



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: April 19, 2017

Department: Business Services

Agenda Planning Date:

Time required:

10 Min

Audio/Visual aids

Contact: Justine Flora

Phone: 503-584-7786

Department Head Signature:

A handwritten signature in black ink that reads "Justine Flora".

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|---|---|
| TITLE | Update Policy 517 Health Insurance Portability and Accountability Act (HIPAA) Protected Health Information Privacy Rule Requirements |
| Issue, Description & Background | This Policy was adopted in 2003 and last updated in 2008. Risk Management wishes to update the policy to incorporate updated language, format and regulatory requirements |
| Financial Impacts: | None |
| Impacts to Department & External Agencies | None |
| Options for Consideration: | Approve policy revision Do not approve revision |
| Recommendation: | Approve policy revision |
| List of attachments: | 517 HIPAA Policy Redline and 517 HIPAA Privacy Rules |
| Presenter: | Justine Flora |

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Justine Flora, Lisa Trauernicht

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the Matter of Adopting an Administrative)
Policy for Health Insurance Portability and)
Accountability Act (HIPAA) Protected
Health Information Privacy Rule
Requirements.

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting Wednesday April 19, 2017 to consider the adoption of a revised administrative policy.

WHEREAS, the board adopted the county policy on Health Insurance Portability and Accountability Act (HIPAA) Protected Health Information Privacy Rule Requirements by board order #08-114 in April, 2003 and finds it appropriate to revise that policy, designated as Policy 517 in the Marion County Administrative Policies and Procedures; now, therefore,

IT IS HEREBY ORDERED that revised Marion County Administrative Policy _____, attached hereto, is adopted.

DATED at Salem, Oregon, this 19th day of April, 2017.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Attachment: Policy/Procedures



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|----------|--|--------------|----------|
| SECTION: | Health, Safety & Security | | |
| TITLE: | Health Insurance Portability And Accountability Act (HIPAA) Protected Health Information Privacy Rule Requirements | PROCEDURE #: | N/A |
| DEPT: | Business Services | ORDER #: | 08-114 |
| ADOPTED: | 4/03 | REVIEWED: | 7/083/17 |
| | | REVISED: | 8/084/17 |

PURPOSE:

The purpose of this policy is to establish the policies and procedures regarding use of, access to and disclosures of protected health information (PHI) in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations.

AUTHORITY:

Authority for this policy is 45 CFR Parts 160, through 164, the Health Insurance Portability and Accountability Act of 1996 as amended.

APPLICABILITY:

This policy is in addition to all other state or federal guidelines, statutes, administrative rules, covered component departmental policies, or other provisions relating to personal health information. In general, the provision that provides the greatest degree of confidentiality, integrity and security prevails. HIPAA provides exemptions from its provisions for certain personal health information, for example information regarding applicants or employees held by an employer for employment purposes, or personal health information regarding inmates in the correctional facility; however, these records are still may be protected by other laws or policies. Any ambiguities in this policy, or conflicts between this policy and another policy, shall be construed so as not to be conflicting with HIPAA, the Privacy or Security Rules.

This policy applies to the county, its officers, employees and agents who may be subject to civil penalties and fines for violations of HIPAA, or may be subject to criminal penalties for knowing, wrongful violations. Employees may be subject to discipline, up to and including termination, dismissal, or business associates may have their contracts terminated.

DEFINITIONS:

“Administrative Safeguards:” means administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the county’s workforce in relation to the protection of that information.

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

Breach: impermissible use or disclosure of PHI that compromises the security or privacy of the PHI in such a way that it poses a significant risk of financial, reputational or other harm to the individual.

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“Business Associate” means: an outside entity or individual other than a member of the workforce that performs, or assists in the performance of, the functions or activities of a covered entity involving the use or disclosure of individually identifiable health information.

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“Confidentiality”: means the property, that data or information is not made available or disclosed to unauthorized persons or processes.

Covered Entity: a health care provider, health plan or health care clearinghouse subject to these rules.

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“Covered component” means: a part of the county that provides health care (e.g., the Health Department) and engages in certain electronic transactions, or has access to or uses protected health information, and as such is directly subject to HIPAA. Departments or positions that are not involved in providing health care and do not have access to or use protected health information of clients or customers are generally not subject to HIPAA.

De-identified health information: health information that does not identify an individual, and with which there is no reasonable basis to believe that the information can be used to identify an individual.

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Disclosure: the release of, transfer of, provision of access to or divulgence in any other manner of information outside the service holding the information.

“EPCI (Electronic Protected Health information)” means: individually identifiable health information (information about the past, present or future physical or mental health or condition, or provision of health care) including demographic data (but excluding data maintained by an employer in its role as employer) that can identify an individual, maintained or transmitted using electronic media.

Minimum necessary: using reasonable criteria, determining and limiting uses, disclosures and requests to only the minimum amount of protected health information necessary to accomplish the purpose or task.

Health information: any information, whether oral or recorded in any form or medium, that:

- a. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- b. Relates to the past, present, or future physical or mental health or condition of an individual; or
- c. The provision of health care to an individual; or
- d. The past, present, or future payment for the provision of health care to an individual.

