COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

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PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	L-4	Page 1 of 12
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The purpose of the Health Insurance Portability and Accountability Act ("HIPAA") is to protect and enhance the rights of consumers, to control the inappropriate use of health information, and to improve the quality, the efficiency, and the effectiveness of the health care system by promulgating standards and requirements mandated by law [45 CFR Parts 160-164]. HIPAA limits how covered entities may use or disclose protected health information ("PHI"). This policy is to establish guidelines for the use and/or disclosure of PHI as permitted or required by 45 CFR.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections

POLICY:

1. Written Authorization [45 CFR 164.508]

   El Dorado County shall not use or disclose PHI without a written authorization signed by the individual, or by the individual's personal representative, unless it is permitted or required by law. When El Dorado County receives or obtains a valid authorization, the use or disclosure of PHI must be consistent with such authorization.

2. Required Disclosures [45 CFR 164.524 or 45CFR 164.528]

   El Dorado County is required to disclose PHI in two circumstances:

   a. To the Secretary of U.S. Department of Health and Human Services to investigate a complaint or to determine compliance with HIPAA regulations.
   b. To an individual regarding their own information, when requested under certain rights to access, inspect, and copy their PHI and to obtain an accounting of disclosure.

3. Permitted Disclosures without an Authorization

   a. Treatment, payment, or health care operations [45 CFR 164.502 & 164.506]: Covered entities are permitted to use or disclose PHI for treatment, payment, or health care operations limited to the following:

i. Covered entities may use or disclose PHI for its own treatment, payment, or health care operations;

ii. Covered entities may disclose PHI for treatment activities of a health care provider;

iii. Covered entities may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information;

iv. Covered entities may disclose PHI to another covered entity for the health care operations if each entity has or had a relationship with the individual who is the subject of the requested PHI and the disclosure is:

A. For the purposes of conducting quality assessment and improvement activities;

B. For the purposes of reviewing the competence or qualifications of health care professionals;

C. For the purposes of health care fraud and abuse detection or compliance.

b. Covered entities that participate in an organized health care arrangement ("OHCA") may disclose PHI about an individual to another covered entity that participates in the OHCA for any health care operations activities of the OHCA [45 CFR 164.506(c)(5)].

c. Public health activities [45 CFR 164.512]: El Dorado County may use and/or disclose PHI without an individual's authorization to carry out its duties as a public health authority to lawfully receive, use, disclose, or exchange protected health information such as:

i. Collecting or receiving information for the purpose of preventing or controlling disease, injury, or disability. This includes reporting disease, injury, vital events such as birth or death, and conducting public health surveillance, investigations, and interventions;

ii. Disclosing information to a foreign government official at the direction of a public health authority;

iii. Receiving child abuse reports as a public health authority or other appropriate government authority authorized by law;

iv. Activities related to the quality, safety, or effectiveness of a federal Food and Drug Administration (FDA) regulated product or activity;

v. Notifying a person who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition;

vi. Disclosing PHI as permitted by 45 CFR 164.512(b)(1)(v) to an employer regarding an individual who is a member of El Dorado County's workforce if:

A. The covered entity is a covered health care provider who is:

I. A member of the workforce of El Dorado County, or

II. Who provides health care to the individual at the request of the El Dorado County:

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. The PHI that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

C. The employer needs the findings to comply with its obligations to record such illness or injury or to carry out its responsibilities for workplace medical surveillance and;

D. The covered health care provider distributes a written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

I. By giving a copy of the notice to the individual at the time the health care is provided, or

II. 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.

vii. Public health research.

d. Required by law: [45 CFR 164.512(a)]: El Dorado County may use or disclose PHI without an individual's authorization if required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law.

e. Victims of abuse, neglect, or domestic violence [45 CFR 164.512(c)]: A covered entity may disclose PHI about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a governmental authority, including El Dorado County's social service or protective services agencies 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 requirement 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:

A. The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims, or

B. 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 PHI 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.

f. Individual Access: El Dorado County's clients may access their own confidential information with certain limitations (refer to "Client Rights" policy).

g. Psychotherapy Notes [45 CFR 164.508 (a)(2)]: El Dorado County may use or disclose psychotherapy notes without an individual's authorization limited to:

i. Carry out treatment, payment, or health care operations, including use by the originator of the psychotherapy notes for treatment;

ii. Training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;

iii. Defend itself in a legal action or other proceeding brought by the individual;

iv. With respect to health oversight activities of the originator of the psychotherapy notes;

v. When required by law.

h. Minimum Necessary: El Dorado County may disclose confidential information for treatment, payment, or health care operations in compliance with "Minimum Necessary" policy.

i. Health oversight activities [45 CFR 164.512(d)]: El Dorado County may disclose PHI without an authorization for health oversight activities authorized by law, including: audits, quality assessment, accrediting/licensing of health care professionals and plans, compiling and analyzing information in anticipation of a civil or criminal legal proceeding, case management and care coordination, business planning and development, resolution of internal grievances (i.e., reviewing allegation of improper conduct), resolution of disputes from patients, or other activities necessary for oversight of the health care system including:

i. Government benefit programs for which health information is relevant to beneficiary eligibility;

ii. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards;

iii. Entities subject to civil rights laws for which health information is necessary for determining compliance.

