

HIPAA Notice of Privacy Practices

Background

The HIPAA Privacy Rule gives individuals the right to be informed of the privacy practices of their health plans and healthcare providers and how their personal health information will be safeguarded and kept private. The Privacy Rule also mandates health plans and covered healthcare providers to develop and distribute a notice that clearly explains the individual's rights to privacy and the entity's privacy practices. This notice should address privacy issues and prompt individuals to discuss their rights with their health plans and healthcare providers.

How the Rule Works

General Rule. The Privacy Rule asserts that individuals have the right to be informed of how a covered entity may utilize and divulge their protected health information. The Privacy Rule also identifies the covered entity's obligations to the individual's protected health information. The Privacy Rule also stipulates that most covered entities must develop a notice describing their privacy practices and distribute the notice to the individuals.

The Privacy Rule does not require the following covered entities to develop a notice:

- Health care clearinghouses wherein the only protected health information they create or receive is as a business associate of another covered entity. See 45 CFR 164.500(b)(1).
- A correctional institution that is a covered entity (e.g., that has a covered health care provider component).
- A group health plan that provides benefits only through one or more insurance contracts with health insurance issuers or HMOs and does not create or receive protected health information other than summary health information or enrollment or disenrollment information.

See 45 CFR 164.520(a).

Content of the Notice. Covered entities are required to provide a notice in plain language that describes:

- How the covered entity may use and disclose an individual's protected health information.
- The individual's rights related to their protected health information and how to exercise these rights, including how to file a complaint to the covered entity.
- The covered entity's legal duties to personal health information, including a statement that the covered entity is required by law to maintain the privacy of protected health information.
- Contact persons that individuals can communicate with for further information about the covered entity's privacy policies.

The notice must include an effective date. For the specific requirements for developing the notice's content, see 45 CFR 164.520(b).



A covered entity must promptly modify and distribute its notice whenever it changes its privacy practices. See 45 CFR 164.520(b)(3), 164.520(c)(1)(i)(C) for health plans, and 164.520(c)(2)(iv) for covered health care providers with direct treatment relationships with individuals.

Providing the Notice.

- A covered entity must make its notice available to anyone asking for it.
- A covered entity must prominently post and make available its notice on its website that informs the public about its customer services or benefits.
- Health Plans must also:
 - Provide the notice to individuals covered by the plan no later than April 14, 2003 (April 14, 2004, for small health plans) and to new enrollees at the time of enrollment.
 - Provide a revised notice to individuals covered by the plan within 60 days of a material revision.
 - Notify individuals covered by the plan about the notice's availability and how to obtain it at least once every three years.
- Covered Direct Treatment Providers must also:
 - Provide the notice to the individual no later than the date of first service delivery (after the April 14, 2003 compliance date of the Privacy Rule) and, except in an emergency treatment situation, make a good faith effort to obtain the individual's written acknowledgment of receipt of the notice. If an acknowledgment cannot be obtained, the provider must document their efforts to obtain the acknowledgment and why it was not obtained.
 - When the first service delivery to an individual is provided over the Internet, through e-mail, or otherwise electronically, the provider must automatically and contemporaneously send an electronic notice in response to the individual's first request for service. The provider must also make a good faith effort to obtain a return receipt or other transmission from the individual in response to receiving the notice.
 - In an emergency treatment situation, provide the notice as soon as it is reasonably practicable after the emergency situation has ended. Providers are not required to make a good faith effort to obtain a written acknowledgment from individuals in these situations.
 - Make the latest notice (i.e., the one reflecting any changes in privacy policies) available at the provider's office or facility for individuals to request to take with them and post the notice in a clear and prominent location at the facility.
- A covered entity may e-mail the notice to an individual if the individual agrees to receive an electronic notice.

See 45 CFR 164.520(c) for the specific requirements for providing the notice.

Organizational Options.

- Any covered entity, including a hybrid entity or an affiliated covered entity, may choose to develop more than one notice, such as when an entity performs different types of covered functions (i.e., the functions that make it a health plan, a healthcare provider, or a healthcare clearinghouse), and there are variations in privacy practices among these

covered functions. Covered entities are encouraged to provide individuals with the most specific notice possible.

- Covered entities participating in an organized healthcare arrangement may choose to produce a single, joint notice if specific requirements are met. For example, the joint notice must describe the covered entities and the service delivery sites to which it applies. Suppose any participating covered entities provides the joint notice to an individual. In that case, the notice distribution requirement with respect to that individual is met for all the covered entities. See 45 CFR 164.520(d).