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

“Hybrid covered entity” means: an entity, the primary function of which is other than to provide health care, although some of its departments provide health care. Marion County is a “hybrid covered entity.”

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Individually identifiable health information: information that is a subset of health information, including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- b. Relates to the past, present, or future physical or mental health or condition of an individual; or
- c. Relates to the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- d. Identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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“Protected Health Information (PHI)” means: individually identifiable health information that is transmitted or maintained electronically or by using any other medium.

“Physical Safeguards” means: physical measures, policies, and procedures to protect electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

“User” means: a person or entity with authorized access to information systems.

“Violation” means: any act that is inconsistent with or against a department or county policy or procedure established pursuant to the implementation of the Privacy Rule of the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, including, but not limited to, any attempted or successful unauthorized access, use, disclosure, modification or destruction of PHI or interference with operations in an information system.

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Workforce: employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

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GENERAL POLICY:

Marion County is designated as a “hybrid covered entity” under HIPAA, meaning that, although the primary function of the county is general government, some of its departments provide health care. Parts of the county that provide health care, or have access to or use protected health information, are “covered components” and directly subject to HIPAA. Other departments or positions are not subject to HIPAA, generally because they are not involved in providing health care and do not have access to or use protected health information of clients or customers.

Covered components cannot disclose protected health information to non-covered components except as permitted by this policy. Covered components can only disclose protected health information as permitted under HIPAA. Certain non-covered components may have obligations

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

under HIPAA as "business associates," described below. The county, its officers, employees and agents may be subject to civil penalties and fines for violations of HIPAA, or may be subject to criminal penalties for knowing, wrongful violations. Employees may be subject to discipline, up to and including terminationdismissal. Business associates may have their contracts terminated and be subject to liability in the event of a violation or breach.

POLICY GUIDELINES:

1. Notice of Privacy Practices:

Marion County recognizes an individual's right to receive adequate notice of the uses and disclosures of the individual's protected health information that may be made by Marion County and of the individual's rights and Marion County's obligations with respect to protected health information. Each covered component within the hybrid-covered entity will adopt a Notice of Privacy Practices. Covered components that have a direct treatment relationship will provide the Notice of Privacy Practices to the individual on the first date of service, or as otherwise allowed under HIPAA. Covered components that have public access to workplaces will post the Notice of Privacy Practices. Covered components will make available any procedures referenced in its Notice of Privacy Practices upon request. 45 CFR 164.520.

2. Roles and Responsibilities:

a. Privacy Officer and HIPAA Compliance

Marion County shall designate a County Privacy Officer and may designate a Privacy Officer for each covered component. The County Privacy Officer and any covered component Privacy Officer are responsible for the implementation and administration of HIPAA through this policy and any applicable departmental policy. 45 CFR 164.530(a).

b. Complaints Officer and HIPAA Privacy Complaints

Marion County shall designate a County HIPAA Complaints Officer and may designate a HIPAA Complaints Officer for each individual covered components. The Complaints Officers may be the same individuals as the Privacy Officers. The Complaints Officers are responsible for providing a process for individuals to make complaints concerning Marion County's compliance with the HIPAA Privacy Rule within their respective areas. Marion County will investigate all privacy complaints received. 45 CFR 164.530(d).

c. Confidentiality and Privacy of Protected Health Information

Marion County, its officers, employees, agents and business associatesassociates will respect and protect the confidentiality and privacy of protected health information. All individually identifiable health information in any form is confidential and private. This includes written, electronic and oral communications. 45 CFR 164.502.

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**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

- d. Role-based County Employee Access
 - 1) Protected health information will only be accessed, used or disclosed by county employees for purposes or in the manner permitted under the HIPAA Privacy Regulations, state law and other federal laws, including the covered component's procedures for this policy, policies and procedures. Access to, or requests for, protected health information shall be limited to those positions and the minimum necessary protected health information required. Specific records, rather than the entire file, shall be requested or accessed when practicable. De-identified information shall be requested or used when practicable.
 - 2) County employees employed in a covered component position will be designated a role-based level of access to protected health information. This level of access will be noted on the position's essential job functions based upon the level of access to protected health information that the employee needs to carry out his or her job responsibilities.
 - 3) All county officers, employees and agents are required to be aware of his or her responsibilities regarding protected health information and to guard against improper uses and disclosures of protected health information.

3. Uses and Disclosures of Protected Health Information:

- a. Privacy Officer and HIPAA Compliance

Marion County may use and disclose protected health information without the individual's authorization if permitted under the HIPAA Privacy Rule, state law and other federal laws regarding the confidentiality, use and disclosure of medical records and protected health information, and as detailed in the covered component's procedures for use and disclosure of protected health information. Employees should contact the Privacy Officer or County Legal Counsel's Office regarding questions as to whether protected health information can be disclosed without an authorization. [45 CFR 164.512](#).

