A physician's personal notes and observations will not be a part of that review (Attachment C).

Whenever the hospital discloses patient information to a third party, a copy of the subject's written authorization shall be added to the patient information or the names and addresses of the third party and a notation of the purpose of the disclosure shall be indicated in the file or record. This also applies to governmental agencies for the purpose of inspections or professional conduct investigations. This does not apply to disclosures to practitioners or personnel employed by the hospital.

- e. PATIENT AMENDMENT/CHALLENGE TO ACCURACY OF THE MEDICAL RECORD:

Public Health Law Section 18 and Mental Health Law Section 33.16 and 45 CFR §164.526 permit a qualified person (i.e. the patient) to challenge the accuracy of the information maintained within his/her medical record. A separate statement should be made disputing the information in question and an amendment. This amendment must be made a permanent part of the patient's medical record and be included with any future authorized disclosure(s).

Procedure:

1. Request for Amendment:

A request for amendment is made by submitting the request in writing to the Health Information/Medical Record Department using the "Request for Record Amendment" form attached hereto as Attachment D. The Health Information/Medical Record Department shall act on the request within sixty (60) days after the date it receives the request. The Health Information/Medical Record Department may, on written notice to the requestor, extend this deadline by up to thirty (30) days. The Health Information/Medical Record Department shall investigate the request, including reviewing the request with the RPCI clinicians involved. After investigation, the Health Information/Medical Record Department shall either:

- i. Approve and Implement the Request. If approved, the requested amendment or change to the medical record shall be made, and the requestor shall be so notified. The Health Information/Medical Record Department shall modify the affected record by either changing the record itself or providing a notation and link on the record linking it to the amendment, which shall be appended to the affected record. The Health Information/Medical Record Department shall obtain from the requestor the name and address of each organization and individual needing to be informed of the amendment or who has the medical record information which was the subject of the amendment and, having occasion to use or rely upon such information, need to be informed of the amendment.
- ii. Denial. If the request is denied, the Health Information/Medical Record Department shall notify the requestor and provide a clear explanation of the basis for the denial and of the requestor's right to (a) submit a written statement of disagreement with the denial; (b) in lieu of a statement of disagreement, to request that the request for amendment and the denial be provided to any future recipients of a disclosure of the portion of the medical record that was the subject of the request; or (c) complain to the Secretary of the Department of Health and Human Services, together with the address, name and title, and telephone number of the appropriate recipient of such complaint. If a statement of disagreement is submitted, the Department may submit a written rebuttal, and shall provide a copy of such rebuttal to the party who submitted the statement of disagreement.
- iii. Recordkeeping and Future Disclosures. The Health Information/ Medical Record Department shall, in the event of a denial, identify the information in the medical record that was the subject of the request, and append or otherwise link the request for amendment, the denial and any statement of disagreement or rebuttal filed. If a statement of disagreement has been filed, it, the request for amendment, the denial and any filed rebuttal, or an accurate summary of these documents, shall be included with subsequent disclosures of the information which

was the subject of the request. If no statement of disagreement is filed, the requestor has the right to require that the amendment request and denial be included in subsequent disclosures of such information.

2. Grounds for Denial of Amendment.

A request for amendment may be denied where it is determined that the information or record sought to be amended or challenged:

- i. was not created by RPCI, unless the requestor provides evidence establishing that the original creator of the record is no longer available to act on the requested amendment;
- ii. is not part of the RPCI records;
- iii. is not subject to inspection by the patient or his or her representative; or
- iv. is correct and complete in its unamended state.

7. DISPOSAL OF PERSONAL HEALTH-RELATED INFORMATION:

After medical records are scanned the paper will be stored in the HIM department for 45 days after scanning. After 45 days, the paper will be destroyed following an appropriate quality and assurance assessment. (Shredded on site at RPCI)

a. After medical records are scanned, the paper will be stored in the HIM department after scanning. After 45 days the paper will be destroyed following an appropriate quality assurance assessment. (Shredded on site at RPCI).

b. After medical records are microfiched: All medical records meeting the criteria for microfiching and destruction as specified by the Institute record retention plan are transported to the contracted agency for this purpose. All medical records will be shredded upon receipt of a request for destroy order signed by the Director of Health Information/Medical Records or his/her designee. The medical record identification number of charts destroyed are logged on the chart tracking system and the microfiche is filed in secure cabinets as a permanent record.

- 8. BREACH OF CONFIDENTIALITY: Unauthorized access or use of health-related information (patient record, computer data, employee health documentation) is a violation of federal law, Public Officers Law Section 74.3(c) and this policy statement.
- 9. DATA MAINTAINED IN HOSPITAL INFORMATION SYSTEM: Confidentiality of patient and provider - specific information must not be compromised.
- 10. Access to data in the HIS is controlled via use of a security password and sign-on procedure established by the Institute Information Technology Department.
- 11. No PHI or patient information should be left unattended in Public Areas.

E. DISTRIBUTION

This Policy and Procedure will be distributed to all Institute Managers via the RPCI internal web page and to holders of backup hard copies of the manual. Managers are responsible for communicating policy content to pertinent staff.