



Exchanging PHI under HIPAA: A Guidance Document for Care Coordinators

Cook County Health (CCH), through its health plan, CountyCare, has contracted with various organizations to perform care coordination services for a certain portions of its member population. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule allows covered entities, such as physicians, health plans and other health care providers, to use or share a patient's Protected Health Information (PHI) without having to get patient authorization, in certain situations. For example, a doctor's office may share a patient's PHI with a health plan in order to support patient care coordination, care management, and quality of care efforts without obtaining the patient's authorization. Below are some frequently asked questions (FAQs) about HIPAA and the types of information that can be shared that may be helpful when communicating with providers regarding care coordination activities.

Q1: What is the HIPAA Privacy Rule?

A1: HIPAA stands for the Health Insurance Portability and Accountability Act, a law that was passed by Congress in 1996. The HIPAA Privacy Rule applies to providers and health plans and establishes national standards to protect patient's protected health information (PHI). The Rule requires that providers take appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of this type of information without patient authorization. The Privacy Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records and to request corrections.

Q2: What is Protected Health Information (PHI)?

A2: PHI is any information in a medical record that can be used to identify an individual and that was created, used, or shared in the course of providing a health care service, such as a diagnosis or treatment. PHI includes any personally identifiable information in medical records and even refers to conversations between doctors and nurses about treatment. PHI also includes billing information and any patient-identifiable information in a health insurance company's computer system.

Q3: When is health plan member authorization not required for sharing PHI?

A3: Under HIPAA, health plan member authorization is usually not required when sharing PHI for three types of reasons: for treatment, payment, or health care operations. Additionally, where any law requires disclosure of specific types of PHI, health plan member authorization is not required. For all other disclosures of PHI, written authorization must be obtained from the health plan member before any PHI is disclosed. For example, where a law firm requests PHI regarding a health plan member, a written authorization from the member must be obtained before the PHI may be provided to the requestor. Please refer to the *CountyCare Authorization to Disclose Health Information* form for more information needed for written authorization by the health plan

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member. If you find yourself in a situation where you are not sure whether you can disclose certain PHI, please contact your manager or the CountyCare Compliance Officer.

Q4: What activities are considered “health care operations?”

A4: “Health care operations” are certain administrative, financial, legal, and quality improvement activities of a provider or health plan that are necessary to run its business and support core treatment or payment functions. Care coordination activities are included within the definition of health care operations.

Q5: What does “care coordination”/ “care coordinator” mean?

A5: Care coordination is the organization of patient care activities to assist in the delivery of health care services. Organizing care involves using personnel and other resources needed to carry out all required patient care activities and is often managed by exchanging information among participants responsible for different aspects of care.

Care coordinators help patients by organizing treatment across multiple health care providers. CountyCare Care Coordinators act on behalf of CountyCare (and other providers serving CountyCare enrollees assigned to the entity) to organize treatment for patients.

Q6: When does a care coordinator’s use and disclosure of PHI fit under “health care operations?”

A6: Care coordinators may use or disclose a member’s PHI to other CountyCare employees or business associates, without getting member authorization, in order to carry out the following types of health care operations:

- Quality assessment and improvement activities;
- Population-based activities for improving health or reducing health care costs; and
- Case management and care coordination. This would include the coordination of health care services on behalf of members enrolled in its care management programs.

For all other uses and/or disclosures of PHI that do not fall under the activities described above, written authorization must be obtained from health plan member.

Q7: When I contact other provider offices for referrals or consults, how much PHI may I share?

A7: When contacting other providers for referrals or consults, care coordinators should be careful to only share information that is general in nature and does not qualify as PHI. This includes any information shared over the phone and by email/fax/mail. Where absolutely necessary, care coordinators are permitted to share a member’s PHI with another provider for care coordination and case management purposes if all three requirements below are met:

1. The provider must have, or have had, a relationship with the member (can be a past or present patient); and
2. The PHI shared must pertain to the relationship; and

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3. Only the minimum information necessary is shared with the provider in relation to the referral or consult in question (*see FAQ 10 for more information*).

Where you are contacting a non-treating provider in order to set up a referral or for consultation purposes, member PHI may not be disclosed without obtaining their authorization.

