TDH
TEXAS DEPARTMENT OF HEALTH

Texas Department of Health

Office of General Counsel

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Dear health care provider or reporting entity:

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Standards (Privacy Standards) codified at 45 CFR, Parts 160 and 164, were implemented on April 14, 2003. The Texas Department of Health (TDH), Office of General Counsel has had an increasing influx of questions and concerns from:

- our internal clients regarding their ongoing ability to perform essential public health, licensing and regulatory functions as well as our ability to monitor for grant and contract compliance; and
- outside entities regarding whether they can comply with TDH rules and contracts without violating HIPAA Privacy Standards.

These are valid concerns. It was never the intention of HIPAA to impede the necessary and legitimate disclosure of protected health information (PHI) for these and certain other essential functions of TDH, or to make it impossible for covered entities to comply with state laws and the federal regulatory requirements.

The following is a brief summary of when a health care provider (that is a HIPAA covered entity) can use and disclose PHI to TDH programs and offices, without the consent or authorization of an individual, and without violating HIPAA Privacy Standards.

The Privacy Standards were amended in August, 2002, to delete the requirement that a consent be obtained before a covered entity could disclose PHI for treatment, payment, and health care operations. (45 CFR §§164.502 and 506) This amendment allows HIPAA covered entities, who are TDH grant recipients, or who deliver services that are paid for by TDH administered programs, to use and disclose PHI to TDH to comply with grant and funding source requirements. For example, federal grants (including Medicaid, Title V, Title XX, Ryan White, CDC grants, and others) require the agency administering the grants to conduct quality monitoring, contract compliance monitoring, financial audits, and fraud and abuse prevention and detection. These activities require a sub-recipient, contractor, or enrolled provider, to provide access to individual patient records. Under the amended regulations the HIPAA covered entity may use or disclose PHI without the risk of the violating a HIPAA privacy standard. In addition, these disclosures do not have to be documented by the covered entity under the Accounting for Disclosures provisions of 45 CFR §164.528.

The Privacy Standards have always contained exceptions to the requirement to obtain a consent or authorization of an individual before disclosing PHI for certain other purposes. These exceptions are found in 45 CFR §164.512. Under these exceptions a covered entity is permitted to use or disclose PHI to TDH under the following circumstances:

§164.512(a) USE OR DISCLOSURE REQUIRED BY LAW. These are generally stated in rules that require specific entities to report a condition, disease or injury to TDH on an ongoing and periodic basis. Examples of this exception are: Cancer registry, reports of communicable disease and injuries, and vital statistics.

§164.512(b) USE AND DISCLOSURE FOR PUBLIC HEALTH ACTIVITIES. This section permits covered entities to release private health information to a public health authority that is authorized by law to collect and receive information for preventing and controlling disease, injury, or disability. This information includes reporting of; disease, injury, vital statistics like births, deaths, marriages, divorces, etc., public health investigations, and public health interventions. Under this exception you are authorized to release information to TDH, or other public health authorities. Disclosure can be initiated by either the public health authority or by you, if it is for one of the above reasons.

§164.512(d) USE AND DISCLOSURE FOR HEALTH OVERSIGHT ACTIVITIES. This section permits covered entities to disclose private health information to a health oversight agency for oversight activities including audits, civil, administrative or criminal investigations, inspections, licensure or disciplinary actions, or other activities necessary for the oversight of the health-care system, government benefit programs, compliance with governmental regulation or compliance with civil rights laws.

§164.512(F) USE AND DISCLOSURE FOR LAW ENFORCEMENT PURPOSES. Section 164.512(f) permits disclosure of private health information to a law enforcement officer for certain law enforcement purposes.

§164.512(j) USE AND DISCLOSURE TO AVERT A SERIOUS THREAT TO HEALTH OR SAFETY. This section permits disclosure of private health information if a covered entity in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The disclosure must be made to a person who is reasonably able to prevent or lessen the threat, or for identification and apprehension of an individual.

These are most of the reasons why TDH collects and receives protected health information. It is important to understand that each of the laws that authorize TDH to collect and receive this information also contain privacy and confidentiality provisions that limit how TDH can further disclose or use the information. Although TDH, as the public health agency for the state of Texas releases information relating to the health and health status of Texans, this information is de-identified using standards that provide for the release of statistical level data only, or to researchers who have been approved by TDH's IRB or Privacy Board. Individually Identifiable Health Information is not subject to disclosure by TDH under the Public Information Act, except to the individual or someone acting on behalf of the individual.

If you have additional questions that relate to your disclosure of PHI to TDH, another public health authority, or to a contractor who has been delegated or designated by TDH to act on TDH's behalf, you may direct your questions to me, at the above address, or by electronic mail to joan.bates@tdh.state.tx.us.

Sincerely,

Joan Carol Bates
Assistant General Counsel
Office of General Counsel