- b. Authorization for Uses and Disclosures of Protected Health Information

- 1) An individual (or a personal representative) may authorize any disclosure of his or her protected health information in writing. An authorization may be revoked in writing, but revocation does not affect acts already taken in reliance on the authorization. The covered component will retain the original authorization or revocation and will provide a copy to the individual (or personal representative).
- 2) If an authorization is required under federal or state law, each covered component will use an authorization form, in plain language, containing the elements specified under the applicable law. A single authorization form may be used, if allowed, and if it contains all of the required elements specified under the applicable laws.

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

- 3) Treatment, payment or eligibility for health care benefits cannot be conditioned on the individual providing an authorization to disclose protected health information, except that a health plan may require one prior to enrollment to make eligibility or risk determinations.
- c. Minimum Necessary Standard
 - 1) Marion County, when using, disclosing or requesting protected health information, shall make reasonable efforts to limit the protected health information used, disclosed or requested to the minimum necessary to accomplish the legitimate, intended purpose. [45 CFR 164.502 and 164.514\(d\)](#).
 - 2) The “minimum necessary” determination is not required for:
 - a. Disclosures to, or requests by, a health care provider for treatment purposes.
 - b. Disclosures made to the individual about his or her own protected health information, or to a personal representative of the individual.
 - c. Uses or disclosures authorized by the individual.
 - d. Disclosures made to the federal Department of Health and Human Services required under the HIPAA Privacy Rule for enforcement purposes.
 - e. Other uses or disclosures required by law.
 - 3) In response to a request for protected health information, covered components may rely on the minimum necessary determination made by the following individuals or entities, that they are only requesting the minimum necessary protected health information, rather than the covered component making its own determination:
 - a. Public official for a permitted disclosure
 - b. Another covered entity
 - c. A health care professional working for a business associate of Marion County
 - d. A researcher with proper authorization.
 - e. [Pursuant to a business associate agreement.](#)
 - d. Uses and Disclosures of Psychotherapy Notes
Marion County maintains the confidentiality of an individual’s psychotherapy notes in accordance with the HIPAA requirements. Marion County will not use or disclose

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psychotherapy notes without obtaining the individual's separate written authorization or as described in the Marion County covered component's procedures. Marion County may limit the individual's access to psychotherapy notes as permitted under HIPAA or state law. ~~45 CFR 164.508(a) and 164.524(a)~~.

e. Disclosures of De-Identified Health Information

- 1) ~~De-identified health information is health information that does not identify an individual, and with which there is no reasonable basis to believe that the information can be used to identify an individual.~~ De-identified health information is not considered protected health information. Health information will be considered de-identified only if one of the two de-identification procedures in 45 CFR 514(b) as amended are followed.
- 2) Marion County may use or disclose de-identified health information without obtaining an individual's authorization. However, Marion County will not use or disclose de-identified health information about genetic testing unless the individual was notified when the genetic test information was obtained of the individual's right to object to the use or disclosure of de-identified genetic test information, or unless the use or disclosure is otherwise authorized by law. ~~45 CFR 164.514~~.

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f. Uses and Disclosures for Research Purposes

Marion County may use or disclose protected health information for research if it obtains the individual's authorization for use and disclosure of protected health information for this purpose, or if the researcher obtains a waiver of the authorization requirements from a research Institutional Review Board or a research institution's Privacy Board per the Common Rule (45 CFR 46.107 as amended). ~~45 CFR 164.512(i)~~.

g. Business Associates

- 1) ~~The HIPAA Privacy Rule identifies a new category of business relationships called a "business associate." A business associate is an outside entity or individual that performs, or assists in the performance of, the functions or activities of a covered entity involving the use or disclosure of individually identifiable health information.~~
- 2) Marion County may disclose protected health information to business associates with whom there is a written contract or memorandum of understanding containing the required HIPAA assurances. Each Marion County covered component must identify its business associates and either amend existing contracts (if required by the rule) using the form of Marion County Business Associate Amendment, or incorporate the HIPAA assurances into new contracts using the Marion County Business Associate Agreement or Addendum. If the business associate relationship

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is with another governmental entity, then a Memorandum of Understanding may be used.

32) In some instances, Marion County itself may be a business associate of another covered entity and be required to amend or enter into an agreement incorporating the HIPAA assurances received from the other covered entity. These will be processed following the Marion County contracting procedures, including review by Legal Counsel. ~~45 CFR 164.504(e)~~.

h. Disclosures to Persons Involved in Individual's Care

1) Marion County may, under certain circumstances, disclose protected health information to an individual's family member, other relative, personal friend, or ~~or~~ other person involved with the individual's care or payment of the care unless the individual has requested a restriction on the disclosures that has been approved, ~~or~~ unless other legal restrictions apply.

2) Marion County may disclose protected health information to notify or assist in the notification of the individual's family member, personal representative, or other person responsible for the individual's care, of the location, general condition or death of the individual unless the individual has requested a restriction on the disclosures that has been approved, ~~or~~ unless other legal restrictions apply. ~~45 CFR 164.510(b)~~.

i. Disclosures for Disaster Relief Efforts

Marion County may disclose protected health information to organizations involved in disaster relief efforts, for the purpose of coordinating with the organizations disclosures to the individual's family member, personal representative, or other person responsible for the individual's care, of the location, general condition or death of the individual unless the individual has requested a restriction on the disclosures that has been approved, ~~or~~ unless other legal restrictions apply. ~~45 CFR 164.510(b)~~.

j. Mitigation of Improper Disclosures

Marion County will mitigate, to the extent practicable, any harmful effect that is known by Marion County to have occurred as a result of a use or disclosure of protected health information either by Marion County or its business associates in violation of the HIPAA Privacy Rule or Marion County policies and procedures. ~~45 CFR 164.530(f)~~.

