



Policies and Procedures; Corporate

This policy is in effect for Children's Hospital of The King's Daughters Health System (CHKDHS) to include the following subsidiaries: Children's Hospital of The King's Daughters, Incorporated (CHKD), Children's Medical Group, Inc., and CMG of North Carolina, Inc. (CMG), and Children's Surgical Specialty Group, Inc. (CSSG).

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SUBJECT: RELEASE OF CONFIDENTIAL PATIENT INFORMATION INTRODUCTION AND OVERVIEW

PURPOSE: To provide safeguards for the security of health care information maintained by Children's Health System (CHS) and its subsidiaries ("the Health System").

To provide for the privacy and confidentiality of patient information/records and the hospital's business records, whether, paper, or computerized information by confirming that only parties with appropriate authorization and/or proper authority have access to the information/records and that the information obtained will be used in a proper manner.

Also reference Hospital and Corporate Policies:

- # H3400 – Medical Record Access & Security/Administrative Control
- # H3402 – Study Uses and Disclosures of Protected Health Information
- # C3402.1 – Research Use and Disclosure of Protected Health Information
- # C3403.1 – Uses and Disclosures of Protected Health Information
- # C3411 – Accounting of Disclosure of Protected Health Information

INTRODUCTION:

CHS is committed to full compliance with all laws and regulations protecting patient privacy and the confidentiality of patient information. Protection of patient privacy and the confidentiality of patient medical records and information present a constant challenge to every department, not just those that provide direct patient care. Therefore, corporate-wide vigilance in this area cannot be overemphasized. Patients have certain legal rights, as described in greater detail below, with respect to their personal privacy and the confidentiality of their medical information. Comprehensive patient privacy protections

exist under both state and federal law. Hospital accreditation standards have recognized and reinforced those rights by requiring hospitals to protect the confidentiality of patients' personal medical information.

CHS abides by the use and disclosure rules set forth by 45 CFR Parts 160 and 164 Standards for Privacy of Individually Identified Health Information mandated by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA allows the federal government to impose civil and/or criminal penalties against individuals for breaches in patient confidentiality up to as much as \$250,000 in fines and/or 10 years in prison.

Because CHS receives payment from Medicare for a portion of the care it provides, it is subject to the Medicare Conditions of Participation established in the regulations to the Social Security Act. One of these conditions of participation requires Medicare participants to establish a procedure to ensure the confidentiality of Medicare patient records.

On a broader scale, the Joint Commission on Accreditation of Health Care Organizations ("Joint Commission") has established accreditation standards requiring CHS to demonstrate respect for patient confidentiality and privacy. These Joint Commission standards require that CHS restrict access to sensitive data and information to persons who have a need, a reason, and permission for such access. Furthermore, CHS must not violate an individual's legal right to personal and informational privacy, including his or her health records. Our failure to comply with Joint Commission standards can result in conditional accreditation, probation, and, potentially, loss of accreditation. Loss of Joint Commission accreditation can be devastating since loss of such status may preclude participation in the Medicare and Medicaid programs.

Federal law also places specific restrictions on disclosure and use of patient records maintained in connection with an alcohol and drug abuse treatment program. Basically, the law requires patient consent for any such disclosure. Limited exceptions to the patient consent requirement exist where a bona fide medical emergency exists or a court of competent jurisdiction issues an appropriate order. The prohibition on disclosure applies to all information related to alcohol or drug abuse treatment, whether that information is recorded or not. In other words, unauthorized disclosure of oral information will violate the law. Perhaps most important is the prohibition against unauthorized disclosure of patient identity.

CHS must have in place policies designed to emphasize to employees at all levels the need for absolute confidentiality of patient identity and course of treatment. Employees providing ancillary services should be included in this type of awareness program, since a violation might be perpetrated by a member of the laboratory or housekeeping staff as well as a direct care provider. Failure to comply with the alcohol and drug abuse privacy restrictions carries a criminal penalty, i.e., federal fines of up to \$5000, depending on whether the violation is a first offense. These restrictions are specifically designed to encourage individuals with alcohol or drug problems to seek treatment and to prevent negative consequences that might otherwise result from unwanted disclosure of their condition.

Many federal disclosure restrictions require "unconditional compliance" meaning violations are prosecuted even if the holder of the information believed disclosure was lawful. Therefore, CHS must ensure that information from copies of patient records is released only to authorized individuals. Further, CHS must ensure that unauthorized individuals cannot gain access to or alter patient records. CHS has established a chain of authority for referral of outside information requests, with final accountability for confidentiality in the Corporate Privacy Officer. Employees faced with any request for patient records or information, whether in writing, over the phone, or in person by someone who looks official and tells a convincing story, must refer all such requests up the established chain of authority or to CHS General Counsel for consideration.

