

Minimum Necessary Policy

1. Introduction

- a. Clark County has adopted this Minimum Necessary Policy to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Department of Health and Human Services (“DHHS”) security and privacy regulations, and the Joint Commissions on Accreditation of Healthcare Organizations (“JCAHO”) accreditation standards, as well as our duty to protect the confidentiality and integrity of confidential medical information as required by law, professional ethics, and accreditation requirements.

2. Purpose

- a. The purpose of the Minimum Necessary Policy is to provide policies and procedures on the “minimum necessary” of Protected Health Information (PHI) as required by the HIPAA Privacy Regulations. It is to establish guidelines to implement the minimum necessary standard and to determine how the standard impacts the use, disclosure and request of PHI.
- b. State of Wisconsin regulations for mental health, alcohol and drug abuse and developmental disabled records requires whenever information from treatment records is disclosed that the information be limited to include only the information necessary to fulfill the request.

3. Definition

- a. Minimum Necessary is the process that is defined in the HIPAA regulations: *When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.*

4. Policy

- a. It is Clark County’s policy to ensure the privacy and security of Protected Health Information (PHI) by limiting the use and disclosure of PHI to what is minimum or reasonably necessary to accomplish the intended purpose in the following three areas:
 - 1) Uses and disclosures of PHI by Clark County’s workforce/staff
 - 2) Uses and disclosures made in response to requests for PHI from other organizations
 - 3) Uses and disclosures when requesting PHI from other organization
- b. This standard applies to all PHI, regardless of its form, character or medium, including, but not limited to electronic, digital, film, tape, paper or verbal.
- c. HIPAA minimum necessary standard does not apply to the following circumstances. However, Wis. Stat. 51.30 requires that when information from treatment records is disclosed that information shall be limited to the information necessary to fulfill the request and does not include specific exceptions.
 - 1) Disclosure to requests by a health care provider for treatment.

- 2) Uses or disclosure made to the individual, as permitted in the HIPAA regulations.
- 3) Disclosures made to the Secretary of the Department of Health and Human Services.
- 4) Uses or disclosures as required by law, as outlined in §164.512(a, c, e, & f).

5. Procedures

- a. Routine and Non-routine Disclosures and Requests: Clark County shall distinguish routine or recurring disclosures and requests from non-routine or non-recurring disclosures and requests:
 - 1) Routine Disclosures: These are disclosure of PHI made to another entity or requests for PHI made by Clark County on a routine or reoccurring basis. For such disclosures or requests:
 1. Clark County will implement policies and procedures that limit the amount of PHI disclosed or requested to the amount reasonably necessary to achieve the purpose of the disclosure or request.
 2. Clark County will consider discussing the minimum necessary with the organization responsible for major requests or disclosures to negotiate mutually agreeable disclosures. In this regard, the organizations involved should address:
 - a. The types of protected health information to be disclosed;
 - b. The types of persons who would receive the protected health information;
 - c. The conditions that would apply to such access; and
 - d. Standards for disclosures to routinely hired types of business associates (e.g., for medical transcription).
 - 2) Non-routine Disclosures: These are disclosures made occasionally. Clark County will determine criteria to limit PHI to what is reasonably needed to accomplish the purpose of the disclosure. Non-routine requests are evaluated on a case by case basis in accordance with the criteria developed by the organization to ensure minimum necessary.
 1. Develop reasonable criteria to limit the amount of information disclosed to the minimum necessary to accomplish the purpose of the disclosure; and
 2. Use these criteria to review these disclosures on an *individual basis*.
- b. Applying the Minimum Necessary Standard to PHI from Other Organizations: Clark County may rely on the judgment of the party requesting the disclosure as to the minimum necessary amount of information needed when the request is made by:
 - 1) A public official or agency for which a disclosure is permitted under section 164.512 of the Privacy Rule (uses and disclosures for which consent, authorization, or opportunity to agree or object is not required).
 - 2) Another covered entity (e.g., health care provider, clinic, health plan, etc.)

