

Policy 2.32: Privacy Program**Responsible Party: Medical Records Manager and Privacy Officer****Next Review Date: December 2016**

Serenity HospiceCare recognizes a duty to avoid wrongful disclosure of Protected Health Information (PHI) of our patients. It is a requirement of Serenity HospiceCare that every effort be made to protect the medical privacy of persons who have PHI (paper or electronic) with Serenity HospiceCare. This is done by protecting paper and electronic records, as well as any other health information, through physical, administrative and technological means directed at maintaining the integrity and security of those records through the creation and implementation of multiple individual policies addressing the various PHI concerns/requirements. All Serenity HospiceCare employees must work to balance business needs and uses of protected health information (PHI) with patients' rights outlined in the HIPAA Privacy Standards. Serenity HospiceCare has assigned a Privacy Officer to oversee the Privacy Program and verify organization compliance.

The following definitions apply to all of Serenity HospiceCare's patient privacy policies and procedures.

Business Associate – A person, business or other entity who, on behalf of an organization covered by the regulations, performs or assists in performing a function or activity involving the use or disclosure of PHI. A business associate is not someone in an organization's own workforce, such as an employee, volunteer, or orientee.

Covered Entity – A health plan (e.g., an individual or group plan that provides or pays the cost of medical care), a health care clearinghouse, or a health care provider who transmits any health information in connection with a transaction covered by HIPAA.

Designated Record Set (DRS)

1. The medical records and billing records about individuals maintained by or for a covered health care provider used, in whole or in part, by or for Serenity HospiceCare to make decisions about individuals.
2. For purposes of this definition, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

Disclosure – The release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Group Health Plan – An employee welfare benefit plan as defined in ERISA, including insured and self-insured plans, to the extent that the plan provides medical care. The plan must have 50 or more participants or be administered by an entity other than the employer that established and maintains the plan. (See definition of "health plan.")

Health Care Clearinghouse – An entity that processes health information received from another entity in a nonstandard format into a standard format or vice versa.

Health Care Operations (HCO) – Any of the following activities of the covered entity to the extent that the activities are related to covered functions (i.e., functions the performance of which makes the entity a health plan, health care provider, or health care clearinghouse), and any of the following activities of an organized health care arrangement in which the covered entity participates:

1. Conducting quality assessment activities;
2. Reviewing the competence or qualifications of healthcare professionals;
3. Conducting training programs;
4. Underwriting, premium rating, and other activities relating to renewal or replacement of health insurance or health benefits;
5. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance;
6. Business planning and development; or
7. Business management and general administrative activities of the entity.

Health Care Provider – A provider of services (as defined in Section 1861 (u) of the Act, 42 U.S.C. 1395x(u)); a provider of medical or health services (as defined in section 1861(s) of Act, 42 U.S.C. 1395X9s)); and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

Health Plan – An individual or group plan that provides, or pays the cost of medical care. Health plans include a group health plan (see definition above), an HMO, Medicare Parts A and B, and Medicaid, among others. Examples of programs that are not health plans include workers' compensation, disability insurance, life insurance, and automobile insurance. A complete listing of inclusions and exclusions can be provided in Missouri regulations.

Indirect Treatment Relationship – A relationship between an individual and a health care provider in which the health care provider:

- a. Delivers health care to the individual based on the orders of another health care provider; and
- b. Typically provides services or products, or reports the diagnosis or results associated with the health care directly to another health care provider, who provides the services or products or reports to the individual.
- c. The most common example of this is the three-way relationship between a physician, a hospice or health care organization and a patient.

Law Enforcement Official – An officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

- a. Investigate or conduct an official inquiry into a potential violation of law; or
- b. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Marketing

To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service,
EXCEPT:

- i. To describe a health-related product or service (or payment for such product or service) that is provided by a facility making the communication, including communications about the entities participating in a health care provider network;
- ii. For treatment of the individual; or
- iii. For case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

Minimum Necessary – The minimum necessary standard in HIPAA’s privacy rule requires covered entities to make reasonable efforts to limit protected health information (PHI) to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. The minimum necessary standard does not apply to disclosures to or requests by a healthcare provider for treatment, payment or healthcare operations.