The Corporate Privacy Officer/Health Information Management Department Director should have familiarity with all laws, regulations, and rules relating to disclosure of patient information. For this reason, regular contact should be maintained with General Counsel. The Corporate Privacy Officer/Health Information Management Department Director or his/her subordinates should be readily available to patient treatment units and outpatient departments that receive requests for patient information. Often,

requests for patient information come from outside health care providers or their staff members who may be treating one of CHS' patients on a referral or other basis, and may need, for treatment purposes, information contained in the medical record. Such requests should be referred to the appropriate Department Manager before any information is released to the outside party. Both the identity of the request maker and the patient's authorization for release of information to that party must be carefully verified before any information is released in accordance with CHS Hospital Policy #H3400, Medical Record Access & Security/Administrative Control. Occasionally, violations of CHS' policies and procedures concerning patient confidentiality occur, perhaps inadvertently. CHS ensures firm but even-handed corrective action of such violations and has developed a reliable reporting system whereby it can quickly learn of violations and effectively correct them before they are repeated. Employees are often reminded that they are each vital, individual links in the compliance chain. Therefore, employees have a duty, subject to corrective action procedures, to report suspected or potential violations of patient confidentiality.

POLICY:

1. **OWNERSHIP OF PATIENT/MEDICAL RECORD INFORMATION.** All patient information/ records, in any form (including but not limited to paper, computer, microfilm, photocopy, etc.) including on-site and remote clinic records, and other remotely stored medical records are strictly confidential and are the property of the Health System and shall not be removed from the premises without a court order, subpoena, statute or other legally mandated direction, or approval by the Health Information Management Department Director or General Counsel. See Policy C3400.1 – Transporting of Protected Health Information.

Medical information is maintained for the benefit of the patient, the physician, and the Health System. It facilitates patient care, medical research, evaluation of medical services, health care reimbursement, education, and legal concerns of the patient, the physician, and the Health System. Release of medical information is performed under the direction of the Corporate Privacy Officer/Health Information Management Department.

2. **CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE.**
 - A. Communications between a patient and a health care provider, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a health care provider, are confidential and privileged, irrespective of when the patient received services from a health care provider, and may not be disclosed except as provided in policy.
 - B. A hospital or professional or an agent or employee of a hospital or professional may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative, subpoena, court order, state/federal statute or other legally mandated direction.
 - (1) Health information may be disclosed to an agent appointed under a patient's power of attorney or to an agent or decision maker designated in an adult patient's advance directive for health care or to any person consistent with the provisions of the Health Care Decisions Act (54.1-2981 et seq.).
 - (a) The agent must provide documentation of his/her authority and must submit a completed request for release of medical records.
 - C. Any person who received confidential information from confidential communications or records who is acting on the patient's behalf may not disclose the information except to

the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

- D. **LIABILITY.** While the medical record is a legal document belonging to the Health System, the information contained in the record belongs to the patient. The Health System has a legal responsibility to protect the privacy of its patients. Unauthorized release of information may result in liability for damages. In addition, the release of confidential medical information may constitute the publication of libel or slander for which damages may lie against the hospital and/or the individual involved with the disclosure. The hospital liability insurance policy may not protect hospital personnel from their individual liabilities related to improper release of medical information.
 - E. When there is doubt and a choice must be made without time to consult the proper authority, it is better to withhold information rather than risk involving the hospital in litigation. It should be noted that any person rightly entitled to information will be able to produce proper authorization.
3. **RELEASE MAY BE PERFORMED ONLY BY THE MEDICAL RECORD DEPARTMENT.** Unless otherwise arranged through the Health Information Management Department or the Hospital General Counsel, release of confidential patient information from information generated for the hospital's medical record, contained in the record, and abstracted from the record must be performed by the Health Information Management Department.
- A. **REQUESTS FOR INFORMATION:** Unless release is delegated by the Health Information Management Department, any department receiving a request for confidential patient information, whether verbal or written), including a subpoena or court order, shall refer the request to the Health Information Management Department or General Counsel.
 - B. **RELEASE OF INFORMATION TO THE NEWS MEDIA** must be authorized in writing by the Director of Public Relations or the Administrative Supervisor (see Corporate policy C3404). Any information to be released that identifies a specific patient requires a complete and signed request and authorization, and must be coordinated through the Health Information Management Department.
4. **DOCUMENTATION OF RELEASE OF INFORMATION.** A record of any patient information released, whether by photocopy, facsimile, verbal, review or other means, must be documented with the name(s) of the party receiving the information, the date, and the specific documents released. This "release" record, or a copy, will be filed in the patient's medical record.
5. **REQUIREMENTS FOR WRITTEN AUTHORIZATION TO DISCLOSE OR RELEASE PATIENT INFORMATION.** Except as otherwise permitted or required by law, protected health information may not be used or disclosed without a valid authorization. When a valid authorization is received the use or disclosure of the protected health information must be consistent with that authorization. ***See Corporate Policy #C3403.2, Valid Authorizations for Release of Confidential Patient Information/Protected Health Information (PHI).***
6. **RELEASE OF SUBSTANCE ABUSE TREATMENT RECORDS.** Patient information relating to substance abuse treatment is strictly regulated by the Federal government. All reports, records and information relating to cases or suspected cases of communicable disease are confidential. Such information may be released or made public only as permitted by law.
- A. Medical records and information regarding identity, diagnosis, prognosis or treatment of any patient, that are maintained in connection with the performance of any program or activity relating to alcoholism or drug abuse education, training or treatment, rehabilitation or research, shall be confidential and disclosed only with prior written consent of the patient or legally authorized representative.

