

VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: Uses and Disclosures of Patient Information

APPLIES TO: VNS Health Home Care, including the Home Care, and Care Management Organization (CMO) divisions;
VNS Health Behavioral Health, Inc.;
VNS Health Personal Care;
VNS Health Hospice Care;
VNS Health Health Plans;
Medical Care at Home, P.C. (collectively, “VNS Health”)

POLICY OWNER: Corporate Compliance Department

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PURPOSE

This Policy and Procedure establishes the general rules which VNS Health will follow when using and disclosing the health information of its patients.

POLICY

I. PERMITTED USES & DISCLOSURES

A. **Protected Health Information.** HIPAA requires VNS Health to adhere to certain rules when using and disclosing protected health information (“PHI”) of its patients. “Protected health information” is defined by HIPAA as information, in any form or medium (including oral, written and electronic communications), that is created by VNS Health, relates to an individual’s physical or mental health and identifies, or could be reasonably expected to be used to identify, an individual. Once a patient has been deceased for more than 50 years, such information about him or her is no longer considered to be PHI.

PHI includes everything from a patient’s name, address, and telephone number to the clinical and billing records.

B. **Use and Disclosure for Treatment, Payment and Health Care Operations.** Consistent with VNS Health’s Joint Notice of Privacy Practices to patients, VNS Health may use and disclose PHI of its patients for VNS Health’s treatment, payment and health care operations

purposes.

No written consent or authorization is required for uses and disclosures of PHI for these purposes unless VNS Health receives direct or indirect remuneration (e.g., payment in any form) in exchange for the PHI.

Additionally, entities participating in the VNS Health Organized Health Care Arrangement (OHCA), may share PHI among and between themselves for the operations of the OHCA related to treatment, payment, and all activities contained in the definition of “healthcare operations”¹ without the requirement that each covered entity have a relationship to the subject individual. The entities participating in the VNS Health OHCA are: VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, Medical Care at Home, P.C., and VNS Health Health Plans.

C. Other Uses and Disclosures of PHI. VNS Health will not use or disclose PHI for purposes other than treatment, payment and health care operations, except that VNS Health may disclose PHI:

1. to the patient.

¹ Health care operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

(1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(3) Except as prohibited under § 164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;

(4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and

(6) Business management and general administrative activities of the entity, including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this subchapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer.

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

2. to entities participating in VNS Health OHCA as described above
3. for treatment activities of another health care provider (e.g., VNS Health can provide PHI to a physician in order to assist the physician in treating a patient).
4. to another Covered Entity for its payment activities (e.g., to a DME provider so that the DME provider can submit an insurance claim for services it provided).
5. to another Covered Entity for certain of its health care operations,² provided the Covered Entity and VNS Health each has or had a relationship with the patient and the PHI pertains to that relationship.
6. pursuant to a valid HIPAA authorization.
7. to a business associate,³ subject to the terms of the applicable business associate agreement.
8. to the U.S. Department of Health and Human Services in connection with compliance reviews and investigations, subject to the requirements of applicable law.
9. to a patient's family, friends and personal representatives as described in VNS Health policy regarding such disclosures.
10. to a person subject to the jurisdiction of the FDA for purposes related to a product approved by the FDA (e.g., incident reporting, tracking of products, product recalls or post-marketing surveillance).
11. for various legal, regulatory and employment purposes pursuant to VNS Health policy regarding such.
12. to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, subject to the requirements of HIPAA and applicable law.
13. in a limited data set that meets the requirement of HIPAA's privacy regulations, if VNS Health enters into a data use agreement with the limited data set recipient.
14. limited to proof of immunization, to a patient's school if a) the school is required by state or other law to have such proof of immunization before admitting the individual; and b) VNS Health has written or oral agreement from the patient or his or her personal representative, as applicable.

² The purpose of such disclosure must be for quality assurance activities, process improvement, case management, population-based activities relating to improving health or reducing health care costs, protocol development, contacts with health care providers and patients about treatment alternatives and related activities, training programs, accreditation, licensure, credentialing, or fraud and abuse compliance.

³ Business Associate means a person to whom VNS Health provides patient information and who performs a task or function on behalf of VNS Health.

15. as otherwise specifically permitted or required by federal regulations.

Note: HIV, alcohol and/or substance abuse and mental health treatment records and genetic information have additional confidentiality protections by state and federal law that must be followed. Questions concerning the disclosure of these types of information should be raised with the Chief Compliance and Privacy Officer.

D. Incidental Disclosures. Incidental uses or disclosures of PHI which occur as a by-product of an otherwise permitted or required use or disclosure are not considered to be violations of HIPAA, provided adequate safeguards have been put into place and minimum necessary policies have been implemented.

E. Covered Entity's Privacy Notice. VNS Health will provide patients with a copy of the Joint Notice of Privacy Practices, which describes VNS Health OHCA's uses and disclosures of PHI, the patient's privacy rights and the procedure for making complaints. In addition, VNS Health will make a good faith effort to obtain each patient's written acknowledgment of receipt of the Joint Notice of Privacy Practices. If VNS Health is unable to do so, it will document the attempts that were made and why such attempts were unsuccessful.