Payment – Activities undertaken by a health care provider to obtain reimbursement for the provision of health care. Examples include, but are not limited to: determining eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts); billing, claims management, collection activities, obtaining payment; reviewing health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services.

Personal Representatives – A person who has the authority to act on behalf of an individual in making decisions related to that individual’s health care.

Protected Health Information – any oral, written or electronic individually-identifiable health information collected or stored by a Serenity HospiceCare. Individually-identifiable health information includes demographic information and any information that relates to past, present or future physical or mental condition of an individual.

Required by Law – A mandate contained in law that compels Serenity HospiceCare to use or disclose PHI which is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Treatment – The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for healthcare from one health care provider to another.

Use – With respect to individually identifiable health information, is the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce Members – Employees, medical staff members, volunteers, trainees, contracted personnel, business associates and other persons who perform services for, or interact with Serenity HospiceCare. This definition applies whether or not the Workforce Member is paid for services rendered to Serenity HospiceCare.

Serenity HospiceCare Privacy Program responsibilities include, but are not limited, to:

- a. Compliance with all policies and procedures related to the Privacy Program.
- b. Implementation of policies and procedures for patient privacy designed to comply with the HIPAA Privacy Standards.
- c. The development and maintenance of up-to-date privacy policies in order to comply with changes in federal and state privacy laws. Changes must be documented and implemented.
- d. Adherence to health plan policies that address the protection of medical information related to Serenity HospiceCare offered to our employees.

Business Associate Requirements – Written agreements with Business Associates are required. The Director of Operations or designee, in collaboration with the Privacy Officer, must establish a process to identify Serenity HospiceCare’s Business Associates. Business Associate language must be added to existing contracts and be incorporated into new and renewing contracts, in consultation with Serenity HospiceCare’s Operations Team.

Personal Representatives – If a person has the authority to legally act on behalf of an adult or emancipated minor, that person must be treated as if he or she were the person being represented. If a person has the authority to legally act on behalf of an unemancipated minor, that person must be treated as if he or she were the unemancipated minor, except when the minor has the authority to act as an individual with respect to PHI when:

- a. The minor consents to the health care;
- b. The minor and a court or another person authorized by law consent to such health care service; or
- c. The parent, guardian or personal representative agree to confidentiality between the health care provider and the minor.

In situations involving abuse, neglect, or endangerment situations, Serenity HospiceCare may elect not to treat a person as the personal representative of an individual if:

- a. Serenity HospiceCare has a reasonable belief that:
 - i. The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - ii. Treating such person as the personal representative could endanger the individual; and Serenity HospiceCare, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative.

State laws regarding personal representatives, emancipated minors, and unemancipated minors vary; refer to Missouri statutes as needed.

Designated Record Set (DRS) – Information used by Serenity HospiceCare to make decisions about an individual is to be integrated into the DRS. When Serenity HospiceCare has information from another organization that has been sent to Serenity HospiceCare via fax or mail, the information will be considered

part of the DRS therefore may be accessed by the patient. The recommendation is that any piece of paper that makes its way into Serenity HospiceCare's paper record be considered part of the DRS.

Guidelines for Employment-related Testing and Assessment – Although employment-related testing and assessments are part of the individual's DRS, the information and results are maintained by Serenity HospiceCare and are not used for any other purposes. As such, a notice of privacy practices is not provided. The Employee Application should indicate that employment-related testing and assessments will be maintained within the organization only and will be used to validate eligibility and continued employment.

Refraining from Retaliatory Acts – Serenity HospiceCare may not intimidate, threaten, coerce, discriminate against, or take any retaliatory action against individuals for exercising any rights under the HIPAA Privacy Standards.

Health Plan Information – Serenity HospiceCare personnel may come in contact with protected health information that is related to Serenity HospiceCare's health plans. An example of such an encounter would be helping an employee with a benefit claim. This information is considered PHI and is subject to HIPAA.

Privacy Program Policies, Procedures and Forms:

There are additional policies, procedures and forms related to this privacy policy. Please contact our offices for more information at 573-431-0162.