

POLICIES AND PROCEDURES
TOPIC: Patient Accounting of Disclosures
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I. BACKGROUND AND PURPOSE

The purpose of this policy is to recognize and accommodate the right of a Patient to request and receive an accounting of certain disclosures concerning their Protected Health Information. This policy describes the WVHIN’s responsibility as it relates to facilitating a Patient’s ability to obtain information regarding the access and disclosure of their Protected Health Information through the Health Information Exchange.

II. POLICY

The HIPAA Privacy Standards grant Patients the right to request and receive an accounting for some disclosures of Protected Health Information. A disclosure simply means any release, transfer, provision of access to, or revealing in any manner information held by a Participating Organization or Business Associate to an outside party. A right to an accounting only applies to certain disclosures of Protected Health Information, not to uses of Protected Health Information.

Upon receipt of a request from a Patient, Participating Organizations are required by the HIPAA Privacy Standards to make available an accounting of certain disclosures of the Patient’s Protected Health Information. The accounting applies to disclosures of paper and electronic Protected Health Information up to a period of 6 years prior to the date of the request. An accounting provided by a Participating Organization must include disclosures to and by its Business Associates.

The HITECH Act extended a Patient’s right to an accounting to include disclosures to carry out Treatment, Payment and Health Care Operations through an electronic health record (EHR). A Patient has a right to receive an accounting of such disclosures made during the 3 years prior to the request. With respect to disclosures by Business Associates through an EHR to carry out Treatment, Payment and Health Care Operations on behalf of a Participating Organization, the HITECH Act requires the Participating Organization to provide either an accounting of the Business Associates’ disclosures or a list and contact information of all Business Associates.

The HITECH Act provides that the effective date of the accounting requirement for HIPAA Participating Organizations that have acquired an EHR after January 1, 2009 is January

1, 2011, or the date that it acquires an EHR, whichever is later. For Participating Organizations that acquired EHRs prior to January 1, 2009, the effective date is January 1, 2014.

The HIPAA Privacy Standards contain certain exceptions to the accounting of disclosures requirement. Participating Organizations and their Business Associates are not required to include the following in a response to a request for accounting:

- ▶ Disclosures made to carry out Treatment, Payment and Health Care Operations, unless the Participating Organization has obtained an EHR within the time frames set forth above;
- ▶ Disclosures made to the Patient about themselves;
- ▶ Disclosures made that were incidental to a use or disclosure otherwise permitted or required for Treatment, Payment or Health Care Operations;
- ▶ Disclosures made to carry out a Patient's authorization;
- ▶ Disclosures made, as may be applicable, for a Participating Organization's facility directory;
- ▶ Disclosures made to persons involved in the Patient's care;
- ▶ Disclosures made for purposes of notifying a person responsible for a Patient's care and for which the Patient had an opportunity to agree or object;
- ▶ Disclosures made for national security or intelligence purposes;
- ▶ Disclosures made to correctional institutions or law enforcement in custodial situations; and
- ▶ Disclosures of a limited data set made in accordance with a specific data use agreement.

The WVHIN is not a Covered Entity. It is not contemplated that the WVHIN will act as a depository of a Designated Record Set containing Protected Health Information for or on behalf of any of its Participating Organizations, but will instead facilitate the exchange of Protected Health Information between Participating Organizations for one or more Permissible Purposes.

Participating Organizations are the originators of the Protected Health Information, and maintain the Designated Record Sets in which this information resides. Likewise, Participating Organizations make the determination whether to disclose Protected Health Information and log the disclosure if required to do so under the HIPAA Privacy Standards, the HITECH Act and their implementing regulations. As such, the Participating Organization whose accounting of

disclosures is being sought by a Patient is the only organization that can logically evaluate and provide for a full accounting of the Patient's Protected Health Information disclosures.

For example, under the HIPAA Privacy Standards, a Participating Organization may be required to temporarily suspend a Patient's right to an accounting if requested by a health oversight agency or law enforcement official in writing. Only the Participating Organization will receive this request to suspend an accounting and therefore, any request for an accounting must be directed to the Participating Organization(s) retaining Patient Protected Health Information for the Participating Organization to fully evaluate the request and a suitable response to the request.

Accordingly, if a Patient makes a request to the WVHIN for an accounting of disclosures of his or her Protected Health Information, the WVHIN will forward that request in writing to the applicable Participating Organization(s) within 10 business days. The Participating Organization(s) will be solely responsible for preparing and delivering the requested accounting to the Patient in accordance with the HIPAA Privacy Standards, the HITECH Act and any applicable implementing regulations. If necessary and the Participating Organization makes such a request, the WVHIN will make available to the Participating Organization disclosures pertaining to a specific Patient request for accounting as required by applicable law.

