



**POLICY TITLE:** 500.00 Using and Disclosing Protected Health Information to Law Enforcement and as Required by Law

**Responsible Department:** Corporate Privacy Office

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## **SUMMARY & PURPOSE:**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a Baptist Health or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared.

## **POLICY:**

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. This policy supports and describes uses and disclosures of patient information for which an authorization or opportunity to agree or object is not required. Baptist Health's policy is to comply with applicable state and federal laws regarding in establishing and implementing these administrative requirements.

## **SCOPE/APPLICABILITY:**

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below who are authorized to disclose individuals' protected health information as required by law or to law enforcement.

- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.
- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.

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- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.

**PROCEDURES TO ENSURE COMPLIANCE:**

1. Uses and Disclosures Required by Law
  - a. Baptist Health personnel who are covered by this policy, and authorized to disclose individuals' protected health information may, without prior patient authorization, disclose protected health information, including sensitive health information, as required by law, provided;
    - i. They verify that the third party to whom the information will be disclosed is authorized to receive such information; and
    - ii. Only the minimum necessary information may be disclosed, unless the disclosure of more information is required by law.
  - b. Before disclosing any patient's protected health information to a law enforcement official, a government agency, a court or an attorney, you must determine if the law requires BHSF to disclose the information.
    - i. You are encouraged to direct any questions you may have concerning such disclosures to the Corporate Privacy Office, Medical Records Department, Risk Management Department or to the Office of General Counsel.
    - ii. Examples of requests that may require disclosures by law include, without limitation:
      - 1) Orders, warrants, or subpoenas issued by a court;
      - 2) Subpoenas or summons issued by a grand jury or an administrative body authorized to require the production of information;
      - 3) A civil or an authorized investigative demand; and
      - 4) Statutes or regulations that require the production of information.
    - iii. If the disclosure is not required by law, then no disclosure shall be made unless the patient whose information is sought authorizes the disclosure or the disclosure as permitted as outlined in section 14 of this policy.
    - iv. Any disclosures that are required by law in connection with reports of abuse, disclosures to law enforcement or to courts and attorneys must comply with the specific sections of this policy that apply to those types of disclosures.
2. Uses and Disclosures for Public Health Activities
  - a. Baptist Health may disclose PHI for public health activities. These activities generally include disclosures to prevent or control disease, injury or disability; report births and deaths; report child abuse or neglect; report reactions to medications or problems with products; notify people of recalls of products they may be using; track certain products and monitor their use and effectiveness; notify a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition; and conduct medical surveillance of our facilities in certain limited circumstances concerning workplace illness or injury.
  - b. We also may release PHI to an appropriate government authority if we believe a patient has been the victim of abuse, neglect or domestic violence; however, we will release this information only if you agree or when we are required or authorized by law.
  - c. Baptist Health personnel who are authorized to disclose individuals' protected health information may, without prior patient authorization, disclose protected health information to public health authorities authorized by law may use or disclose protected health information for the public health activities and purposes described in this policy.
  - d. Notification to a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition:

- i. If you suspect that a person may be unaware that he or she has been exposed to a communicable disease or that such person may otherwise unknowingly be at risk of contracting or spreading a disease or condition, you should determine whether a disclosure to the person in question is authorized by law and whether a disclosure should be made. You are encouraged to direct any questions concerning such disclosures to the Corporate Privacy Office or Risk Management.
  - ii. If a disclosure is made, only the minimum necessary information may be disclosed to the person in question, unless the disclosure of more information is required by law.
  - iii. To an employer, about an individual who is a member of the workforce of the employer, if:
    - 1) Baptist Health is a covered health care provider who provides health care to the individual at the request of the employer:
      - a) To conduct an evaluation relating to medical surveillance of the workplace; or
      - b) To evaluate whether the individual has a work-related illness or injury.
    - 2) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance.
    - 3) The employer needs such findings in order to comply with its obligations, under Occupational Safety & Health Administration ("OSHA") 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
    - 4) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
      - a) By giving a copy of the notice to the individual at the time the health care is provided; or
      - b) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
  - iv. To a school, about an individual who is a student or prospective student of the school, if:
    - 1) The protected health information that is disclosed is limited to proof of immunization;
    - 2) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
  - v. The covered entity obtains and documents the agreement to the disclosure from either:
    - 1) A parent, guardian, or other person acting in loco parentis of the individual, if the individual is not an emancipated minor; or
    - 2) The individual, if the individual is an adult or emancipated minor.
3. Disclosures about victims of abuse, neglect or domestic violence
- a. BHSF personnel who are covered by this policy, and authorized to disclose individuals' protected health information may, without prior patient authorization, disclose protected health information to public health authorities authorized by law to receive reports of abuse or neglect of a child:
    - i. If you suspect that a patient under the age of 18 has been the victim of abuse or neglect, you must determine whether a report of child abuse or neglect should be made to the Department of Children and Families or another public health authority; and
    - ii. If a report is made, only the minimum necessary information may be disclosed to the appropriate public health authority; and
    - iii. Each disclosure made to report child abuse or neglect must be accounted for in the patient's medical record.
  - b. Except for reports of child abuse or neglect permitted by section 3(a) of this policy, Baptist Health personnel may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
    - i. To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
    - ii. If the individual agrees to the disclosure; or
    - iii. To the extent the disclosure is expressly authorized by statute or regulation and:

- 1) Baptist Health, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
- 2) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- iv. If a report is made, only the minimum necessary information may be disclosed to the appropriate public health authority.
- c. Informing the individual
  - i. Baptist Health personnel who makes a disclosure of an individual's protected health information as part of a report of abuse, neglect, or domestic violence, as required by law must promptly inform the individual that such a report has been or will be made, except if:
    - 1) The care provider, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
    - 2) The care provider would be informing a personal representative, and Baptist Health reasonably believes the personal representative is responsible for the abuse, neglect, or other injury and that informing such person would not be in the best interests of the individual as determined by the care provider, in the exercise of professional judgment.
4. Uses and disclosures for health oversight activities
  - a. Baptist Health may disclose Health Information to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections and licensure as well as quarterly reports to the Agency for Healthcare Administration (AHCA). These activities are necessary for the government to monitor the healthcare system, government programs and compliance with civil rights laws.
  - b. BHSF personnel covered by this policy, and who are authorized to disclose individuals' protected health information may, without prior patient authorization, disclose protected health information to health oversight agencies for oversight activities authorized by law.
    - i. Before disclosing protected health information to AHCA or any other health oversight agency, you must comply with the following:
      - 1) Verify that the party is a health oversight agency that it is authorized to receive the information; and
      - 2) Assure that only the minimum necessary information may be disclosed to the health oversight agency, unless the disclosure of more information is required by law.
  - c. Baptist Health may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
    - i. The health care system;
    - ii. Government benefit programs for which health information is relevant to beneficiary eligibility;
    - iii. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
    - iv. Entities subject to civil rights laws for which health information is necessary for determining compliance.
  - d. Permitted uses
    - i. If Baptist Health also is a health oversight agency, Baptist Health may use protected health information for health oversight activities as permitted by section 4c of this policy.
5. Disclosures for judicial and administrative proceeding
  - a. Baptist Health may disclose Health Information in response to a court or administrative order. We also may disclose Health Information in response to a subpoena, discovery request or other lawful process by someone else involved in the dispute, but only if efforts have been made to tell the individual about the request or to obtain an order protecting the information requested.

- b. Before disclosing protected health information in response to a subpoena, discovery request, or other type of request from a court or an attorney, you must verify the identity of the requesting party and that the requesting party is authorized to receive the requested information.
6. Disclosures for law enforcement purposes
- a. Baptist Health may release Health Information if asked by a law enforcement official for the following reasons:
    - i. To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).
    - ii. To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
    - iii. To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.
    - iv. To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree).
      - 1) Child abuse or neglect may be reported, without a parent's agreement, to any law enforcement official authorized by law to receive such reports; or
      - 2) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
        - a) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
        - b) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
        - c) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.
    - v. To alert law enforcement to the death of the individual when there is a suspicion that death resulted from criminal conduct.
    - vi. To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
    - vii. When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity such as:
      - 1) The commission and nature of a crime;
      - 2) The location of such crime or of the victim(s) of such crime; and
      - 3) The identity, description, and location of the perpetrator of such crime.
        - a) If the BHSF care provider, however, believe that the medical emergency described in this paragraph is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, this section shall not apply, and any disclosure to a law enforcement Officer for law enforcement purposes shall be subject to the section of this policy regarding Abuse.
        - b) If you receive a request from a law enforcement Officer seeking protected health information, you must verify the identity of the requesting party and that the party is authorized to receive the requested information.
7. Uses and disclosures to avert a serious threat to health or safety
- a. Baptist Health may use and disclose Health Information when necessary to prevent or lessen a serious threat to a patient's health and safety or the health and safety of the public or another person. Any disclosure, however, will be to someone who may be able to help prevent the threat.
  - b. BHSF personnel who are authorized to disclose individuals' protected health information may, without prior patient authorization and consistent with applicable law and standards of ethical conduct, disclose protected health information in accordance with the provisions of this Section if there is a reasonable and

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good faith belief that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