4. Individual's Rights Regarding Protected Health Information:

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**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

a. Individual's Right to Access Protected Health Information

An individual has the right to access, inspect and copy his or her protected health information maintained in the covered component's Designated Record Set except:

- 1) Psychotherapy notes.
- 2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- 3) Certain circumstances detailed in the covered component's procedures.
- 4) Other limitations under state or federal law. [45 CFR 164.524](#).

b. Individual's Right to Request Amendment of Protected Health Information

An individual has the right to request in writing that Marion County amend protected health information about him or her maintained in the covered component's Designated Record Set, stating the reasons for the request. Requests to amend protected health information will be processed according to the covered component's procedures, including making reasonable efforts to provide the amendment to persons identified by the individual or known by the covered component to have the information who may or ~~reasonable~~ reasonably could rely on the information, as well as processing amendments received from another covered entity. The request to amend protected health information, and any documentation of either granting or denying the request, in whole or in part, along with any statement of disagreement and any rebuttal, must be appended or linked to the protected health information. [45 CFR 164.526](#).

c. Individual's Right to Request Alternative Communications

Marion County's covered components will accommodate any reasonable written request by an individual to receive communications of his or her protected health information from Marion County by alternative means or at alternative locations. The covered component will determine if the request for alternative communications has been approved before contacting the individual in that manner. [45 CFR 164.522\(b\)](#).

d. Individual's Right to Request Restrictions on Uses and Disclosures

An individual has the right to request that Marion County restrict uses or disclosures of the individual's protected health information to carry out treatment, payment or health care operations. Marion County is not required to agree to a restriction; therefore, Marion County will evaluate the requests in accordance with the Marion County covered component's procedures. [45 CFR 164.522\(a\)](#).

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

e. Individual's Right to an Accounting of Disclosures

An individual or the individual's personal representative may request an accounting of disclosures of protected health information. A request for an accounting may be made orally or in writing, and if in writing, will be retained by the covered component. Marion County covered components will develop procedures for documentation of disclosures of protected health information. [45 CFR 164.528](#).

5. Administrative and Physical Safeguards:

a. Safeguards Against Unauthorized Uses or Disclosures

Marion County will take reasonable steps to safeguard protected health information from any intentional or unintentional unauthorized use or disclosure. This includes unauthorized disclosures of protected health information by a covered component to a non-covered component of the county. [45 CFR 164.503\(e\)](#).

b. Safeguards to Limit Incidental Uses or Disclosures

Marion County, to the maximum extent possible, will limit incidental uses or disclosures of protected health information. An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and occurs as a by-product of an otherwise permitted use or disclosure. [45 CFR 164.503\(e\)](#).

c. Administrative, Technical, Physical Safeguards

Each Marion County covered component will ensure that appropriate administrative, technical and physical safeguards are taken to prevent unauthorized uses or disclosures and to limit incidental uses or disclosures of protected health information. In particular, each covered component will address the following in relation to safeguarding protected health information:

- 1) Computer systems use and access, including passwords, assignment or termination of access rights, physical location of computers or visibility of computer screens, transmission of data over public and private data lines, storage and security of electronic records, laptop computers and [personal digital assistants \(PDA\)mobile devices](#)
- 2) Minimizing use of e-mails to transmit protected health information unless encrypted or de-identified, and safeguards to prevent disclosure to unauthorized recipients.
- 3) Facsimiles in or out containing protected health information, including location of facsimile equipment and a facsimile cover sheet with a statement of confidentiality.

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- 4) Paper records or files containing protected health information, including limitations on uses or access, record handling and storage, record retention, record destruction and archived records.
- 5) Verbal exchanges of protected health information in a manner that minimizes risks of others overhearing protected health information, including safeguards concerning location of conversations, use of telephones and cellular phones.
- 6) Building or department security, including physical access and authorized personnel access. [45 CFR 164.530\(e\)](#).

6. Training of Workforce:

Marion County will train its employees concerning Marion County's policies and procedures regarding the privacy of protected health information, as necessary and appropriate depending on the duties and responsibilities of the employee. Each covered component will train its employees on the more specific policies and procedures of that covered component if applicable. In addition, all new employees or employees who are promoted or transferred into a position with access to protected health information will be trained on the relevant policies and procedures. Completion of training will be documented. [45 CFR 164.530\(b\)](#).

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7. Review and Resolution of Privacy Complaints:

Each Marion County covered component will provide a process for individuals to make privacy complaints concerning Marion County's compliance with HIPAA and the Privacy Rule. All privacy complaints received will be investigated and appropriate follow-up measures taken. [45 CFR 164.530\(d\)](#).