- B. PRE-RELEASE OF PATIENT/MEDICAL RECORD INFORMATION received from another health care provider: “Federal rules prohibit the release of drug/alcohol treatment records unless further release is expressly permitted by the written consent of the person to whom it pertains. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.”
 - (1) The statement above regarding re-release of information must accompany each release made from the Children’s Hospital of The King’s Daughters records pertaining to drug/alcohol treatment. See Corporate Policy C3403.2 additional authorization requirements.
7. Under specific circumstances, CHS may use or disclose protected health information without patient authorization in the following situations (See Corporate Policy C3403.1, Uses and Disclosures of Protected Health Information, for details)
- A. Uses and Disclosures to carry out Treatment, Payment, or Health Care Operations (TPO)
 - (1) CHS takes appropriate action to provide that its employee or agent who requires health care information for TPO will:
 - (a) Not use or disclose the health care information for any other purpose; and
 - (b) Take appropriate steps to protect the patient information
 - B. Uses and Disclosures requiring the opportunity for the patient to agree or to object.
 - (1) Facility Directories
 - (2) Uses and Disclosures for involvement in the individual’s care and notification purposes
 - C. Uses and Disclosures for which an authorization, or opportunity to agree or object is not required.
 - (1) Uses and Disclosures required by Law
 - (2) Uses and Disclosures for Public Health Activities
 - (3) Uses and Disclosures about Victims of Abuse, Neglect or Domestic Violence
 - (4) Uses and Disclosures for Health Oversight Activities
 - (5) Disclosures for Judicial and Administrative Proceedings
 - (6) Disclosures to Law Enforcement that
 - i. Are pursuant to process and as otherwise required by law
 - ii. Provide limited information for identification and location purposes
 - iii. Provide limited information for victims of crime
 - iv. Provide limited information for decedents
 - v. Provide limited information for crime on premises
 - vi. Provide limited information for reporting crime in emergencies
 - (7) Uses and Disclosures about Decedents
 - (8) Uses and Disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes
 - (9) Uses and Disclosures for Research with:
 - i. IRB waiver of authorization
 - ii. Review preparatory for research
 - iii. Research on decedents

- (10) Uses and Disclosures to Avert a Serious Threat to Health or Safety
- (11) Uses and Disclosures for Specialized Government Functions

8. **FEE FOR RELEASE OF HEALTH CARE/MEDICAL RECORD INFORMATION.** Unless provided for by other state law, the hospital or professional may charge a fee for retrieving or copying patient information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.
 - A. The hospital, in its discretion and as a condition of furnishing copies of patient records, may require advance payment of the fees. Advance payment is generally required when the copies requested are extensive.
9. **PENALTY** for unauthorized release of confidential patient information.
 - A. If an employee of the Health System releases confidential patient information without proper authority or fails to document the medical record with proof of authority as specified in paragraph 4 of this policy, the employee will be subject to corrective action up to and including termination of employment.

PROCEDURE:

1. Refer all requests for patient information generated for the hospital's medical records, contained in the record, or abstracted from the record to the Health Information Management Department for processing unless specifically delegated to a department.
 - A. All departments that have the delegated responsibility for releasing patient information must maintain a current written release of information policy and procedure, which conforms to this policy.
2. Refer all subpoenas' that request patient information generated for the hospital's medical records, contained in the record, or abstracted from the record to the Health Information Management Department.
3. If any unauthorized release of patient information/medical records has been made or any complaint about release of patient information/medical records is made, report this information to the Corporate Privacy Officer or General Counsel immediately.
4. Any questions about this policy should be directed to the Corporate Privacy Officer, Health Information Management Department, the Risk Manager, or General Counsel.