

## VNS HEALTH CORPORATE POLICY & PROCEDURE

**TITLE:** Uses and Disclosures of PHI for Various Legal, Public Health, Regulatory and Employment Purposes

**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 Health Plans;  
VNS Health Hospice Care; and  
Medical Care at Home, P.C. (collectively, "VNS Health")

**POLICY OWNER:** Corporate Compliance Department

**FIRST ISSUED:** May 27, 2009

**NUMBER:** HIPAA.3

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### PURPOSE

In compliance with the Health Insurance of Accountability and Portability Act of 1996 and its implementing regulations (collectively, "HIPAA"), this Policy and Procedure establishes the general rules which VNS Health will follow when using and disclosing protected health information ("PHI") for various legal, public health, regulatory and employment purposes.

### POLICY

For the specific purposes described below, VNS Health may use or disclose PHI without first obtaining the patient or member's written authorization and without providing the patient/member with an opportunity to object. In addition, many of the disclosures permitted under this Policy must be included in VNS Health's accountings of disclosures per the accounting of the HIPAA Accounting Policy.

**Note:** HIV-related information, genetic information, alcohol and/or substance abuse records and mental health records may receive additional confidentiality protections under state and federal laws which are not preempted by HIPAA and must be followed. Questions concerning the disclosure of these types of information should be raised with the Privacy Officer or Legal Department.

## **I. USES AND DISCLOSURES MADE FOR HEALTH OVERSIGHT ACTIVITIES**

A. **Uses and Disclosures for Health Oversight Activities.** VNS Health may disclose PHI to a health oversight agency, (e.g., a Medicare carrier, Medicaid administrator, IPRO, etc.) for oversight activities authorized by law, including audits, civil, and criminal investigations or proceedings, inspections, licensure or disciplinary actions.

**Exceptions.** Health oversight activities do not include an investigations in which the patient/member is the subject of an investigation that does not arise out of and is not directly related to: (a) the receipt of health care; (b) a claim for public benefits related to health; or (c) qualification for, or receipt of, public benefits or services when a patient/member's health is integral to the claim. The rules governing disclosures for law enforcement purposes apply when the request is about a patient/member for other purposes.

If VNS Health is unable to determine whether a request for PHI is for a health oversight activity, VNS Health should either ask for an explanation of the purpose of the request and consult with the Privacy Officer.

## **II. USES AND DISCLOSURES FOR PUBLIC HEALTH.** VNS Health may disclose PHI:

A. **To Prevent or Control Disease.** If required by law for preventing or controlling disease, injury, or disability and the conduct of public health surveillance, interventions or investigations.

B. **To Report Child Abuse or Neglect.** To the New York State Central Registry or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

C. **To fulfill requirements of the Food and Drug Administration (FDA).** For the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such disclosures include, without limitation, disclosures made for the following purposes:

1. To collect or report adverse events, product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
2. To track FDA-regulated products;
3. To enable product recalls, repairs, replacements or lookbacks (including locating and notifying people who have received products subject to recalls, withdrawals or lookbacks); and
4. To conduct post-marketing surveillance.

D. **To Notify Persons of Exposure to Communicable Diseases.** If VNS Health is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation, e.g., anthrax.

E. **To Disclose Proof of Immunization to Schools.** If VNS Health obtains agreement, which may be oral, from a parent, guardian, or other person acting *in loco parentis* for the patient/member, or from the individual if he or she is an adult or emancipated minor. VNS Health should document any oral consent.

III. **USES AND DISCLOSURES FOR EMPLOYMENT PURPOSES.** VNS Health can use and disclose information about an individual who is a member of the workforce of the employer, if the following four requirements are met:

A. **Covered Entity is Provider.** VNS Health is a member of the workforce of such employer (e.g., on-site medical clinic), or provides health care to the individual at the request of the employer:

1. To conduct an evaluation relating to medical surveillance of the workplace; or
2. To evaluate whether the individual has a work-related illness or injury;

B. **PHI is Work-Related.** The PHI consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

C. **PHI is Required by Law.** The employer needs such findings in order to comply with its obligations to report and record occupational injuries and illnesses under Federal laws and related regulations, such as the Occupational Safety and Health Act, or similar state laws, or to carry out responsibilities for workplace medical surveillance; and