III. PROCEDURES

A. Patient Responsibilities.

1. A Patient must direct all requests for an accounting of disclosures of his or her own Protected Health Information in writing to the applicable Participating Organization(s).

2. A Patient has the right to receive one free accounting from each Participating Organization every 12 months. Patients may be charged a fee for additional accountings from a Participating Organization if the Patient is aware of the fee in advance and is provided an opportunity to withdrawal or modify the request for an additional accounting.

3. A Patient has the right to receive an accounting from a Participating Organization within 60 days of the Participating Organization's receipt of the request, unless otherwise notified.

B. Participating Organization Responsibilities.

1. All requests for accounting of disclosures of Protected Health Information made by or on behalf of a Patient will be directed in writing to the applicable Participating Organization(s) by either the Patient or by the WVHIN.

2. The applicable Participating Organization(s) will be solely responsible for evaluating the request and determining whether an accounting may be made to the Patient in compliance with all applicable federal and state legal requirements.

3. If a Participating Organization determines that a Patient is entitled to an accounting of disclosures to some or all of his or her Protected Health Information, then the applicable Participating Organization(s) will be solely responsible for the provision of a written response to the Patient within 60 days of receipt of the Patient's request.

4. If a Participating Organization is unable to respond to a request for an accounting within 60 days of receipt, a Participating Organization may request a one-time 30 day extension of time to respond by notifying the Patient in writing of the reasons for delay and the expected date the accounting will be provided.

5. A Participating Organization is solely responsible for providing a response to a Patient request for accounting which includes disclosures required by applicable law on behalf of the Participating Organization and the WVHIN.

6. A Participating Organization may request the WVHIN to provide the Participating Organization with an accounting of disclosures of a Patient's Protected Health Information made through the Health Information Exchange to enable the Participating Organization to respond to a request for an accounting by the Patient. Participating Organizations must forward that request in writing to the WVHIN within 10 business days after receipt of a request for accounting of disclosures.

7. The actual provision of an accounting of disclosures to a Patient by the Participating Organization(s) must be accomplished in compliance with all legal requirements, including but not limited to, the requirements of the HIPAA Privacy Standards and the HITECH Act and their implementing regulations.

C. WVHIN Responsibilities.

1. The WVHIN will ensure that the Health Information Exchange has the capacity to track all disclosures of Patient Protected Health Information by each Participating Organization made through the Health Information Exchange. Disclosures should be tracked in accordance with the following standards:

- (i) If the disclosure is from one Participating Organization to another Participating Organization for Treatment, Payment, or Health Care Operations, a record of the disclosure must be maintained for at least 3 years from the date of disclosure. The information tracked shall be sufficient to enable a Participating Organization to provide an accounting to the Patient in compliance with applicable laws.
- (ii) If the disclosure is from the WVHIN to another party for Public Health Reporting or any other purpose permitted by WVHIN Policies and Procedures, a record of the disclosure must be maintained for at least 6 years from the date of disclosure. The information tracked for such disclosure shall include:

- a. The date of the disclosure;
- b. The name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person;
- c. A brief description of the Protected Health Information disclosed; and
- d. A brief statement of the purpose of the disclosure that reasonably informs the Patient of the basis for the disclosure.

2. The WVHIN shall not be obligated to nor will it directly respond to accounting requests received directly from a Patient.

3. Any Patient request for an accounting of disclosures of his or her Protected Health Information made to the WVHIN will be forwarded in writing to the applicable Participating Organization(s) within 10 business days for handling. The WVHIN will acknowledge receipt of the Patient's request for an accounting and notify the Patient in writing that their request has been sent to the Patient's Health Care Provider/Plan for processing and a response.

4. If a Participating Organization deems it necessary, the WVHIN shall make available to the Participating Organization information about the Health Information Exchange's disclosures of Protected Health Information, if any, that must be included to fully and properly respond to the Patient's request for accounting.

5. The WVHIN shall be obligated to provide an accounting of only those disclosures made through the Health Information Exchange within the following time periods:

- (i) If the disclosure is from one Participating Organization to another Participating Organization for Treatment, Payment, or Health Care Operations, the accounting must include only those disclosures made during the 3 year period immediately preceding the date of the Patient's request.
- (ii) If the disclosure is from the WVHIN to another party for Public Health Reporting or any other purpose permitted by the WVHIN Policies and Procedures, the accounting must include only those disclosures made during the 6 year period immediately preceding the date of the Patient's request, or the period during which the Participating Organization has had connectivity with the WVHIN immediately preceding the date of the Patient's request, whichever is shorter.

6. The WVHIN shall respond to a Participating Organization's request for an accounting within 30 days of the WVHIN's receipt of the request. For each disclosure for which an accounting must be provided, the WVHIN's response shall include all information the

WVHIN is obligated to track pursuant to applicable laws, including but not limited to the HIPAA Privacy Standards and the HITECH Act.