Exceptions to health oversight activities: Health oversight activities does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to: the receipt of health care; a claim for public benefits related to health; qualification for or receipt of public benefits or services when a patient health is integral to the claim for public benefits or services.

j. Judicial and administrative proceedings [45 CFR 164.512(e)]: El Dorado County may disclose PHI without an authorization for judicial and administrative proceedings in response to an order of a court, subpoena, discovery request, or other lawful process unless prohibited, or otherwise limited, by federal or state law applicable to program or activity requirements.

k. Law enforcement purposes [45 CFR 164.512(f)]: El Dorado County may:

i. Report certain injuries or wounds;

ii. Provide PHI to identify or locate a suspect, victim, or witness;

iii. Alert law enforcement of a death as a result of criminal conduct;

iv. Provide confidential information which constitutes evidence of criminal conduct on the premises of El Dorado County

v. Provide confidential information in compliance with and as limited by the relevant requirement of court order, subpoena, or similar process authorized by law;

vi. If confidential information is to be disclosed to locate a suspect, fugitive, material witness, or missing person, the County may only disclose the following:

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;

H. Distinguishing physical characteristics.

l. Decedents [45 CFR 164.512(g)]: El Dorado County may disclose PHI to a coroner or medical examiner to identify a deceased person, determine a cause of death, or other duties as authorized by law.

m. Funeral Directors [45 CFR 164.512(g)]: El Dorado County may disclose PHI to funeral directors, consistent with applicable law, as needed to carry out their duties or prior to in reasonable anticipation of an individual's death.

n. Cadaveric organ, eye or tissue donation [45 CFR 164.512(h)]: El Dorado County may disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue to facilitate donation and transplantation.

o. Research [45 CFR 164.512(i)]: El Dorado County may disclose PHI for research purposes, as specified in the policy "Research Use and Disclosure".

p. To avert serious threat to health or safety [45 CFR 164.512(j)]: Subject to certain limitation in 45 CFR 164.512(j)(2), PHI may be disclosed if El Dorado County believes in good faith the disclosure is necessary to:

i. Prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and to

ii. An individual(s) reasonably able to prevent or lessen the threat, including the target of the threat;

iii. Inform law enforcement officials to identify or apprehend an individual admitting participation in a violent crime or it appears the individual has escaped from lawful custody.

q. Correctional institutions [45 CFR 164.512(k)]: El Dorado County may disclose PHI to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of the inmate, other inmates, individuals, or the officers and employees of the correctional institution.

r. Specialized government functions [45 CFR 164.512(k)]: El Dorado County may disclose PHI for specialized government functions, including authorized federal officials for conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by law.

s. Reporting crime in an emergency [45 CFR 164.512(f)(6)]: A covered health care provider providing emergency health care in response to a medical emergency, other than emergency on the premises of the covered health care provider, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
   i. The commission and nature of a crime;
   ii. The location of such crime or the victim(s) of such crime; and
   iii. The identity, description, and location of the perpetrator of such crime.

   Exception: If the covered health provider believes the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (e) of this section.

4. Re-disclosure of PHI [45 CFR 164.508 (c)(2)]
   a. Unless prohibited by state and federal laws, PHI held by El Dorado County and disclosed pursuant to a client's authorization, may be subject to re-disclosure and no longer protected by this policy if the recipient is not subject to federal or state privacy laws, court protective order, or other lawful process.
   b. Federal regulations 42 CFR Part 2 and 34 CFR 361.38 prohibit El Dorado County from making further disclosure of vocational rehabilitation and alcohol and drug rehabilitation confidential information without specific written authorization from the individual to whom it pertains.
   c. CA Health & Safety Code § 120980 prohibits further disclosure of HIV tests and information.
   d. CA Civil Code 56.17 prohibits further disclosure of genetic information without specific written consent from the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical information is not sufficient for this purpose.
   e. CA W & I 4908 places restriction on re-disclosure of information regarding clients of publicly funded mental health or developmental disability providers.

5. Authorization is Not Required, Given the Opportunity to Agree or Object [45 CFR 164.510]
   a. In limited circumstances the County may use or disclose PHI, without an authorization provided:
      i. The individual is informed in advance and given the opportunity in advance to agree or object;

ii. Unless otherwise protected by law, the County may orally inform the individual and obtain and document the individual's oral agreement.