D. **Written Notice is Posted.** VNS Health provides written notice to the patient/member that the foregoing disclosure will be made to the individual's employer:

1. by giving a copy of the notice to the individual at the time the health care is provided; or
2. 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. **USES AND DISCLOSURES FOR LAW ENFORCEMENT PURPOSES**

A. **Disclosures Concerning Victims of Abuse, Neglect or Domestic Violence.**

1. Except for reports of child abuse as described above, Covered Entity may disclose PHI about a patient/member whom VNS Health reasonably believes to be a victim of abuse, neglect, or domestic violence, if the disclosure is to an appropriate government authority provided that the disclosure is either:

- (a) required by law and complies with and is limited to the relevant requirements of such law;
  - (b) agreed to by the patient/member; or
  - (c) authorized by statute or regulations, and:
    - (1) VNS Health reasonably believes that the disclosure is necessary to prevent serious harm to the patient/member or other potential victims; or
    - (2) the patient/member is unable to agree due to incapacity, and a government authority represents that the PHI sought is not intended to be used against the patient/member and an immediate enforcement activity would be materially and adversely affected by waiting until the patient/member is able to agree to the disclosure.
2. VNS Health must promptly inform the patient/member that such a report has been or will be made except in circumstances where:
- (a) VNS Health, in the exercise of its professional judgment, believes that informing the patient/member would put the patient/member at risk of serious harm; or
  - (b) VNS Health would be required to inform a personal representative of the patient/member, and VNS Health reasonably believes that
    - (i) such personal representative is responsible for the abuse, neglect, or other injury; and
    - (ii) informing such person would not be in the best interests of the patient/member.

**B. Disclosures to Law Enforcement Officials for Law Enforcement Purposes.<sup>1</sup>**

Disclosures may be made to law enforcement:

**Note:** PHI should not be disclosed pursuant to this Section without first speaking to the Privacy Officer, Compliance Department or Legal Department, as appropriate.

- 1. when required by law, including laws that require the reporting of certain types of wounds or other physical injuries;
- 2. in compliance with and as limited by the requirements of:
  - (a) a court order, a court-ordered warrant or summons issued by a judge; or

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<sup>1</sup> Refer to applicable State and Federal law before making disclosures pursuant to this Section. The release of PHI in response to subpoenas that are not accompanied by a court order or patient authorization is limited by State law and privileges (e.g. NY CLPR 3122 and 4504). Therefore, staff should not respond to such subpoenas unless authorized by the Privacy Officer.

- (b) an administrative request, including a subpoena or summons from an administrative agency, an investigative demand from an authorized body, or similar process authorized under law, provided that all three of the following requirements are met:
    - (1) the PHI sought is relevant and material to a legitimate law enforcement inquiry;
    - (2) the request is specific and limited in scope to the extent practicable in light of the purpose for which the PHI is sought; and
    - (3) De-identified information could not reasonably be used;
- 3. for the purpose of identifying or locating a suspect, fugitive, material witness or missing person, provided that only the following PHI is disclosed<sup>2</sup>:
  - (a) Name and address;
  - (b) Date and place of birth;
  - (c) Social security number;
  - (d) ABO blood type and Rh factor;
  - (e) Type of injury;
  - (f) Date and time of treatment;
  - (g) Date and time of death, if applicable; and
  - (h) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence facial hair, scars and tattoos;
- 4. except as otherwise noted herein, in response to a request about a patient/member who is or is suspected to be a victim of a crime, other than a domestic abuse victim, if:
  - (a) the patient/member agrees to the disclosure; or
  - (b) VNS Health cannot obtain the patient/member's agreement because of incapacity or other emergency circumstances; and

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<sup>2</sup> Except as otherwise permitted, VNS Health may not disclose any PHI related to an individual's DNA or DNA analysis, dental records or typing, samples or analysis of body fluids or tissue for purposes of locating or identifying an individual.

