POLICIES AND PROCEDURES
TOPIC: Patient Restrictions on Disclosures
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I. BACKGROUND AND PURPOSE

The purpose of this policy is to describe the WVHIN's role in ensuring that Patients have the right to request restrictions on the use and disclosure of their own Protected Health Information. This policy describes how Participating Organizations and the WVHIN will implement such agreed upon or required restrictions within the context of the Health Information Exchange.

II. POLICY

The HIPAA Privacy Standards establish a process by which Patients may request restrictions on the use and disclosure of their own Protected Health Information to a Covered Entity. This right to request restrictions applies to uses and disclosures of the Patient's Protected Health Information for Treatment, Payment and Health Care Operations; disclosures to persons involved in the Patient's health care or payment for health care; or disclosures to notify family members or others about the Patient's general condition, location, or death.

Generally, a Covered Entity is under no obligation to agree to requests for restrictions; however, the Covered Entity is required to have policies in place establishing a procedure to accept or deny such requests. The requested restrictions may either be accepted or denied by the Covered Entity whose records are subject to the Patient's request. A Covered Entity that accepts the request must comply with the restrictions, except for the purpose of providing the Patient with Emergency Treatment. If certain requirements are met, a Covered Entity is required to accept a Patient's restriction request. Out-of-Pocket Goods and Services is the only required restriction.

The WVHIN is not a Covered Entity and therefore will not accept requests for restrictions on the use and disclosure of Patient Protected Health Information for or on behalf of any of its Participating Organizations. The goal of the WVHIN is to facilitate 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 Patient records in which this information resides. As such, the Participating Organization whose records are subject to the Patient's request for restrictions is the only organization that can logically evaluate the request.

Patient-Restricted Information is considered Sensitive Health Information (see Policy and Procedure Document Number 102 for the handling of Sensitive Health Information). Patient-

Restricted Information includes any information that is subject to a disclosure restriction that impacts the Permissible Purposes of Treatment, and has been specifically requested by a Patient and agreed to by the Participating Organization as contemplated under 45 C.F.R. § 164.522 (other than Out-Of-Pocket Goods and Services). It could also include a patient's request for restriction to a use or disclosure of Protected Health Information permissible under state law. In the absence of a specific written authorization signed by the Patient, federal law permits the disclosure of Patient-Restricted Information for the Permissible Purposes of Emergency Treatment and Public Health Reporting. Accordingly, under its current configuration, Patient-Restricted Information may be shared through the Health Information Exchange for the Permissible Purposes of Emergency Treatment and Public Health Reporting.

Out-Of-Pocket Goods and Services are also considered Sensitive Health Information. They include any goods or services for which the Participating Organization has been paid out-of-pocket in full by the Patient, and the Patient has requested the Participating Organization to restrict the disclosure of said goods and services to an insurance company, group health plan, or other third party payor for payment or health care operations as contemplated under 45 C.F.R. § 164.522(a)(1)(vi). In the absence of a specific Consent or authorization signed by the Patient applicable to Out-Of-Pocket Goods and Services, federal law permits Out-Of-Pocket Goods and Services to be disclosed for the Permissible Purposes of Treatment, Emergency Treatment, and Public Health Reporting. Accordingly, under its current configuration, Out-Of-Pocket Goods and Services may be shared through the Health Information Exchange for the Permissible Purposes of Treatment, Emergency Treatment, and Public Health Reporting.

If a Patient makes a request in writing to the WVHIN to restrict the use or disclosure of his or her Protected Health Information, the WVHIN will forward that request to the applicable Participating Organization(s) within ten (10) business days of receipt. The Participating Organization(s) will be solely responsible for making all determinations regarding the acceptance or denial of the requested restriction, and for electronically tagging the restricted information as Sensitive Health Information.

III. PROCEDURES

A. Patient Procedures.

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

2. Any Patient's request for restrictions received by the WVHIN will be forwarded to the applicable Participating Organization(s) identified in the written request for restrictions.

3. A request for restriction should include whether the Patient wants to limit the use or disclosure of his or her Protected Health Information for Treatment purposes.

4. If the request is for a restriction other than Out-of-Pocket Goods and Services, a Participating Organization will evaluate the request for restriction and notify the Patient of its determination to either grant or deny the request.

5. A Patient may terminate an agreed upon restriction with a Participating Organization at any time by:

(i) Agreeing to or requesting the termination of the restriction in writing; or

(ii) Orally agreeing to the termination of the restriction and the oral agreement is documented by the Participating Organization.

