
SUBJECT: ACCOUNTING

GENERAL STANDARD:

AHS health care providers and health plans will provide an individual, upon written request, with an accounting of certain disclosures of PHI that AHS and its Business Associates have made, in compliance with the Privacy Rule.

AHS will not charge individuals for the first accounting requested by an individual in a 12-month period, but may charge a cost-based fee for additional accountings in such 12-month period.

AHS will ensure it appropriately responds to all requests for accountings of disclosures of PHI, and will incorporate the requirements of any other law (e.g., AHS Rule 96-23) in its responses.

PRIVACY RULE:

I. Individual's Right to Accounting of Disclosures of PHI

- A. An individual has the right to receive in writing an accounting of disclosures of PHI made by a CE or its BAs for up to six years before the date on which the accounting is requested, except for disclosures:
1. That occurred before April 14, 2003;
 2. To carry out treatment, payment and health care operations as provided in Section 164.506 of the Privacy Rule;
 3. To individuals of PHI about them as provided in Section 164.502 of the Privacy Rule;
 4. Incident to a use or disclosure otherwise permitted or required by the Privacy Rule, as provided in Section 164.502 of the Privacy Rule;
 5. Pursuant to an authorization as provided in Section 164.508 of the Privacy Rule;
 6. For a facility's directory or to persons involved in an individual's care or other notification purposes as provided in Section 164.510 of the Privacy Rule;

7. For national security or intelligence purposes as provided in Section 164.512(k)(2) of the Privacy Rule;
 8. To correctional institutions or law enforcement officials as provided in Section 164.512(k)(5) of the Privacy Rule; or
 9. As part of a limited data set in accordance with Section 164.514(e) of the Privacy Rule.
- B. The CE must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, as provided in Sections 164.512(d) or (f), respectively, for the time specified by such agency or official, if such agency or official provides the CE with a written statement that such an accounting to the individual would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required.
1. If the agency or official statement identified in Paragraph B above is made orally, the CE must:
 - a. Document the statement, including the identity of the agency or official making the statement;
 - b. Temporarily suspend the individual's right to an accounting of disclosures subject to the statement; and
 - c. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless a written statement pursuant to Paragraph B above is submitted during the 30 day period.

II. Content of Accounting of Disclosures

- A. The CE must provide the individual with a written accounting that includes disclosures of PHI that occurred during the six years (or less per the individual's request) prior to the date of the request for an accounting, including disclosures to or by BAs of the CE.
- B. The written accounting of disclosures must include the following elements for each disclosure:
1. The date of the disclosure;
 2. The name of the entity or person who received the PHI and the address of such entity or person (if known);
 3. A brief description of the PHI disclosed; and

4. 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 under Sections 164.502(a)(2)(ii) (i.e., disclosures made to the Secretary of the Department of Health and Human Services for compliance reviews) or 164.512 of the Privacy Rule (See, General Standards and Guidelines on “External Parties,” “Legal Requirements,” and “Research”).
- C. Where multiple disclosures of PHI are made by the CE during the applicable period of accounting to the same person or entity for a single purpose under Sections 164.502(a)(2)(ii) (i.e., disclosures made to the Secretary of the Department of Health and Human Services for compliance reviews) or 164.512 of the Privacy Rule (See, General Standards and Guidelines on “External Parties,” “Legal Requirements,” and “Research”), then the accounting may, with respect to such multiple disclosures, provide:
1. The elements required for the first disclosure during the accounting period as described in Paragraph II.B.1 – II.B.4 above;
 2. The frequency, periodicity or number of disclosures made during the accounting period; and
 3. The date of the last such disclosure during the accounting period.
- D. If, during the period covered by the accounting, the CE has made disclosures of PHI for a particular research purpose in accordance with the Privacy Rule for 50 or more individuals, the accounting may, with respect to such disclosures for which the PHI about the individual may have been included, provide:
1. The name of the protocol or other research activity;
 2. A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
 3. A brief description of the type of PHI that was disclosed;
 4. The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
 5. The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and

6. A statement that the PHI of the individual may or may not have been disclosed for a particular protocol or other research activity.
- E. If the CE provides an accounting for research disclosures, in accordance with the above, and if it is reasonably likely that the PHI of the individual was disclosed for such research protocol or activity, the CE shall, at the request of the individual, assist in contacting the entity that sponsored the research and the researcher.
- F. The CE must maintain a copy of the written accounting provided to the individual for six years from the date of its creation.

