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**Human Resources Operating Procedure No. 129**

**HIPAA Privacy and Security**

**Trinity Health Corporation Welfare Benefit Plan**

**Trinity Health Corporation Retiree Benefit Plan (Grandfathered)**

**Integrity & Compliance Policy No. 01 Integrity & Compliance Program**

EFFECTIVE DATE*:* January 1, 2017

Original Effective Date: April 14, 2003

PROCEDURE TITLE:

***Individual Rights Regarding Restrictions and***

***Confidential Communications With Respect to***

***Protected Health Information***

***To be reviewed every three years by:***

***Trinity Health Corporation Welfare Benefit Plan Privacy Official***

**REVIEW BY: January 1, 2020**

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This Procedure is in furtherance of the Trinity Health Corporation Integrity & Compliance Program as set forth in Trinity Health Corporation Integrity & Compliance Policy No. 01.

**PURPOSE**

The purpose of this Procedure is to establish a process for an Individual to request a restriction on the Use and Disclosure or confidential communication of his or her PHI maintained by the Plan. If the regulations under HIPAA are changed by HHS the Plan will follow the revised regulations.

**PROCEDURES**

## 1. Requesting a Restriction on the Use and Disclosure of PHI.

## a. An Individual must make a request to the Plan to restrict the Use or Disclosure of his or her PHI for Treatment, Payment and Healthcare Operations purposes, and Disclosures to those involved in the Individual’s care or Payment for such Individual’s care and for notification purposes in writing to the Plan on the form provided by the Privacy Official.

## b. The Plan will review the request and determine whether the Plan can reasonably accommodate the request. The Privacy Official or his or her delegate will notify the Individual in writing of the decision within 30 days of receipt of the request.

## c. The Plan is not required to agree to the Individual’s request for a restriction except a request to restrict Disclosure of PHI about the Individual to a health plan if:

## i. The Disclosure is for the purpose of carrying out Payment or Healthcare Operations and is not otherwise required by law; and

## ii. The PHI pertains solely to a health care item or service for which the Individual, or person other than the health plan on behalf of the Individual, has paid the Plan in full.

## d. If the Plan agrees to the requested restriction, it will not violate the restriction except:

## i. If the Individual who requested the restriction is in need of emergency Treatment; and

## ii. The restricted PHI is necessary to provide that emergency Treatment. If restricted PHI is Disclosed to a health care provider because it is necessary for emergency Treatment, the Plan will request that the health care provider not further Use or Disclose the information.

e. The Plan’s agreement to a restriction on the Use or Disclosure of PHI is not effective to prevent Uses or Disclosures:

i. When required by the HHS to investigate or determine the Plan’s compliance with HIPAA;

ii. For facility directories; or

iii. For which an Authorization or opportunity to agree or object is not required.

f. If the Plan agrees to a requested restriction, the Plan’s Privacy Official will take reasonable steps to help ensure that the Plan abides by the restriction.

g. The Plan’s agreement to a restriction is binding only on the Plan and its Business Associates, not on other entities such as insurers or health care providers.

h. The Individual may revoke his or her agreement to restrict the Use and Disclosure of PHI by submitting a signed written request to terminate the agreement.

i. The Plan may terminate an agreement to restrict the Use and Disclosure of PHI if:

i. The Individual agrees to or requests the termination in writing;

ii. The Individual orally agrees to the termination and the oral agreement is documented; or

iii. The Plan informs the Individual that it is terminating its agreement to the restriction. If a restriction is terminated under this Section 1.i.iii., the termination will only be effective for PHI created or received after the date the Plan informs the Individual that it is terminating its agreement to the restriction.

j. If the Plan terminates an agreement to restrict the Use and Disclosure of PHI, a Workforce Member will provide the affected Individual with a document regarding the termination of the agreement.

k. The Plan will document any restriction agreed to by the Plan and will retain such documentation for the period of time described under Human Resources Operating Procedure No. 143 (Updates and Record Retention).

***2. Requesting Confidential Communications – Alternative Means/Location***

a. An Individual must make a request for a Confidential Communication of his or her PHI in writing to the Plan on the form provided by the Privacy Official. The Plan will not require an explanation from the Individual as to the reason for the request for Confidential Communication. A minor may request Confidential Communications, but the Plan will not grant such requests unless the minor has a right to confidentiality under state law.

b. The Plan will accommodate reasonable requests for Confidential Communications. However, such requests will be granted only if:

i. When appropriate, the Individual specifies information as to how Payment, if any, will be handled; and

iii. The Individual specifies an alternative address or other method of contact.