- 3) A professional who is a workforce member or business associate of the organization, if the professional states that the amount requested is the minimum necessary; or.
- c. A party requesting the “entire medical record,” must specifically justify the request as the minimum, or reasonable, amount necessary to meet the needs of the request (e.g., transfer of care, medical history of longstanding condition, etc.) before the organization will disclose the PHI.
- d. Applying the Minimum Necessary Standard When Requesting PHI from Other Organizations: Clark County will limit its requests for PHI to the minimum, or reasonable, amount necessary to accomplish the purpose of the request.
- e. Upon issuing a request for the “entire medical record,” the organization specifically justifies the request as the minimum, or reasonable amount necessary to accomplish the purpose of the request (e.g., transfer of care, medical history of longstanding condition, etc.).
- f. Applying the Minimum Necessary Standard to Clark County:
 - 1) For uses of PHI that require access by Clark County, Clark County will identify:
 1. The person or classes of persons in the workforce who need access to PHI;
 2. The category or categories of PHI to which access is needed, and
 3. Any conditions appropriate to such access.
- g. Clark County will have in place a process to determine the appropriate scope of the individual’s access to PHI that includes:
 - 1) An assessment of individual’s appropriate access to PHI performed by the responsible department director/supervisor and based on:
 1. Job description/position scope
 2. Need to know
 3. Patient care needs
 4. Administrative needs
 - 2) Completion of access request form and/or agreement form by the individual and the individual’s director/supervisor
 - 3) Education and review conducted by the individual’s director/supervisor, which covers the individual’s responsibilities related to access and includes the minimum necessary standard, confidentiality, security and the consequences of inappropriate access to PHI or breach of patient confidentiality.
- h. Clark County will carry out periodic reviews of access levels to determine:
 - 1) Changes in staff member position or scope of responsibilities, and
 - 2) Changes in information available through information components
- i. Clark County will take reasonable efforts to limit the individual’s access to PHI that is necessary to carry out their duties or on a “need-to-know” basis. Individuals with

- unrestricted access to PHI are limited to accessing information for which they are responsible for providing treatment or carrying out related operational duties (e.g., quality audits, infection control monitoring, risk management activities, utilization review, etc.).
- j. Requests for access to PHI not routinely covered in the scope of the individual’s position shall be reviewed by leadership (e.g., privacy officer, administration, HIM/IT director, etc.) to determine the nature of the request and the benefit of granted access. Access may be granted on a limited basis and time frame to accommodate the duration of the project. Examples of special requests might include:
 - 1) Research projects;
 - 2) Grant applications;
 - 3) Needs assessments; or
 - 4) Staff performance appraisal and monitoring
 - k. Clark County will periodically monitor access to determine appropriateness of staff review of PHI. Tracking incidents of unauthorized access will increase the security of patient’s health information and decrease the risk of privacy violations. Methods for auditing access might include:
 - 1) Conducting random checks of patients to determine access;
 - 2) Using exception reports to determine time of access, length of access, access to “confidential” or “VIP” patient PHI;
 - 3) Reviewing “role-based” access by position and unit of assignment within the organization; or
 - 4) Reviewing requests for and access to “hard copy” patient records.
 - l. Departments that are responsible for the administration of department-specific modules or information systems such as medication administration or dictation access must also periodically monitor access to determine appropriateness of staff access to PHI.
 - m. Position transfers that may involve different levels of access to PHI will be reviewed to determine the appropriate new scope of access.
 - n. Corrective Action: Upon determination of inappropriate or unauthorized access to PHI by a staff member, Clark County will determine the appropriate corrective action for the misconduct.

The following is a chart of methods of creating minimum necessary PHI:

Method of Handling PHI	How to create minimum necessary
Electronic	Create security mechanisms to monitor and limit access PHI based on the criteria listed under Uses and Disclosures of PHI within the Workforce/Staff Section 1
Paper	Black out any information not required by the disclosure request.
Verbal	Only disclose the information needed by the request made.