III. Provision of the Accounting of Disclosures

- A. The CE must act on an individual's request for an accounting of disclosures no later than 60 days after receipt of the request, as follows:
 1. The CE must provide the individual with the accounting requested; or
 2. If the CE is unable to provide the accounting within the 60 days, then the CE may extend the time to provide the accounting by no more than 30 days, provided that:
 - a. The CE, within the original 60 day time limit, provides the individual with a written statement of the reasons for the delay and the date by which the CE will provide the accounting; and
 - b. The CE may have only one such extension of time for action on a request for an accounting.
- B. The CE will not charge an individual for the first accounting of disclosures in any 12-month period.
- C. The CE may impose a reasonable, cost based fee for each subsequent request for an accounting by the same individual within the 12-month period, provided that the CE informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

IV. Documentation of Accounting of Disclosures

- A. A CE must document in electronic or written format and retain for six years from the date of its creation or the date when it was last in effect, whichever is later, the following:
 1. The information required to be included in an accounting per Paragraph II above;

2. The written accounting that is provided to the individual; and
 3. The titles of the persons or offices responsible for receiving and processing requests for accountings by individuals.
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GUIDELINES:

1. AHS health care providers and health plans will assemble the information necessary to provide an accounting, if requested by a patient/beneficiary (or his/her personal representative), for each disclosure of PHI that is **not** exempted from the accounting requirement.
2. **AHS health care providers and health plans will complete [the form](#), which can be found on the AHS employees' HIPAA website [Privacy Standards and Guidelines](#) page, every time they make a disclosure of PHI that is not exempted from the accounting requirement. As noted below, disclosures for public health and health oversight activities are subject to the accounting requirement. There may, at times, be confusion on whether a specific disclosure is for a health care operation, or for a public health or health oversight activity. Consequently, AHS health care providers and health plans will complete the form attached to this Standard and Guidelines whenever they make a disclosure of PHI to any federal, state or other governmental official, or to any person working for such federal, state or other governmental official – except where the disclosure is clearly for treatment or payment activities.**
3. The disclosures subject to the accounting requirement generally include any disclosure by an AHS health care provider or health plan to a Business Associate, by the AHS health care provider or health plan to any other person or entity, or from an AHS Business Associate, where a disclosure is:
 - A. required by any Vermont or federal law (e.g., in accordance with an obligation to disclose communicable disease information under Vermont law);
 - B. for any public health activity (e.g., in connection with any effort by a public health authority to prevent or control disease, injury or disability; in connection with an FDA regulated product or activity; or to an employer in connection with work place surveillance or employee evaluations);
 - C. about victims of abuse, neglect or domestic violence (e.g., to a social services or protective services agency about a victim of domestic violence);
 - D. for any health oversight activity (e.g., in connection with audits, licensure or disciplinary actions);
 - E. for any judicial or administrative proceeding (e.g., in response to a court order);

- F. for any law enforcement purpose (e.g., in response to a grand jury subpoena; in connection with an effort by law enforcement to identify or locate a suspect, fugitive, material witness or missing person; or about an individual who is or is suspected to be a victim of a crime);
 - G. about a decedent (e.g., to a coroner or medical examiner to determine a cause of death);
 - H. for cadaveric organ, eye or tissue donation (e.g., to organ procurement organizations engaged in the procurement, banking or transplantation of cadaveric organs, eyes or tissue);
 - I. for any research disclosure without patient/beneficiary authorization (e.g., pursuant to an Institutional Review Board waiver of the authorization requirement for recruitment activities);
 - J. to avert a serious threat to health or safety (e.g., to law enforcement to help prevent or lessen a serious and imminent threat to the health or safety of a person or the public);
 - K. for specialized government functions (e.g., for national security and intelligence activities);
 - L. for workers compensation (e.g., as authorized by and to the extent necessary to comply with workers compensation laws);
 - M. to the Secretary of the Department of Health and Human Services (e.g., in connection with a compliance review); and
 - N. for any wrongful or inappropriate disclosure (e.g., any disclosure that should NOT have occurred).
4. We stress that this list is general, and most of the identified categories have important sub-categories that include disclosures that are subject to the accounting requirement. For more information on the sub-categories, see the Standards and Guidelines on “Legal Requirements”, “External Parties” and “Research.” Nevertheless, AHS health care providers and health plans will be overly inclusive in the information they retain regarding disclosures of PHI, so that if an accounting request is made, they have a sufficient pool of information from which to prepare a formal response.
 5. AHS health care providers and health plans will meet their goal of being overly inclusive by following the rule identified in Paragraph 2 above.
 6. AHS health care providers and health plans understand that they must account for disclosures that should not have been made. In other words, they must complete the form attached to this Standard and Guidelines for all disclosures that they or a Business Associate mistakenly made, or that were otherwise in violation of the Privacy Rule.