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8. Enforcement and Sanctions:

a. Actions Against the Covered Entity and Its Employees

HIPAA provides for civil penalties and sanctions, as well as criminal penalties, for violations and breaches both against the covered entity and the county's officers, employees or agents. Sanctions can include loss of federal funding.

- 1) Civil Penalties and Sanctions - A civil penalty of up to \$100 per violation and \$25,000 per year for identical violations may be imposed against the covered entity or any person who violates HIPAA or the Privacy Rule regulations, and for general failure to comply with the requirements and standards. Other civil sanctions may include injunctive relief or loss of federal funding. [42 USC 1320d-5, Public Law 104-191, Sec. 1176](#).
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- 2) Criminal Penalties - Criminal penalties and imprisonment may be imposed for knowing and wrongful disclosures in violation of HIPAA. Depending on the category of the offense, criminal fines can be up to \$50,000, \$100,000 or \$250,000,
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**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
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~~and imprisonment of up to 1 year, 5 years or 10 years. 42 USC 1320d-6, Public Law 104-191, Sec. 1177.~~

b. Disciplinary Actions

Marion County as a covered entity must apply appropriate disciplinary sanctions against an employee who fails to comply with the county or covered component's HIPAA privacy policies and procedures, up to and including terminationanddismissal.

- 1) Just Cause - Failure to comply with the county or covered component's HIPAA privacy policies and procedures is considered just cause for disciplinary action under the Marion County Personnel Rules.
- 2) Disciplinary Process - Employees who fail to comply with the county or covered component's HIPAA privacy policies and procedures shall be disciplined pursuant to the applicable Personnel Rules and collective bargaining agreements up to and including terminationanddismissal. ~~45 CFR 164.530(e)(1)~~.

Adopted: 4/03

Reviewed:

Revised:



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|-----------------|---|------------------|------------------------------|
| SECTION: | Health, Safety & Security | | |
| TITLE: | Health Insurance Portability And Accountability Act (HIPAA) Protected Health Information Privacy Rule Requirements | | |
| DEPT: | Business Services | | |
| ADOPTED: | 4/03 | REVIEWED: | 3/17 |
| | | | REVISED: 04/17 |

PURPOSE: The purpose of this policy is to establish policies and procedures regarding use of, access to and disclosures of protected health information (PHI) in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations.

AUTHORITY: Authority for this policy is 45 CFR Parts 160, through 164, the Health Insurance Portability and Accountability Act of 1996, as amended.

APPLICABILITY: This policy is in addition to all other state or federal guidelines, statutes, administrative rules, covered component departmental policies, or other provisions relating to personal health information. In general, the provision that provides the greatest degree of confidentiality, integrity and security prevails. HIPAA provides exemptions from its provisions for certain personal health information, for example information regarding applicants or employees held by an employer for employment purposes, or personal health information regarding inmates in the correctional facility; however, these records may be protected by other laws or policies. Any ambiguities in this policy, or conflicts between this policy and another policy, shall be construed so as not to be conflicting with HIPAA, the Privacy or Security Rules.

This policy applies to the county, its officers, employees and agents who may be subject to civil penalties and fines for violations of HIPAA; or may be subject to criminal penalties for knowing, wrongful violations. Employees may be subject to discipline, up to and including dismissal. Business associates may have their contracts terminated.

DEFINITIONS:

Administrative Safeguards: Administrative actions and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the county's workforce in relation to the protection of that information.

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PROTECTED HEALTH INFORMATION PRIVACY RULE REQUIREMENTS**

Breach: Impermissible use or disclosure of PHI that compromises the security or privacy of the PHI in such a way that it poses a significant risk of financial, reputational or other harm to the individual.

Business Associate: An outside entity or individual other than a member of the workforce that performs, or assists in the performance of, the functions or activities of a covered entity involving the use or disclosure of individually identifiable health information.

Confidentiality: Property, data or information is not made available or disclosed to unauthorized persons or processes.

Covered Entity: A health care provider, health plan or health care clearinghouse subject to these rules.

Covered component: A part of the county that provides health care (e.g., the Health Department) and engages in certain electronic transactions, or has access to or uses protected health information, and as such is directly subject to HIPAA. Departments or positions that are not involved in providing health care and do not have access to or use protected health information of clients or customers are generally not subject to HIPAA.

De-identified health information: Health information that does not identify an individual, and with which there is no reasonable basis to believe that the information can be used to identify an individual.

Disclosure: The release of, transfer of, provision of access to or divulgence in any other manner of information outside the service holding the information.

EPHI (Electronic Protected Health information): Individually identifiable health information (information about the past, present or future physical or mental health or condition, or provision of health care) including demographic data (but excluding data maintained by an employer in its role as employer) that can identify an individual, maintained or transmitted using electronic media.

Minimum necessary: Using reasonable criteria, determining and limiting uses, disclosures and requests to only the minimum amount of protected health information necessary to accomplish the purpose or task.

Health information: Any information, whether oral or recorded in any form or medium, that:

- a. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- b. Relates to the past, present, or future physical or mental health or condition of an individual; or
- c. The provision of health care to an individual; or
- d. The past, present, or future payment for the provision of health care to an individual.