F. Patient Restrictions. A patient has the right to request restrictions on how VNS Health uses or discloses their PHI to carry out treatment, payment and health care operations.

1. VNS Health has to agree to restrictions made by patients to restrict disclosure of PHI to a health plan if: (a) the PHI pertains solely to health care items or services for which the patient has paid VNS Health in full; and (b) the disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law.

2. For all other patient restriction requests, VNS Health does not have to agree to such restrictions. When a request for a restriction is made by a patient, VNS Health will inform the patient of VNS Health's decision regarding a request for a restriction and will document that the request was made as well as the decision made by VNS Health. This is documented in the patient record, and such requests and decisions are tracked by the Chief Compliance and Privacy Officer or designee.

3. VNS Health staff may not agree to any restrictions on VNS Health's uses or disclosures of PHI without the prior approval of the Chief Compliance and Privacy Officer or designee.

If VNS Health agrees to a restriction requested by a patient, VNS Health will honor the restriction, unless the patient subsequently agrees to terminate the restriction⁴, and except when otherwise required to provide emergency treatment to the patient.

⁴ Either in writing or orally. Oral agreements to terminate a restriction should be documented by VNS Health in the patient record and on the log of the Chief Compliance and Privacy Officer.

G. Remuneration for PHI.

If VNS Health receives remuneration for PHI, VNS Health may not disclose PHI for any purpose unless it has obtained the patient's authorization, except as listed below.

1. VNS Health may disclose PHI for the following purposes even if it is receiving direct or indirect remuneration in exchange for disclosing PHI:

- (a) Public health activities;
- (b) Under the VNS Health OHCA;
- (c) Research purposes as long as the remuneration received is reasonable cost-based fee to cover the cost to prepare and transmit the information for research purposes;
- (d) Treatment and payment purposes;
- (e) Sale, transfer, merger, or consolidation of all or any part of VNS Health and for related due diligence;
- (f) Services rendered by a business associate at the specific request of VNS Health;
- (g) To a patient or their personal representative when requested; or
- (h) Otherwise required by law permitted under the privacy regulations.

II. PATIENT AUTHORIZATIONS

A. Authorization Required. If VNS Health intends to use or disclose PHI for purposes other than treatment, payment or health care operations, and when the use or disclosure is not otherwise authorized under HIPAA, VNS Health will first obtain a valid written and signed authorization from the patient or his or her personal representative. When VNS Health receives a valid authorization, all uses and disclosures pursuant to the authorization must be consistent with its terms.

B. Who Can Execute an Authorization. The following individuals are authorized to sign an authorization:

- 1. The patient, provided that he/she is competent and at least 18 years old;
- 2. A personal representative with the legal authority to make medical decisions for an incapacitated patient, such as a court appointed guardian authorized to make medical decisions, health care agent, surrogate, parent, or other person acting *in loco parentis* that has the legal authority to make medical decisions on behalf of a minor subject to VNS Health's policy and procedure regarding personal representatives;

3. A person, executor or administrator of a deceased patient who has the authority to act on behalf of a deceased patient or the patient's estate.

C. Documentation. VNS Health will retain a written, signed copy of such authorization. This documentation will be retained for six (6) years from the date of the authorization's execution or the date when the authorization was last in effect, whichever is later.

D. Defective Authorizations. VNS Health will not accept an authorization if:

1. the authorization's expiration date has passed, or the expiration event is known by VNS Health to have occurred;

2. the authorization that has not been filled out completely or contains material information known by VNS Health to be false;

3. the authorization is known by VNS Health to have been revoked or incorrectly created as a compound authorization.

E. Compound and Conditional Authorizations.

1. Except as indicated in this Section, VNS Health will not condition a patient's treatment or payment on the patient's providing an authorization.

(a) VNS Health may require an authorization if the purpose of providing the health care is to disclose the PHI to a third party.⁵

(b) VNS Health may also condition the provision of research-related treatment on the provision of an authorization.

2. Generally, an authorization for the use or disclosure of PHI will not be combined with any other document. Any type of authorization may, however, be combined with any other type of authorization, with the following exceptions and conditions:

(a) An authorization for a use or disclosure of psychotherapy notes can only be combined with another psychotherapy note authorization.

(b) An authorization for a research study may be combined with any other type of written permission for the same or another research study, including consent to participate in such research.

(c) An authorization for a research study that conditions the provision of research-related treatment on the provision of the authorization may be combined with an authorization for other research activities that are not conditioned upon the provision of the authorization, if the compound authorization clearly differentiates

⁵ For example, if a Covered Entity has a contract with an employer to provide fitness-for-duty exams to its employees, a Covered Entity can refuse to conduct the exam if the employee refuses to provide an authorization to disclose the exam results to the employer.

between the conditioned and unconditioned research components and provides the individual with an opportunity to separately opt into (or not opt into) the research activities that are not conditioned upon authorization. For additional information regarding the use of research authorizations refer to VNS Health's research policy.