Q8: What if I need to disclose PHI to contractors or subcontractors outside of CountyCare?

A8: If PHI is going to be shared with contractors or subcontractors outside of the CountyCare administrative staff, a Business Associate Agreement (*see FAQ 9 for more information*) must be in place to ensure that the information shared is properly protected. These disclosures of PHI must also meet the minimum necessary standard (*see FAQ 10 for more information*). If you find yourself in this situation, please contact your manager or the CountyCare Compliance Officer to ensure that a proper Business Associate Agreement is in place before disclosing the PHI in question.

Q9: What are “Business Associate Agreements?”

A9: A business associate is a person or organization that creates, receives, maintains, or transmits PHI to perform a function or activity on behalf of a health plan or provider. For example, business associates may be responsible for billing, claims processing or administration, data analysis, utilization review, quality assurance, legal or patient safety activities.

Under HIPAA, providers and health plans must enter into agreements with their business associates in order to (1) ensure that the business associate appropriately protects PHI; and (2) specifically define and limit the uses and disclosures of PHI that the business associate is allowed to make.

Q10: What is the “minimum necessary” standard under HIPAA?

A10: Generally, any use or disclosure of PHI for payment or health care operations must meet the minimum necessary standard. This means that providers, health plans and business associates that use, share, or request PHI must make reasonable efforts to *limit* PHI to the minimum amount of PHI that is reasonably necessary to achieve the purpose of the use, sharing, or request. This also means that individuals should not share or access information regarding health plan members unless they need this information to do their job. For example, when sharing a member’s information with a provider for care management purposes, only information pertinent to the specific care management issue may be shared, not the entire the patient record. The minimum necessary standard does not apply to disclosures to or requests between providers for treatment purposes.

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Q11: What does member information concerning “sensitive health services” include, and what types of information can I share?

A11: “Sensitive health services” are generally those that include mental health, developmental disabilities and behavioral health services, or other services that involve the treatment of highly stigmatized conditions (e.g., AIDS/HIV, STDs, etc.). Federal and state privacy laws allow for the sharing of PHI related to sensitive health services for care coordination purposes without member consent, except for psychotherapy notes, which are personal notes recorded by a provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are maintained separate from the rest of the patient’s medical record. In order to disclose psychotherapy notes for care coordination purposes, health plan member authorization must be obtained.

However, psychotherapy notes do not include any information about mental health services rendered, providers rendering the services, pharmaceuticals prescribed or dispensed, and diagnoses (e.g., summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date). This information may be shared for care coordination purposes without member authorization. (See FAQ 13 for more information).

Federal law also prohibits sharing certain substance abuse diagnosis and treatment information for care coordination purposes (see FAQ 12 for more information).

Q12: Can I disclose PHI related to substance abuse diagnosis and treatment for care coordination purposes without member consent?

A12: Maybe. Certain PHI related to substance abuse diagnosis and treatment is prohibited from being used for care coordination purposes.

While HIPAA may allow for the disclosure of PHI for care coordination purposes, the federal 42 CFR Part 2 Program (“Part 2”) law and regulations do not permit the use and disclosure of substance abuse diagnosis and treatment records, maintained in connection with the performance of any federally assisted alcohol and drug abuse program (“covered program”), for care coordination purposes.

A Part 2 covered program is any program that receives Federal dollars and holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment. Part 2 requirements apply to any information disclosed by a covered program that identifies an individual, directly or indirectly, as having a current or past drug or alcohol problem, or as a participant in a covered program. This includes information related to the identity, diagnosis, prognosis, or treatment of a member in a substance abuse program. Where Part 2 information

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has been disclosed to a provider or health plan, that provider or health plan is not permitted to disclose the information further without the member or patient consent.

However, if the substance abuse information is learned from the member directly, such as disclosed on a Health Risk Assessment, or identified through a non-Part 2 provider, such as an emergency room or detox unit, then it can be used for care coordination purposes without member consent.

It can be confusing and difficult to navigate the requirements related to disclosure of substance abuse PHI. As such, care coordinators should check with the CountyCare Compliance officer if they should have any questions.

Q13: What other health plans or providers can I share member information with concerning sensitive health services (including those related to mental and behavioral health)?