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Hybrid covered entity: An entity, the primary function of which is other than to provide health care, although some of its departments provide health care. Marion County is a “hybrid covered entity.”

Individually identifiable health information: Information that is a subset of health information, including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- b. Relates to the past, present, or future physical or mental health or condition of an individual; or
- c. Relates to the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- d. Identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained electronically or by using any other medium.

Physical Safeguards: Physical measures, policies, and procedures to protect electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

User: A person or entity with authorized access to information systems.

Violation: Any act that is inconsistent with or against a department or county policy or procedure established pursuant to the implementation of the Privacy Rule of the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, including, but not limited to, any attempted or successful unauthorized access, use, disclosure, modification or destruction of PHI or interference with operations in an information system.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

GENERAL POLICY:

Marion County is designated as a hybrid covered entity under HIPAA, meaning that, although the primary function of the county is general government, some of its departments provide health care. Parts of the county that provide health care, or have access to or use protected health information, are covered components and directly subject to HIPAA. Other departments or positions are not subject to HIPAA, generally because they are not involved in providing health care and do not have access to or use protected health information of clients or customers.

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Covered components cannot disclose protected health information to non-covered components except as permitted by this policy. Covered components can only disclose protected health information as permitted under HIPAA. Certain non-covered components may have obligations under HIPAA as business associates, described below. The county, its officers, employees and agents may be subject to civil penalties and fines for violations of HIPAA, or may be subject to criminal penalties for knowing, wrongful violations. Employees may be subject to discipline, up to and including dismissal. Business associates may have their contracts terminated and be subject to liability in the event of a violation or breach.

POLICY GUIDELINES:

1. Notice of Privacy Practices

Marion County recognizes an individual's right to receive adequate notice of the uses and disclosures of the individual's protected health information that may be made by Marion County and of the individual's rights and Marion County's obligations with respect to protected health information. Each covered component within the hybrid-covered entity will adopt a Notice of Privacy Practices. Covered components that have a direct treatment relationship will provide the Notice of Privacy Practices to the individual on the first date of service, or as otherwise allowed under HIPAA. Covered components that have public access to workplaces will post the Notice of Privacy Practices. Covered components will make available any procedures referenced in its Notice of Privacy Practices upon request.

2. Roles and Responsibilities

2.1 Privacy Officer and HIPAA Compliance

Marion County shall designate a County Privacy Officer and may designate a Privacy Officer for each covered component. The County Privacy Officer and any covered component Privacy Officer are responsible for the implementation and administration of HIPAA through this policy and any applicable departmental policy.

2.2 Complaints Officer and HIPAA Privacy Complaints

Marion County shall designate a County HIPAA Complaints Officer and may designate a HIPAA Complaints Officer for individual covered components. The Complaints Officers may be the same individuals as the Privacy Officers. The Complaints Officers are responsible for providing a process for individuals to make complaints concerning Marion County's compliance with the HIPAA Privacy Rule within their respective areas. Marion County will investigate all privacy complaints received.

2.3 Confidentiality and Privacy of Protected Health Information

Marion County, its officers, employees, agents and business associates will respect and protect the confidentiality and privacy of protected health information. All individually

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identifiable health information in any form is confidential and private. This includes written, electronic and oral communications.

2.4 **Role-based County Employee Access**

- 2.4.1 Protected health information will only be accessed, used or disclosed by county employees for purposes or in the manner permitted under the HIPAA Privacy Regulations, state law and other federal laws, including the covered component's policies and procedures. Access to, or requests for, protected health information shall be limited to those positions and the minimum necessary protected health information required. Specific records, rather than the entire file, shall be requested or accessed when practicable. De-identified information shall be requested or used when practicable.
- 2.4.2 County employees employed in a covered component position will be designated a role-based level of access to protected health information. This level of access will be noted on the position's essential job functions based upon the level of access to protected health information that the employee needs to carry out his or her job responsibilities.
- 2.4.3 All county officers, employees and agents are required to be aware of his or her responsibilities regarding protected health information and to guard against improper uses and disclosures of protected health information.

3. **Uses and Disclosures of Protected Health Information**

3.1 **Privacy Officer and HIPAA Compliance**

Marion County may use and disclose protected health information without the individual's authorization if permitted under the HIPAA Privacy Rule, state law and other federal laws regarding the confidentiality, use and disclosure of medical records and protected health information, and as detailed in the covered component's procedures for use and disclosure of protected health information. Employees should contact the Privacy Officer or County Legal Counsel's Office regarding questions as to whether protected health information can be disclosed without an authorization.

3.2 **Authorization for Uses and Disclosures of Protected Health Information**

- 3.2.1 An individual (or a personal representative) may authorize any disclosure of his or her protected health information in writing. An authorization may be revoked in writing, but revocation does not affect acts already taken in reliance on the authorization. The covered component will retain the original authorization or revocation and will provide a copy to the individual (or personal representative).

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- 3.2.2 If an authorization is required under federal or state law, each covered component will use an authorization form, in plain language, containing the elements specified under the applicable law. A single authorization form may be used, if allowed, and if it contains all of the required elements specified under the applicable laws.
- 3.2.3 Treatment, payment or eligibility for health care benefits cannot be conditioned on the individual providing an authorization to disclose protected health information, except that a health plan may require one prior to enrollment to make eligibility or risk determinations.