Exception: For individuals receiving alcohol and drug, mental health, or vocational rehabilitation services, oral permission is insufficient and written authorization is required.

b. Disclosures are limited to a family member, other relative, or close personal friend, or any other person named by the individual involved in the individual's care.

6. Rescinding an Authorization
   a. An individual can cancel an authorization by submitting a signed written request to the County **except** when:
      i. The county has taken action in reliance on the authorization;
      ii. The authorization was obtained as a condition of obtaining insurance coverage, and another law provides the insurers with the right to contest a claim under the policy or the policy itself;
      iii. For alcohol and drug treatment participants who may orally revoke an authorization to disclose alcohol and drug treatment programs. Oral revocations must be documented and maintained in the individual's record.

7. Verification of Identity [45 CFR 164.514(h)]
   a. Verification of identity and the authority of a person requesting protected health information will be made prior to any disclosure if the identity or authority of such person is not known.
   b. Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the PHI when such documentation, statement, or representation is a condition of the disclosure.

8. Request Denials

   El Dorado County shall deny any request for confidential information without a signed authorization unless it is permitted or required by law.

PROCEDURE:

1. Authorization requirements

   Unless permitted or required by law, El Dorado County may not use or disclose PHI without a valid authorization [45 CFR 164.508]. When El Dorado County obtains or receives a valid authorization, the use or disclosure of PHI must be consistent with the authorization.

   a. Elements of a valid authorization [45 CFR 164.508 & Civil Code 56.10-56.16]:
      i. A description of the information to be used or disclosed that identifies the information in a specific and meaningful way.
      ii. The name or other specific identification of the person or organization authorized to make the request.
      iii. The name or other specific identification of the person or organization authorized to release the information.
      iv. The specific purpose for the use and/or disclosure. “At the request of the individual” is sufficient when the individual initiates the authorization and does not elect to provide a statement of purpose.
      v. An expiration date or an expiration event (e.g., end of research study).
      vi. Signature and date, if signed by a personal representative, a description of the personal representative’s authority to act on behalf of the individual.
      vii. Written in plain language.
      viii. A statement of the individual’s right to revoke the authorization in writing and instructions how to revoke the authorization.
      ix. A statement that the individual signs the authorization voluntarily and El Dorado County’s may or may not condition treatment, payment, enrollment, or eligibility for benefits by stating either:
         A. El Dorado County may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when it is prohibited to condition authorizations, or

B. The consequences to the individual who refuses to sign the authorization when El Dorado County can condition treatment, enrollment in the health plan, or eligibility for benefits.

x. A statement describing the potential that the information disclosed pursuant to the authorization may be subject to re-disclosure and may no longer be protected.

xi. Type face as mandated by CA Civil Code.

xii. Statement the individual has the right to receive a copy of the authorization.

xiii. Additional elements may be added to the authorization pursuant to specific programs or other state and federal requirement consistent with HIPAA regulations.

b. An authorization [45CFR 164.508] is invalid if the:

i. Expiration date has passed or the event is known to have occurred;

ii. Form has not been filled out completely, or is missing element(s) as described in this section;

iii. Authorization is known to be revoked;

iv. Information in the authorization is known to be false.

c. Compound authorizations [45 CFR 164.508 (b) (3)]: An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization except as follows:

i. An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of PHI for such research or a consent to participate in such research;

ii. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.

d. El Dorado County may only obtain, use, or disclose PHI if the written authorization includes all the required elements of a valid authorization and only use or disclose PHI consistent with the authorized release of information.

e. Prohibition on conditioning of authorization [45 CFR 164.508 (b)(4)]: El Dorado County may not condition an individual's treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, with the following exceptions:
   i. A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;
   ii. A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:
      A. The authorization sought is for the health plan (s) eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and
      B. The authorization is not for a use or disclosure of psychotherapy notes, and
   iii. A covered entity may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of PHI to such third party.

f. A signed authorization is required in the following situations:
   i. Prior to an individual's enrollment in the County's administered health plan, if necessary for determining eligibility or enrollment;
   ii. For the use and disclosure of psychotherapy notes (except as listed in section 3. g. of this policy)
   iii. For disclosures to an employer for use in employment related determinations;
   iv. For research purposes unrelated to the individual's treatment;
   v. For any purpose in which state or federal law requires a signed authorization;
   vi. For marketing purposes except for:
      A. Face-to-face communications with the individual;
      B. Promotional gift or nominal value provided by the County.
   vii. To provide health care that is solely for the purpose of creating protected health information to disclose to a third party. For example, in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by El Dorado County, the evaluator may as a

condition of conducting the evaluation, require the parent to sign an authorization to release the evaluation report (but not the underlying psychotherapy notes) to El Dorado County.

g. Signed authorizations must be retained for a minimum of six years from the date the authorization was last in effect or as required by law [45 CFR § 164.105 (c)(1)].

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164