A13: Under HIPAA and Illinois law, certain types of information concerning sensitive health services can be shared without member authorization between a health plan and:

- Providers caring for the health plan member/patient (with either a past or current relationship with the member);
- Care coordinators caring for the CountyCare health plan member/patient; and
- Employees of CountyCare, in the course of its internal health plan operations.

If the health plan or provider does not meet the criteria outlined above, the PHI containing sensitive health services may not be disclosed without health plan member authorization. But remember, you may not share psychotherapy notes or certain PHI concerning substance abuse diagnosis or treatment information without obtaining health plan member consent, even if the requirements above are met.

Q14: How do I make sure that I am sending PHI safely and securely under HIPAA?

A14: Always use appropriate protections to prevent an impermissible use or sharing of PHI:

- Make sure to encrypt and secure PHI in an email before sending.
- Ensure that any electronic device used to send PHI is password-protected.
- Ensure that any electronic device used to send PHI has up-to-date security software.
- Do not send PHI in paper form without written patient authorization (See the *CountyCare Authorization to Disclose Health Information* form) signed by the health plan member.

Q15: When can I share PHI with a health plan member's family or friends?

A15: HIPAA allows a health plan to share PHI with a health plan member's family or friends where the health plan member has signed the *CountyCare Authorization to Disclose Health Information* or *Authorized Representative Form*. The *Authorization to Disclose Health Information Form* instructs

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CountyCare to allow Customer Service to speak to another person the member designates or allows for a specific release of information. The *Authorized Representative Form* allows that family member or friend to act on behalf of the health plan member.

Where the health plan member is present in the conversation with the family or friend (e.g., on the phone), PHI can also be shared, as long as the health plan member orally agrees to the disclosure. If the health plan member is NOT present and HAS NOT signed an Authorized Representative Form, the PHI cannot be shared with the family member or friend.

Q16: When can I share PHI about a health plan member with their family members or others if I believe that the health plan member presents a serious danger to themselves or others?

A16: It depends. The answer to this question varies depending upon the details of the situation. The HIPAA rules generally state that care coordinators may not release PHI to individuals other than the health plan member without either prior written consent from the member (e.g., CountyCare *Authorization to Disclose Health Information* or *Authorized Representative Form*) or oral consent, obtained from the member on the phone at the time of disclosure. (See *FAQ 15 for more information*). However, where a care coordinator feels there is reasonable belief that the member presents a serious or imminent danger to themselves or others, the HIPAA Privacy Rule allows for the disclosure of necessary PHI to relevant individuals, including family members, the target of the threat, or other individuals who are able to prevent or lessen the threat.

Before sharing PHI for these purposes, the care coordinator must first consult with their supervisor regarding the information that will be shared and whether disclosure will be appropriate, given the facts of the scenario. Once the decision to share information is approved by a supervisor, the care coordinator must carefully document the situation and supervisor approval in the member's case management system file. The following information must be included in the health plan member's file:

- The date and time of the disclosure
- The information disclosed about the health plan member
- The recipient of the information (e.g., the family member name)
- The reasoning for why serious danger was involved
- The reasoning for why disclosure to the individual (who is not the member) was necessary
- The name of the supervisor who approved the disclosure
- The date and time that supervisor approval was obtained

Where a Care Coordinator Supervisor has questions related to the potential disclosure, the CountyCare Compliance Department can be contacted for further guidance.

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Q17: When can I share and/or discuss PHI regarding a minor child with their parent or guardian? Does the minor have to be present for these conversations?

A17: Any child under the age of eighteen (18) is considered a “minor” under the HIPAA requirements. The HIPAA rules generally allow a parent or guardian to have access to medical information about his or her child, as his or her minor child’s personal representative, when such access is consistent with State or other law. This means that information regarding a child’s health care can be generally discussed with a parent, without the child being present, except in the following circumstances outlined below.

