

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

Using and Disclosing PHI	<b>Policy: 4.9</b>
Research – Using PHI	<b>Effective Date:</b> July 5, 2016
<b>References:</b> <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a> 45 CFR Part 164.512	
<b>TTUHSC El Paso HIPAA Website:</b> <a href="http://elpaso.ttuhscc.edu/hipaa/">http://elpaso.ttuhscc.edu/hipaa/</a>	

### **Policy Statement**

Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) recognizes that individuals' rights to privacy and confidentiality are a critical aspect of maintaining quality care and service and is committed to allowing individuals to exercise their right to privacy and confidentiality under the HIPAA Privacy Rule, and other applicable federal state and/or local laws and regulations. To support this commitment, TTUHSC El Paso will maintain and update, as appropriate, written policies and procedures to provide guidance on employee and organizational responsibilities regarding using, disclosing or requesting protected health information (PHI) to be used in research.

### **Scope**

This policy applies to all health care information handled service areas owned and/or operated by TTUHSC El Paso.

### **Definitions**

Refer to [HPP 1.1 for Glossary of HIPAA Terms](#).

### **Policy**

1. **De-Identified Health Information** is health information that is not “individually identifiable health information” “and, as such, is not protected by the Privacy Rule” because it does not meet the definition of PHI. Two methods of determining this are acceptable.

The first method is the “Expert Determination” method. If a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable determines:

- a) that the risk is very small that information could be used alone or in combination with other reasonably available information by an anticipated recipient to identify an individual who is the subject of the information; and
- b) documents the methods and results of the analysis that justify such determination.

The second method is the “Safe Harbor” method. This requires:

- a) that following eighteen (18) identifiers related to the patient, his/her relatives, employers or household members are removed:
  - 1) Names:

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

- 2) All geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for three digits of a zip code if according to the current publicly available data from the Bureau of the Census:
  - (a) the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people, and
  - (b) the initial three digits of a zip code for all such geographic units containing 20,000 people or fewer is changed to “000”
- 3) All elements of dates (except year) for that are directly related to an individual, including birth date, discharge date, and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category age 90 and older.
- 4) Telephone numbers;
- 5) Fax numbers;
- 6) E-mail addresses;
- 7) Social Security numbers;
- 8) Medical record numbers;
- 9) Health plan beneficiary numbers;
- 10) Account numbers;
- 11) Certificate/license numbers;
- 12) Vehicle identifiers and serial numbers;
- 13) Device identifiers and serial numbers including license plate numbers;
- 14) Web Universal Resource Locators (URLs);
- 15) Internet Protocol (IP) address numbers;
- 16) Biometric identifiers, including finger and voice prints;
- 17) Full face photograph images and any comparable images;
- 18) Any other unique identifying number, characteristic, or code, except as permitted under HIPAA (45 CFR 164.514(c) to re- identify data

**AND**

- b) The covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

2. **Human Subjects** are defined by the Department of Health and Human Services as living individuals about whom an investigator (whether professional or student) conducting research (45 CFR 46.102(e)(1) :
  - i. Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or
  - ii. Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.The FDA defines a human subject as an individual who is or becomes a participant in research, either as a recipient of the test article or as a control.

A subject may be either a healthy human or a patient.

3. **Limited Data Set** is a subset of de-identified information that includes dates and any specific identifiers (1, 2, and 4-18 listed above) that are required to be removed to create

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

de-identified information.

4. PHI means individually identifiable health information maintained or transmitted by TTUHSC El Paso or any other Covered Entity in any form or medium, including information transmitted orally, or in written or electronic form. PHI does NOT include employment records held by TTUHSC El Paso in its role as employer or education records covered by the Family Educational Rights and Privacy Act (FERPA) 45 CFR 160.103. See also HIPAA Privacy Policy 1.1 Glossary of Terms – HIPAA
5. **Research** means a systemic investigation, including research, development, testing and evaluation designed to develop or contribute to generalizable knowledge.
6. **TTUHSC El Paso Privacy Board** means the TTUHSC El Paso Institutional Review Board (IRB) designated pursuant to the TTUHSC El Paso IRB Policies and Procedures.

### Authorization

The HIPAA Authorization form or a request for a Waiver of Authorization shall be included in initial applications for any human research project which utilizes protected health information. Generally, TTUHSC El Paso investigators should obtain an “Authorization to Use and/or Disclose Your Protected Health Information for Research Study” before using or disclosing PHI.