3.3 Minimum Necessary Standard

- 3.3.1 Marion County, when using, disclosing or requesting protected health information, shall make reasonable efforts to limit the protected health information used, disclosed or requested to the minimum necessary to accomplish the legitimate, intended purpose.
- 3.3.2 The minimum necessary determination is not required for:
 - 3.3.2.1 Disclosures to, or requests by, a health care provider for treatment purposes.
 - 3.3.2.2 Disclosures made to the individual about his or her own protected health information, or to a personal representative of the individual.
 - 3.3.2.3 Uses or disclosures authorized by the individual.
 - 3.3.2.4 Disclosures made to the federal Department of Health and Human Services required under the HIPAA Privacy Rule for enforcement purposes.
 - 3.3.2.5 Other uses or disclosures required by law.
- 3.3.3 In response to a request for protected health information, covered components may rely on the minimum necessary determination made by the following individuals or entities, that they are only requesting the minimum necessary protected health information, rather than the covered component making its own determination:
 - 3.3.3.1 Public official for a permitted disclosure
 - 3.3.3.2 Another covered entity
 - 3.3.3.3 A health care professional working for a business associate of Marion County

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3.3.3.4 A researcher with proper authorization.

3.3.3.5 Pursuant to a business associate agreement.

3.4 Uses and Disclosures of Psychotherapy Notes

Marion County maintains the confidentiality of an individual's psychotherapy notes in accordance with the HIPAA requirements. Marion County will not use or disclose psychotherapy notes without obtaining the individual's separate written authorization or as described in the Marion County covered component's procedures. Marion County may limit the individual's access to psychotherapy notes as permitted under HIPAA or state law

3.5 Disclosures of De-Identified Health Information

3.5.1 De-identified health information is not considered protected health information. Health information will be considered de-identified only if one of the two de-identification procedures in 45 CFR 514(b) as amended are followed.

3.5.2 Marion County may use or disclose de-identified health information without obtaining an individual's authorization. However, Marion County will not use or disclose de-identified health information about genetic testing unless the individual was notified when the genetic test information was obtained of the individual's right to object to the use or disclosure of de-identified genetic test information, or unless the use or disclosure is otherwise authorized by law.

3.6 Uses and Disclosures for Research Purposes

Marion County may use or disclose protected health information for research if it obtains the individual's authorization for use and disclosure of protected health information for this purpose, or if the researcher obtains a waiver of the authorization requirements from a research Institutional Review Board or a research institution's Privacy Board per the Common Rule (45 CFR 46.107 as amended).

3.7 Business Associates

3.7.1 Marion County may disclose protected health information to business associates with whom there is a written contract or memorandum of understanding containing the required HIPAA assurances. Each Marion County covered component must identify its business associates and either amend existing contracts (if required by the rule) using the form of Marion County Business Associate Amendment, or incorporate the HIPAA assurances into new contracts using the Marion County Business Associate Agreement or Addendum. If the business associate relationship is with another governmental entity, then a Memorandum of Understanding may be used.

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3.7.2 In some instances, Marion County itself may be a business associate of another covered entity and be required to amend or enter into an agreement incorporating the HIPAA assurances received from the other covered entity. These will be processed following the Marion County contracting procedures, including review by Legal Counsel.

3.8 Disclosures to Persons Involved in Individual's Care

3.8.1 Marion County may, under certain circumstances, disclose protected health information to an individual's family member, other relative, personal friend, or other person involved with the individual's care or payment of the care unless the individual has requested a restriction on the disclosures that has been approved, unless other legal restrictions apply.

3.8.2 Marion County may disclose protected health information to notify or assist in the notification of the individual's family member, personal representative, or other person responsible for the individual's care, of the location, general condition or death of the individual unless the individual has requested a restriction on the disclosures that has been approved, unless other legal restrictions apply.

3.9 Disclosures for Disaster Relief Efforts

Marion County may disclose protected health information to organizations involved in disaster relief efforts, for the purpose of coordinating with the organizations disclosures to the individual's family member, personal representative, or other person responsible for the individual's care, of the location, general condition or death of the individual unless the individual has requested a restriction on the disclosures that has been approved, unless other legal restrictions apply.

3.10 Mitigation of Improper Disclosures

Marion County will mitigate, to the extent practicable, any harmful effect that is known by Marion County to have occurred as a result of a use or disclosure of protected health information either by Marion County or its business associates in violation of the HIPAA Privacy Rule or Marion County policies and procedures.

4. Individual's Rights Regarding Protected Health Information

4.1 Individual's Right to Access Protected Health Information

An individual has the right to access, inspect and copy his or her protected health information maintained in the covered component's Designated Record Set except:

4.1.1 Psychotherapy notes.

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- 4.1.2 Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- 4.1.3 Certain circumstances detailed in the covered component's procedures.
- 4.1.4 Other limitations under state or federal law.

