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**SUBJECT: FAMILY AND FRIENDS**

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**GENERAL STANDARD (PRIVACY RULE SECTION 164.510(b)):**

AHS health care providers and health plans may disclose to an individual's family member, other relative, or close personal friend, or any other person identified by the individual, the PHI directly relevant to that person's involvement with the individual's care or payment related to that health care.

AHS health care providers and health plans may also use or disclose PHI to notify, or assist in the notification of, an individual's family, personal representative, or another person responsible for his/her care, of the individual's location, general condition or death.

In addition, AHS health care providers and health plans may use or disclose PHI about an individual to an entity assisting in a disaster relief effort so that appropriate persons can be notified about the individual's condition, status, and location.

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**PRIVACY RULE:**

- I.** As set forth below, a CE may disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the PHI directly relevant to:
  - A. Such person's involvement with the individual's care; or
  - B. Payment related to the individual's health care.
- II.** As set forth below, a CE may use or disclose PHI to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual, of the individual's location, general condition, or death.
- III.** If the individual is present for, or otherwise available prior to, a use or disclosure permitted by Paragraphs I or II, and has the capacity to make health care decisions, the CE may use or disclose the PHI if it:
  - A. Obtains the individual's agreement;
  - B. Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

- C. Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.
  - IV. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the CE may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant to the person's involvement with the individual's health care. A CE may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.
  - V. A CE may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by Paragraph II. The requirements in Paragraphs III and IV apply to such uses and disclosures to the extent that the CE, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.
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#### **GUIDELINES:**

- 1. AHS health care provider and health plan personnel will rely on their best judgment when making a disclosure of PHI regarding a patient/beneficiary to a family member, other relative, or close personal friend, or any other person identified by a patient/beneficiary, when the patient/beneficiary is present for, or otherwise available before, the use or disclosure. In this context, AHS health care provider or health plan personnel will not make a disclosure if the patient/beneficiary has objected to it, or such personnel have the sense that the patient/beneficiary would not desire the disclosure to take place. For example:
  - A. AHS health care provider personnel will respect the wishes of the patient, whether those wishes are directly manifested (e.g., where a patient explicitly says "it is not okay to share this information with my husband, even though he is in the waiting room") or are implicit (e.g., where a patient is obviously uncomfortable with the disclosure of PHI to a family member).
  - B. AHS health plan personnel will respect the wishes of the beneficiary, whether those wishes are directly manifested (e.g., where a beneficiary, inquiring about the status of a claim, says "it is okay to share my health information with my wife, she is helping me with my claim") or are implicit (e.g., where a beneficiary and spouse together call AHS to discuss a claim issue, and it is readily apparent that the beneficiary desires the spouse to participate in the call).

2. Similarly, AHS health care provider and health plan personnel will rely on their best judgment when making a disclosure of PHI to a family member, other relative, or close personal friend, or any other person identified by the individual, when the patient/beneficiary is not present, is incapacitated, or in the context of an emergency circumstance. In this event, the AHS health care provider or health plan personnel will not make the disclosure unless, in their professional judgment, the disclosure is in the best interest of the patient. For example, it may be in the best interest of a patient for a health care provider to notify the parent of a minor that his/her son has been involved in a serious accident.
3. In all cases, AHS health care providers will use their best judgment and experience with common practice to determine whether to permit a family member, other relative, or close personal friend, or any other person identified by the individual, to pick up filled prescriptions (e.g., hearing aids or birth control pills), medical supplies, X-rays, or other similar forms of PHI for a patient.
4. In all cases, AHS health care provider and health plan personnel will only disclose the PHI directly relevant to the involvement that the family member, other relative, or close personal friend of the patient/beneficiary, or other person identified by the individual, has with respect to the health care at issue, or payment for that care. For example, an AHS health care provider who notifies the spouse of a patient regarding an accident, need only inform the spouse of the accident, not of any health information pertaining to unrelated care previously provided to the patient.
5. AHS health care provider and health plan personnel will review with the Assistant Attorney General or other counsel providing services to the provider or plan, any potential disclosure of PHI associated with disaster relief efforts.
6. AHS health care providers and health plans occasionally receive inquiries from the offices of elected officials (e.g., the Governor's office) regarding the status of an application for public benefits, or other issue involving the conduct of the health care provider or health plan, where the elected official (or designee) is acting as an advocate for an individual. In these situations:
  - A. The Privacy Rule would arguably permit the disclosure of PHI to the elected official (or designee), where the official (or designee) is a person "identified" by the individual, as noted in this Standard and Guidelines (in that context, a disclosure might be justified as being in the best interest of the individual, where the individual is not present when the disclosure would take place: See, Paragraph 2 above).
  - B. However, AHS health care providers and health plans will not share PHI with the elected official (or designee), because state statutes (e.g., the Vermont Patient Privilege and Mental Health statutes) and AHS Rule 96-23 very likely preclude such disclosures.

- C. Consequently, in such situations, the following script may be followed when responding to such an inquiry:

“We certainly appreciate your desire for information regarding \_\_\_\_\_, and we will promptly look into this situation, and report back to you on the general outcome of our review. However, please understand that we are required by federal and state laws to maintain the privacy of the health information of our clients, and that is an obligation we take very seriously. Consequently, and although we know that you are only seeking the information to help \_\_\_\_\_, we cannot share health information with you without more formal authorization from \_\_\_\_\_. In that regard, if \_\_\_\_\_, were to sign an authorization specifically allowing us to share health information with you, then we would be happy to speak with you in more detail. We can provide a form authorization immediately, if you desire to pursue this authorization option. Thank you.”