Such authorization shall satisfy the requirements of 45 CFR § 164.508, except that the authorization may state that it does not expire, that there is no expiration date or event, or that it continues until the end of the research study. The authorization form may not be altered by an investigator. Any request to alter the HIPAA document should be submitted to the TTUHSC El Paso HIPAA Privacy Officer using the “Addendum to Authorization to Use and/or Disclose PHI for Research Study” form found at <https://elpaso.ttuhscc.edu/hipaa/>

The authorization form must be reviewed and signed at the same time as the consent to participate in research form and/or any other legal permission form related to the research study is completed. Research involving Psychotherapy Notes cannot be combined with any other Authorizations.

The original completed authorization form is retained by the investigator in the research regulatory binder. A copy of the authorization form shall be filed in the subject’s medical record.

### Waiver of Authorization

TTUHSC El Paso may also use and disclose specified PHI for research purposes without an individual’s authorization and/or without the necessity for an opportunity to agree or object under limited circumstances with documented Privacy Board approval. For purposes of HIPAA, the TTUHSC El Paso Institutional Review Board will act as Privacy Board as defined by 45 CFR Part 164.512(i). IRB administrators shall verify Privacy Board Agreements with affiliated Entities are in place prior to a Privacy Board Review. The IRB Director is a member of the Privacy Board and may acknowledge HIPAA waiver requests. All IRB decisions are documented in the IRB meeting minutes and communicated to the principal investigator and designated research team members via the iRIS system.

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

### Waiver of Authorization for Human Research

Principal Investigators may request to use and disclose specified PHI without an individual's specific authorization and/or without the necessity for an opportunity for the individual to agree or object for research purposes provided that the criteria required by 45 CFR 164.512(i) are satisfied. These criteria include:

- a) The intended use and/or disclosure of PHI involve no more than a minimal risk to the privacy of the individuals.
- b) The research could not practicably be conducted without the waiver.
- c) The research could not practicably be conducted without access to and use of the protected health information.

HIPAA Waiver questions are included in the IRB Application Form in iRIS and are to be completed by investigators who wish to request a waiver of HIPAA Authorization. Responses to the questions are reviewed by a member of the Institutional Privacy Board and will be acknowledged as part of the IRB review process.

### Waiver of Authorization Preparatory to Research

\*\*\*\*\*PHI may be used or disclosed to a researcher in preparation for research without an authorization consistent with 45 CFR Part 164.512(i)(1)(ii).

In order to obtain a Waiver of HIPAA Authorization in preparation for research, the Principal Investigator should complete the relevant section of the Principal Investigator's Request to Use and Disclose PHI Without an Authorization form found at <https://elpaso.ttuhscc.edu/hipaa/>. Completed forms should be submitted to the HIPAA Privacy Officer, to a local IRB Administrator (acting in the role of Privacy Board member) for review.

The review by a Privacy Board member is to assure each of the following:

- a) Use or disclosure is solely to review PHI as necessary to prepare a research protocol;
- b) PHI will not be removed from TTUHSC El Paso; and
- c) PHI is necessary for research purposes.

### Waiver of Authorization for Decedent Information

Principal Investigators may request to use and disclose specified PHI without an individual's specific authorization and/or without the necessity for an opportunity for the individual's family member(s) or representative(s) to agree or object for research purposes provided that the criteria required by 45 CFR 164.512(i)(1)(iii) are satisfied.

In order to obtain a Waiver of HIPAA Authorization to obtain information about a decedent's PHI, the Principal Investigator should complete the relevant section of the Principal Investigator's Request to Use and Disclose PHI Without an Authorization form found at <https://elpaso.ttuhscc.edu/hipaa/>. Completed forms should be submitted to the HIPAA Privacy Officer, to a local IRB Administrator (acting in the role of Privacy Board member) for review.

The review by a Privacy Board member is to assure each of the following:

- a) The use or disclosure is sought solely for research on the protected health information of decedents;

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

- b) ability to provide documentation of the death of such individuals; and
- c) That the protected health information for which use or disclosure is sought is necessary for the research purposes.

### **De-identified Data.**

A researcher may utilize a de-identified data set (as defined above) without a subject's Authorization.

### **Limited Data Set.**

A researcher may use a Limited Data Set (as defined above) for research purposes if the researcher enters into a Data Use Agreement. Refer to [HPP 6.2 Data Use Agreements](#).

Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or to the Fraud and Misconduct Hotline at (866) 294-9352 or [www.ethicspoint.com](http://www.ethicspoint.com) under Texas Tech University System.

### **Frequency of Review**

The TTUHSC El Paso Privacy and Security Committee have authority for HIPAA policy approval.

Questions regarding this policy may be addressed to the [Institutional Privacy Officer](#) or the [Institutional Compliance Officer](#).

The policy may be amended or terminated at any time.

**Review Date:** July 13, 2020

**Revision Date:** August 9, 2016, July 18, 2017, July 21, 2020