- c. Permitted Disclosures.
  - i. Baptist Health may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the authorized personnel, in good faith, believes the use or disclosure:
    - 1) To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
    - 2) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
    - 3) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
    - 4) Is necessary for law enforcement authorities to identify or apprehend an individual:
      - a) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
      - b) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
  - d. Use or disclosure not permitted
    - i. A use or disclosure to law enforcement to apprehend an individual may not be made if the information is learned by BHSF entity:
      - 1) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure, or counseling or therapy; or
      - 2) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy to affect the propensity to commit the criminal conduct that is the basis for the disclosure.
  - e. Presumption of good faith belief
    - i. Baptist Health employees that use or disclose protected health information pursuant to avert a serious threat to health or safety are presumed to have acted in good faith with regard to a belief, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.
- 8. Uses and disclosures about decedents
  - a. Coroners and medical examiners
    - i. BHSF personnel who covered by this policy, and are authorized to disclose individuals' protected health information may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
    - ii. If Baptist Health also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.
  - b. Funeral directors.
    - i. Baptist Health may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.
  - c. Cadaveric organ, eye or tissue donation purposes.
    - i. Baptist Health may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.
- 9. Uses and disclosures for specialized government functions
  - a. BHSF personnel who are authorized to disclose individuals' protected health information and who receive a request from a third party seeking such information concerning current or former member of a branch of the United States Armed Forces or any foreign military must verify the identity of the requesting party and that the party is authorized to receive the requested information.
  - b. Baptist Health may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the

- proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:
- i. Appropriate military command authorities; and
  - ii. The purposes for which the protected health information may be used or disclosed.
- c. Separation or discharge from military service
- i. Baptist Health that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.
- d. Veterans
- i. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.
- e. Foreign military personnel
- i. Baptist Health may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel.
- f. National security and intelligence activities
- i. Baptist Health may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).
- g. Protective services for the President and others
- i. Baptist Health may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.
  - ii. BHSF personnel shall consult with BHSF's Office of the General Counsel if necessary to determine whether the requested disclosure is permitted and appropriate. Only the minimum necessary information should be disclosed to the requesting party
- h. Medical suitability determinations
- i. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:
    - 1) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12968;
    - 2) As necessary to determine worldwide availability or availability for mandatory service abroad; or
    - 3) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.
10. Correctional institutions and other law enforcement custodial situations
- a. Baptist Health may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
    - i. The provision of health care to such individuals;
    - ii. The health and safety of such individual or other inmates;
    - iii. The health and safety of the officers or employees of or others at the correctional institution;
    - iv. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
    - v. Law enforcement on the premises of the correctional institution; or

- vi. The administration and maintenance of the safety, security, and good order of the correctional institution.
  - b. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.
  - c. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.
11. Disclosures for workers' compensation
- a. Baptist Health may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.
12. HIV/AIDS Information
- a. Unless a court order specifically requires BHSF to disclose HIV/AIDS information concerning a patient, BHSF employees may disclose HIV test results or the identity of the patient upon whom a test has been performed ONLY with the authorization of the patient, using the standard authorization form. In addition, the following statement must accompany disclosures of such information:
    - i. "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose."
    - ii. An oral disclosure must be accompanied by an oral notice and followed by a written notice within 10 days.
13. Accounting for Disclosures
- a. An individual has the right to receive an accounting of disclosures of protected health information made by Baptist Health in the six years prior to the date on which the accounting is requested, with the exceptions which are outlined in detail in Corporate Privacy Policy 10000-74220-107.00 (Patient Rights - Right to an Accounting of Disclosures of Protected Health Information).
  - b. Content of the accounting. Each disclosure made as required by law must be accounted for unless specifically prohibited by the applicable privacy policy.
  - c. Baptist Health must provide the individual with a written accounting that contains the following:
    - i. The date of the disclosure;
    - ii. The name of the entity or person who received the protected health information and, if known, the address of such entity or person;
    - iii. A brief description of the protected health information disclosed; and
    - iv. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure.
14. Deceased individuals
- a. Baptist Health must comply with the requirements of this policy with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

**SUPPORTING/REFERENCE DOCUMENTATION:**

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Federal Statutes
- Applicable Florida State Laws

**RELATED POLICIES, PROCEDURES, AND ASSOCIATED FORMS:**

- 10000-74220-001.00 Unified Corporate Privacy Policy on HIPAA Compliance
- 10000-74220-107.00 Patient Rights – Right to an Accounting of Disclosures of Protected Health Information

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- Attachment - 10000-74220-6025 Request for an Accounting of Disclosures
- 10000-74220-100.00 Patient Rights Privacy
- Attachment - 10000-74220-6029 Record of Disclosures of Patient Health Information

**ENFORCEMENT & SANCTIONS:**

1. Reference: Corporate HIPAA Privacy Policy 10000-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.
4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.