7. AHS health care providers and health plans understand that “disclosure” is broadly defined under the Privacy Rule, and includes situations where they or a Business Associate makes PHI accessible to a third party.
8. Review from the Assistant Attorney General or other counsel providing services to an AHS Department, Division or Office, is required in any situation where any health oversight agency or official requests (in writing or orally) suspension of a patient’s/beneficiary’s right to receive an accounting of disclosures.
9. AHS health care providers and health plans will coordinate any request for an accounting with any Business Associate engaged in any activity for which an accounting would be required. AHS must provide an accounting of disclosures *to the Business Associate* (if the Business Associate is assisting in an activity that is subject to an accounting requirement) and *from a Business Associate* (if the Business Associate disclosed PHI for any type of disclosure subject to the accounting requirement).
10. The accounting provided can take an abbreviated form where multiple disclosures of PHI to the same person or entity are involved. Nevertheless, AHS health care providers and health plans will complete the form attached to this Standard and Guidelines for each and every disclosure they make that is subject to the accounting requirement (subsequently, the information covered by those forms could be abbreviated, per the requirements of the Privacy Rule).
11. Accountings for research related disclosures can be complex. Consequently, before any disclosure of PHI for a research study, where the disclosure would otherwise be subject to the accounting requirement, the person from the Division, Department, or Office engaged in such disclosure will contact the Assistant Attorney General or other counsel providing services to that Division, Department, or Office, for general guidance.
12. All requests for accounting will be coordinated with the Privacy Official, to ensure that timely responses are provided, and to properly make any permitted charge.
13. AHS health care providers and health plans will designate the persons responsible for record keeping, per the Privacy Rule, in each covered component.
14. AHS Rule 96-23, Section 3.5 (Disclosures Without Consent in Limited Circumstances), is akin to the provisions in Section 164.528 of the Privacy Rule. Section 3.5 states:

*Employees must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and persons who are elderly or who have disabilities. Information may be released without consent when Vermont law creates a duty to warn identified individuals of potential harm to their person or property, in response to court orders, or to investigate or report criminal activity as required by federal or state law or regulation. Only information relevant to the situation shall be disclosed. **The employee shall document the date, purpose and content of the report, the name, address and affiliation of the person to whom the information was released, and shall notify the client that the information was disclosed.***

Like the Privacy Rule, AHS Rule 96-23 requires that AHS employees track certain disclosures, and then provide an accounting to an AHS client. Significantly, AHS requires this accounting in situations where the Privacy Rule would also require an accounting (e.g., disclosures required by state statutes; disclosures to avert a serious threat to health or safety; and disclosures made in response to court orders). In addition, the Privacy Rule and Section 3.5 generally require that the same information be tracked (e.g., date of a disclosure and the purpose of a disclosure).

The primary difference between the Privacy Rule and AHS Rule 96-23, on this issue, is that Section 3.5 requires an accounting every time a covered disclosure is made, whereas the Privacy Rule only requires an accounting if requested (although, as it concerns disclosures of PHI in connection with cases of the abuse of vulnerable adults, the Privacy Rule can also require notification to the individual, on a per disclosure basis).

In sum, as it concerns the frequency of accountings to clients, AHS Rule 96-23 is more stringent in terms of privacy protection, and will be followed by those AHS health care providers and health plans subject to its requirements (i.e., those who voluntarily serve their clients, such as the Department of Prevention, Assistance, Transition and Health Access and the Vermont Department of Health).