- (1) the law enforcement official states: that such PHI is needed to determine whether a person, other than the patient/member, violated the law, and is not intended to be used against the patient/member; and immediate law enforcement activity would be materially adversely affected by waiting until the patient/member-victim gains sufficient capacity to agree; and
  - (2) disclosure is in the best interest of the victim;
5. for the purpose of alerting an officer to the death of a patient/member which VNS Health suspects resulted from criminal conduct;
6. if VNS Health believes in good faith that the PHI is evidence of criminal conduct that occurred on VNS Health's premises;
7. if VNS Health provides emergency health care, other than an emergency occurring on the premises of VNS Health, and disclosure of the PHI is necessary to alert law enforcement to:
  - (a) the commission and nature of a crime;
  - (b) the location of the crime or victims of the crime; and
  - (c) the identity, description and location of the perpetrator of the crime.

C. **Identification a Deceased Person or Cause of Death.** Limited disclosures may be made to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or the performance of other duties authorized by law.

D. **Funeral Arrangements.** Limited disclosures, including disclosures prior to the patient/member's death, may be made to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the deceased person.

E. **Disclosures For Purposes of Workers' Compensation.** Limited disclosures may be made as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs that provide benefits for work-related injuries or illness without regard to fault. Disclosures for this purpose should not be made without first contacting the Human Resource Department or the Privacy Officer.

F. **To Avert a Serious Threat to Health or Safety.** Limited disclosures may be made if consistent with applicable law, and if VNS Health believes, in good faith, that the use or disclosure:

1. is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and such disclosure is made to a person or persons reasonably able to prevent or lessen the threat; or
2. is necessary for law enforcement authorities to identify or apprehend an individual:
  - (a) who appears from all the circumstances to have escaped from a correctional institution or from lawful custody; or
  - (b) due to a statement made by an individual admitting participation in a violent crime which may have caused serious physical harm to the victim, if such disclosure is limited to the contents of the individual's statement and provides only the PHI that can be disclosed when identifying a victim, as described above.

**EXCEPTION:** Use or disclosure under this section may not be made if the PHI was obtained by VNS Health in the course of treating the individual's tendency to engage in the criminal conduct that is the subject of the disclosure, or by means of a request by the individual to be treated or referred for treatment, counseling or therapy for such condition.

V. **Disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes.** VNS Health may use or

disclose PHI to organ procurement organizations for the purpose of facilitating organ, eye or tissue donation or transplantation.

VI. **DISCLOSURES FOR JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.** The release of PHI in response to subpoenas or discovery requests that are not accompanied by a court order or patient/member authorization is limited by state law and privileges (e.g., NY CLPLR 3122 and 4504). Therefore, staff should not respond to such subpoenas unless authorized by the Legal Department.

VII. **DISCLOSURES MADE TO VARIOUS GOVERNMENT AGENCIES.** VNS Health may disclose PHI in the following situations:

A. **Uses and Disclosures for Military and Veteran Activities.** Uses and disclosures may be made concerning individuals who are members of the armed forces or foreign military for activities deemed necessary by appropriate military command or foreign military authorities;

B. **Disclosures for National Security and Intelligence Activities.** Disclosure may be made to authorized Federal officials for the performance of lawful intelligence, counter-intelligence, and other national security activities authorized by applicable law;

C. **Disclosures for Protective Services for the President and Others.**

Disclosures may be made to authorized federal officials for the provision of protective services to the President or certain other executive persons or to foreign heads of state;

D. **Disclosures to Correctional Institutions and in Other Custodial Situations.**

Disclosure may be made to a correctional institution or a law enforcement official, if the appropriate individual represents that PHI about an inmate or individual in custody is necessary for:

1. the provision of health care to such individuals;
2. the health and safety of such individual or other inmates;
3. the health and safety of the officers or employees of or others at the correctional institution;
4. the health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, Covered Entity, or setting to another;
5. law enforcement on the premises of the correctional institution; and
6. the administration and maintenance of the safety, security, and good order of the correctional institution.

Because these are not routine occurrences, VNS Health's personnel should refer all questions regarding such disclosures to the Privacy Officer.

**REFERENCES:** 45 CFR § 164.512



<b>Reviewed:</b>	7/2010	9/2013	1/2015	11/2016	4/2018	11/2019
<b>Revised &amp; Approved:</b>		9/2013		11/2016	1/2019	1/2020
<b>Reviewed:</b>	11/2020	3/2022	6/2023			
<b>Revised &amp; Approved:</b>	3/2021	6/2022	9/2023			