B. Participating Organization Procedures.

1. All requests for restrictions on the use or disclosure 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, if it receives such request.

2. The applicable Participating Organization(s) will be solely responsible for determining whether to grant or deny a Patient's request to restrict the use or disclosure of his or her Protected Health Information in compliance with all federal legal requirements and the Participating Organizations policies and procedures.

3. When evaluating a request for restriction, the Participating Organization shall consider the implications that the restriction would have on the accuracy, integrity and availability of information through the Health Information Exchange.

4. Participating Organizations will determine whether the Patient request for restriction is for Out-of-Pocket Goods and Services, which is a required restriction, or whether the request is for an optional restriction.

5. If a Patient's request for restrictions is agreed to by the applicable Participating Organization(s), and that restriction applies to Treatment, then the applicable Participating Organization(s) will be solely responsible for timely documenting the restriction in its records and electronically tagging the restricted Protected Health Information as Patient-Restricted Information (*See also* WVHIN Patient Consent-Sensitive Health Information Policy) in order to segregate it and otherwise comply with the laws governing such information.

6. The process used to evaluate a requested optional restriction by the Participating Organization(s) must be accomplished in compliance with the following:

(i) The Participating Organization must inform the Patient in writing whether it will agree to or deny its request for restriction;

(ii) If the requested restriction is granted, and that restriction applies to Treatment, then the Participating Organization is solely responsible for

immediately electronically tagging the Patient-Restricted Information as Sensitive Health Information to block it from being disclosed through the Health Information Exchange for all Permissible Purposes except Emergency Treatment and Public Health Reporting.

7. Any Participating Organization that receives Patient-Restricted Information in response to an Inquiry must refrain from re-disclosing such information to third parties except as may be authorized by law.

8. Any Participating Organization that receives unauthorized Patient-Restricted Information must immediately notify in writing or electronically the Participating Organization from whom it originated, and must return or destroy such unauthorized Patient-Restricted Information. For purposes of this Policy and Procedure, the term "immediately" means within the same business day.

9. Any Participating Organization that desires to request or disclose Patient-Restricted Information from or to another Participating Organization pursuant to a legally valid authorization signed by the Patient may do so using the DIRECT secure messaging service associated with the WVHIN.

10. A Participating Organization that agrees to terminate an agreed upon restriction will immediately remove any electronic tags that identify the impacted Protected Health Information as Sensitive Health Information.

C. WVHIN Procedures.

1. The WVHIN will not directly process or approve any Patient's request for restriction on the use or disclosure of his or her Protected Health Information.

2. Any Patient's request for restriction of his or her Protected Health Information made to the WVHIN will be forwarded in writing to the applicable Participating Organization(s) within ten (10) business days for handling. The WVHIN will notify the Patient with the following message: "Your request to restrict the use or disclosure of your Protected Health Information has been sent to your Health Care Provider/Plan. Your Health Care Provider/Plan will process this request, not the WVHIN, and any questions that you may have should be addressed to that Provider/Plan."

3. It is ultimately the responsibility of the Participating Organization to process and decide upon the requested restriction.

4. The WVHIN will offer Participating Organizations the ability to electronically tag Patient-Restricted Information or Out-of-Pocket Goods and Services as Sensitive Health Information.

5. The WVHIN will share Patient-Restricted Information in response to an Inquiry from a Participating Organization only if the Patient has elected not to Opt-Out, and it is for a Permissible Purpose that is authorized by law without a Patient's signed authorization.

6. Patient-Restricted Information or Out-of-Pocket Goods and Services may be disclosed through the Health Information Exchange for Emergency Treatment and Public Health Reporting.

7. A Patient's Patient-Restricted Information will not be disclosed through the Health Information Exchange for the Permissible Purpose of Treatment. The Participating Organization that submitted the Inquiry will receive no acknowledgment of any kind that Patient-Restricted Information for this Patient may exist.

8. Out-of-Pocket Goods and Services may be shared through the Health Information Exchange for the Permissible Purpose of Treatment.

9. Any disclosure of Sensitive Health Information through the Health Information Exchange must be accompanied by a written warning that prohibits re-disclosure of the information by the receiving organization except as may be authorized by law.

10. The WVHIN may make DIRECT secure messaging available to its Participating Organizations. Participating Organizations may utilize this DIRECT functionality to request or disclose Patient-Restricted Information among each other pursuant to a legally valid authorization signed by the Patient. DIRECT secure messaging is a distinct service made available by the WVHIN separate from its Health Information Exchange, and is not subject to the Opt-Out rules contained in the Policy and Procedure on Patient Consent – General.