There are five types of situations where a care coordinator is not be able to share protected health information with a parent about their child:

1. When the parent no longer has the right or authority to act for the child (e.g., parental rights have been terminated).
2. When CountyCare has received notification from the minor’s provider that the minor was treated confidentially based on their own consent and that disclosure of information related to the treatment to their parent and/or guardian would be contrary to the minor child’s best interests.
3. When the care coordinator believes, in the exercise of his or her professional judgment, that providing such information would not be in the best interest of the child because of a reasonable belief that the child may be subject to abuse or neglect by the parent, or that doing so would otherwise endanger the child.
4. When, and to the extent that, the parent previously agreed that the minor and the care coordinator may have a confidential relationship.
5. When expressly prohibited by State or other applicable law (*see FAQ 18 below*).

Q18: Are there certain times when I need to get a minor child’s consent to disclose specific types of PHI to their parents, for example, information regarding reproductive health and/or family planning?

A18: Several Illinois state laws address instances when specific types of health information about a child may not be shared with their parent(s) without their consent. Such special circumstances include the following:

- **Reproductive health services/family planning services.** Records and communications regarding reproductive health services/family planning services (including contraceptives and pregnancy testing, emergency contraception, abortion services, sexual assault, and emergency care) received by a minor child may not be discussed with a parent of the minor child, without the minor child’s consent, where the child has requested confidentiality for the services provided, consented to receive the services on their own (without parent consent), and they are: (a) legally married, (b) a parent, (c) pregnant, or (d) legally emancipated by a court for the purpose of consent to medical care.

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- **Sexually Transmitted Infections (STIs)**. Records and communications regarding STIs testing, treatment and counseling (including AIDs, HIV, syphilis, gonorrhea, Chlamydia, or chancroid) received by a minor child, 12 years old or older, may not be discussed with a parent of the minor child, without the minor child's consent, where the child has requested confidentiality for the services provided and consented to receive the services on their own (without parent consent).
- **Substance Abuse**. Records and communications regarding diagnosis, treatment or counseling related to drug use or alcohol consumption by the minor child, or the effects on the minor of drug or alcohol abuse by a member of the minor's family, may not be discussed with a parent of the minor child, without the minor child's consent, particularly where the child is 12 years old or older and they consented to receive the services on their own (without parent consent).
- **Mental Health**. Records and communications regarding mental health or developmental disabilities services can be disclosed to parents or guardians without the child's consent when the child is under age 12. However, if a child is between ages 12 and 17, the parent or guardian may only access the information with the child's consent, or if the child's therapist does not find any compelling reasons to deny access.

Care coordinators may need to communicate with the minor child's health care provider(s) to ensure that they are notified of circumstances where the child has requested that information regarding these types of services/treatments be kept confidential and/or where the child has consented for the treatment on their own, without consent from their parents.

Q19: What do I do when a member's treating provider will not share PHI with me because they believe it would not be allowed under HIPAA or other confidentiality laws?

A19: HIPAA generally permits health care providers and health plans to use or disclose PHI, without patient/health plan member authorization, for treatment, payment, and health care operations. This means that a health care provider is generally allowed to share PHI with CountyCare Care Coordinators without member consent, as long as the purpose of the disclosure meets the definition of health care operations (*see FAQs 4 and 6*), the information is about a CountyCare member, and the information shared meets the minimum necessary criteria (*see FAQ 10*).

However, there are some cases where a provider may not be able to share a health plan member's PHI with CountyCare without member consent, even if the purposes of the disclosure are for health care operations/care coordination. Generally, health care providers are not able to share information regarding substance abuse (e.g., drug or alcohol abuse) without the member's consent, including information related to the identity, diagnosis, prognosis, or treatment of a member in a substance abuse program (*see FAQ 12 for more information*). Additionally, in some cases, a provider may not wish to share specific details about care provided where the health plan member (in most cases a minor) has requested confidentiality for the services provided and

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consented to receive the services on their own (without parent consent). Finally, a provider may not share PHI of a health plan member where the health plan member has specifically requested that the provider not disclose PHI to their health plan that is related to health care for which the patient (or someone on behalf of the patient) has paid for in the service in full/out of pocket (not paid for by the health plan).

Where a provider is not willing to share PHI about a member, it is best to ask for written documentation from the provider regarding why the information is protected. Where their explanation for why the information may not be shared meets the exceptions in the paragraph above, CountyCare Care Coordinators should work with the member to receive their consent to share the information in question.

Please contact CountyCare if you have any further concerns or questions.

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