4.2 Individual's Right to Request Amendment of Protected Health Information

An individual has the right to request in writing that Marion County amend protected health information about him or her maintained in the covered component's Designated Record Set, stating the reasons for the request. Requests to amend protected health information will be processed according to the covered component's procedures, including making reasonable efforts to provide the amendment to persons identified by the individual or known by the covered component to have the information who may or reasonably could rely on the information, as well as processing amendments received from another covered entity. The request to amend protected health information, and any documentation of either granting or denying the request, in whole or in part, along with any statement of disagreement and any rebuttal, must be appended or linked to the protected health information.

4.3 Individual's Right to Request Alternative Communications

Marion County's covered components will accommodate any reasonable written request by an individual to receive communications of his or her protected health information from Marion County by alternative means or at alternative locations. The covered component will determine if the request for alternative communications has been approved before contacting the individual in that manner.

4.4 Individual's Right to Request Restrictions on Uses and Disclosures

An individual has the right to request that Marion County restrict uses or disclosures of the individual's protected health information to carry out treatment, payment or health care operations. Marion County is not required to agree to a restriction; therefore, Marion County will evaluate the requests in accordance with the Marion County covered component's procedures.

4.5 Individual's Right to an Accounting of Disclosures

An individual or the individual's personal representative may request an accounting of disclosures of protected health information. A request for an accounting may be made orally or in writing, and if in writing, will be retained by the covered component. Marion County covered components will develop procedures for documentation of disclosures of protected health information.

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5. Administrative and Physical Safeguards

5.1 Safeguards Against Unauthorized Uses or Disclosures

Marion County will take reasonable steps to safeguard protected health information from any intentional or unintentional unauthorized use or disclosure. This includes

unauthorized disclosures of protected health information by a covered component to a non-covered component of the county.

5.2 Safeguards to Limit Incidental Uses or Disclosures

Marion County, to the maximum extent possible, will limit incidental uses or disclosures of protected health information. An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and occurs as a by-product of an otherwise permitted use or disclosure.

5.3 Administrative, Technical, Physical Safeguards

Each Marion County covered component will ensure that appropriate administrative, technical and physical safeguards are taken to prevent unauthorized uses or disclosures and to limit incidental uses or disclosures of protected health information. In particular, each covered component will address the following in relation to safeguarding protected health information:

5.3.1 Computer systems use and access, including passwords, assignment or termination of access rights, physical location of computers or visibility of computer screens, transmission of data over public and private data lines, storage and security of electronic records, laptop computers and mobile devices

5.3.2 Minimizing use of e-mails to transmit protected health information unless encrypted or de-identified, and safeguards to prevent disclosure to unauthorized recipients.

5.3.3 Facsimiles in or out containing protected health information, including location of facsimile equipment and a facsimile cover sheet with a statement of confidentiality.

5.3.4 Paper records or files containing protected health information, including limitations on uses or access, record handling and storage, record retention, record destruction and archived records.

5.3.5 Verbal exchanges of protected health information in a manner that minimizes risks of others overhearing protected health information, including safeguards concerning location of conversations, use of telephones and cellular phones.

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5.3.6 Building or department security, including physical access and authorized personnel access.

6. Training of Workforce

Marion County will train its employees concerning Marion County's policies and procedures regarding the privacy of protected health information, as necessary and appropriate depending on the duties and responsibilities of the employee. Each covered component will train its employees on the more specific policies and procedures of that covered component if applicable. In addition, all new employees or employees who are promoted or transferred into a position with access to protected health information will be trained on the relevant policies and procedures. Completion of training will be documented.

7. Review and Resolution of Privacy Complaints

Each Marion County covered component will provide a process for individuals to make privacy complaints concerning Marion County's compliance with HIPAA and the Privacy Rule. All privacy complaints received will be investigated and appropriate follow-up measures taken.

8. Enforcement and Sanctions

8.1 Actions Against the Covered Entity and Its Employees

HIPAA provides for civil penalties and sanctions, as well as criminal penalties, for violations and breaches both against the covered entity and the county's officers, employees or agents. Sanctions can include loss of federal funding.

8.1.1 Civil Penalties and Sanctions - A civil penalty may be imposed against the covered entity or any person who violates HIPAA or the Privacy Rule regulations, and for general failure to comply with the requirements and standards. Other civil sanctions may include injunctive relief or loss of federal funding.

8.1.2 Criminal Penalties - Criminal penalties and imprisonment may be imposed for knowing and wrongful disclosures in violation of HIPAA.

8.2 Disciplinary Actions

Marion County as a covered entity must apply appropriate disciplinary sanctions against an employee who fails to comply with the county or covered component's HIPAA privacy policies and procedures, up to and including dismissal.

8.2.1 Just Cause - Failure to comply with the county or covered component's HIPAA privacy policies and procedures is considered just cause for disciplinary action under the Marion County Personnel Rules.

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8.2.2 Disciplinary Process - Employees who fail to comply with the county or covered component's HIPAA privacy policies and procedures shall be disciplined pursuant to the applicable Personnel Rules and collective bargaining agreements up to and including dismissal.

9. Periodic Review

Risk Management shall review this policy at least every three years to ensure compliance with applicable laws and rules.

Adopted: 04/03

Reviewed: 07/16

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