- (d) Except for authorizations regarding conditioned research related treatment and unconditioned research, authorizations that condition the provision of treatment or payment cannot be combined with other authorizations.

F. Revocations. An individual can revoke his or her authorization, in writing, at any time, unless VNS Health has relied upon the authorization.

1. **Authorizations for Marketing.** Generally, VNS Health will not use or disclose PHI for marketing purposes unless it obtains a patient authorization. There are, however, several exceptions to the authorization requirement for marketing. Additionally, if marketing involves financial remuneration to VNS Health from a third party, the authorization form must state that such remuneration is involved. For questions regarding marketing authorizations, refer to Covered Entity's Marketing Policy.

2. **Authorizations for Fundraising.** The Covered Entity may use patient demographic information, dates of health care service, department of service information, treating physician, outcome information, and health insurance status of the patient for fundraising purposes, so long as this use of the information is described in the notice to patients. If the information is to be given to anyone other than a business associate or institutionally related foundation, a patient authorization is required. For questions regarding Fundraising authorizations, refer to VNS Health's Marketing Policy and HIPAA Fundraising policy.

III. VERIFICATION

Prior to disclosing any Protected Health Information ("PHI"), VNS Health will verify the identity and authority of all individuals requesting Protected Health Information, including access to or a copy of Protected Health Information, if the identity or authority of such individuals is not known.

A. Verifying Identity. Prior to disclosing any PHI, and if the identity of the person requesting PHI is not known, the VNS Health workforce member will request information to verifying the identity of the requesting party.

B. Authority. The VNS Health workforce member will obtain any documentation, statements, or representations, whether oral or written, from the person requesting the PHI to verify the authority of the person to receive the PHI requested.

C. Common Examples of Verifying Identity and Authority When it is Not Known.

1. If the requestor is a patient. Only the identity of a patient needs to be verified. Identity can be verified by the combination of a full name, address, date of birth, last four digits or the Social Security number or other demographic information checked against information maintained in the VNS Health computer system.

- (a) If a patient has provided a properly executed authorization for release of medical records form, requesting that his/her PHI be mailed to another party, the VNS Health workforce member is not required to verify the identity or authority of the party designated to receive the information.
- (b) If a patient has provided a properly executed authorization for release of medical records form, requesting that his/her PHI be picked up by another party or released over the phone, the VNS Health workforce member is not required to verify authority of the person to receive the information however, the VNS Health workforce member must verify the identity of the person to whom the PHI is being released.

2. If the requestor is not the patient. Identity may be verified through the ability to answer or provide specific identifying information regarding the patient or photo identification. Authority may be verified through legal documentation such as Letters of Guardianship, Power of Attorney, or documentation in the record that the person is a friend or family members involved in the patient's care (Refer to VNS Health Policy: *Disclosures to Family Members, Friends and Personal Representatives*). If there is no such documentation, you may ask for the patient to call back to provide verbal permission to speak with the family member or ask for a copy establishing the authority.

3. If the requestor is an outside healthcare provider or other covered entity. Verify the person's name, phone number and organization's name plus the ability to provide specific identifying information regarding the patient, and the purpose for the request, such as for treatment or payment. When in doubt return the call to the person at the provider's office.

4. If the requestor is a public official. VNS Health workforce member may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of PHI is to a public official or a person acting on behalf of the public official: presentation of an agency identification badge, other official credentials, or other proof of government status if the request is made in person; or appropriate letterhead if the request is received in writing. Requests by public officials should be directed to the Chief Compliance and Privacy Officer, who will consult with the Legal Department as appropriate, to determine if the proper authority exists for requests made by oral statement, warrant, court order, subpoena or other legal process.

IV. DECEASED INDIVIDUALS

These policies and prohibitions apply to Protected Health Information for 50 years after the patient is deceased.

V. DISCLOSURES BY WHISTLEBLOWERS AND WORKFORCE MEMBER CRIME VICTIMS

A. Disclosures by Whistleblowers. VNS Health is not considered to have made an improper disclosure if a member of its workforce or a business associate discloses protected health information, provided that:

1. The workforce member or business associate believes in good faith that VNS Health has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and

2. The disclosure is to: (1) a health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of VNS Health or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by VNS Health; or (2) an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to such conduct by VNS Health.

B. Disclosures by Workforce Members Who are Victims of a Crime. VNS Health is not considered to have made an improper disclosure if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that the protected health information disclosed is about the suspected perpetrator of the criminal act and the protected health information disclosed is limited to information for identification and location purposes.

REFERENCE: 45 CFR §§ 160.103, 164.501, 164.502; 164.508, 164.510, 164.512, & 164.522(a)

SEE ALSO: VNS Health Policy HIPAA.16-*Disclosures to Family Members, Friends and Personal Representatives*

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