The Privacy Official or his or her delegate is responsible for determining whether an Individual’s request for a Confidential Communications is reasonable.

c. In cases where the Plan grants an Individual’s request for Confidential Communications, the Plan will adhere to the granted request (i.e., will send the Individual’s PHI in a manner or to the location specified) and the Privacy Official will be responsible for ensuring that all appropriate Workforce Members are notified of the alternative means of communicating the PHI and are in compliance with the granted Confidential Communications request.

d. In a case where the Plan determines that an Individual’s request for a Confidential Communication is unreasonable, the Plan will document the facts and circumstances to support the determination that the request was unreasonable and inform the Individual requesting the same of the denial in writing within ten (10) business days of the determination of denial or as soon as administratively possible after the determination. Any follow-up questions from the Individual will be directed to the Privacy Official.

e. The Plan will document any accommodation for Confidential Communication agreed to by the Plan and will retain such documentation for the period of time described under the Human Resources Operating Procedure No. 143 (Updates and Record Retention).

# DEFINITIONS

The following are definitions of key terms used in this Procedure. Any terms used in this Procedure, but not otherwise defined herein, shall have the meaning set forth in the HIPAA regulations, 45 CFR §§ 160.103, 164.103, 164.304, 164.402 and 164.501.

**Authorization means** the written permission from an Individual that permits the Plan to Use or Disclose PHI for purposes beyond the scope of Treatment, Payment or Healthcare Operations.

**Business Associate means**, with respect to a Covered Entity, a person or organization that:

1. Creates, receives, maintains, or transmits PHI for a function or activity on behalf of a Covered Entity other than in the capacity of a member of the Covered Entity’s Workforce; or

2. Provides, other than in the capacity of a member of the Covered Entity’s Workforce, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the Covered Entity, where the provision of the service involves the Disclosure of PHI from the Covered Entity, or from another Business Associate of the Covered Entity, to the person.

However, a person or organization is not a Business Associate if it is:

3. A health care provider (e.g., hospital medical staff), with respect to Disclosures by a Covered Entity to the health care providing concerning the treatment of an individual; or

4.. A plan sponsor with respect to Disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent the requirements of 45 CFR § 164.504(f) of HIPAA apply and are met.

**Confidential Communication means** a communication regarding PHI between an Individual and the Plan that is sent through alternative means or to an alternative location and not through the Plan’s regular method of communication.

**Covered Entity means** (a) a health plan, (b) a healthcare clearinghouse, or (c) a health care provider who transmits any health information in an electronic form in connection with a transaction covered under 45 CFR Subtitle A, Subchapter C, Parts, 160, 162 and 164.

**Disclosure (or Disclose) means**, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

**HHS means** the U.S. Department of Health and Human Services.

**Healthcare Operations means** any of the following activities of the Covered Entity to the extent that the activities are related to covered functions:

1. Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR § 3.20), population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing or credentialing activities;

3. Except as prohibited under 45 CFR §164.502(a)(5)(i) (prohibited use of genetic information for underwriting), underwriting, enrollment, premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance);

4. Conducting or arranging for medical review, legal services and auditing functions, including fraud and abuse detection and compliance programs;

5. Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and

6. Business management and general administrative activities of the entity, including, but not limited to:

a. Management activities relating to implementation of and compliance with the requirements of HIPAA;

b. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer;

c. Resolution of internal grievances;

d. The sale, transfer, merger or consolidation of all or part of the Covered Entity with another Covered Entity, or an entity that, following such activity, will become a Covered Entity, and due diligence related to such activity; and

e. Consistent with the applicable requirements of HIPAA, creating de-identified health information or a limited data set, and fund raising for the benefit of the Covered Entity.

**HIPAA means** the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. § 1320d, et. seq., and the regulations issued thereunder, 45 CFR Parts 160 and 164, as amended from time to time.

**Individual** **means** the person who is the subject of PHI and who is also a participant or former participant in the Plan or a covered spouse, dependent or beneficiary under the Plan.

**Individually Identifiable Health Information means** information that is a subset of health information, including demographic information collected from an Individual, and that:

1. Is created or received by a health care provider, health plan, employer, or health care clearing house; and

2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and

3. Identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

**Payment** **means**:

1. The activities undertaken by:

a. Except as prohibited under 45 CFR §164.502(a)(5)(i) (prohibited use of genetic information for underwriting), a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or

b. A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and

2. The activities in paragraph 1. of this definition relate to the Individual to whom health care is provided and include, but are not limited to:

a. Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts) and adjudication or subrogation of health benefit claims;

b. Risk adjusting amounts due based on enrollee health status and demographic characteristics;

c. Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance) and related healthcare data processing;

d. Review of healthcare services with respect to medical necessity, coverage under a health plan, appropriateness of care or justification of charges;

e. Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and

f. Disclosure to consumer reporting agencies of any of the following PHI relating to collection of premiums or reimbursement:

i. Name and address;

ii. Date of birth;

iii. Social security number;

iv. Payment history;

v. Account number; and

vi. Name and address of the healthcare provider and/or health plan.

**Plan means** the Trinity Health Corporation Welfare Benefit Plan (“Welfare Plan”) and the Trinity Health Corporation Retiree Benefit Plan (Grandfathered) (“Retiree Plan”), with respect to the benefit programs thereunder that constitute “health plans,” as defined in 45 CFR § 160.103. For the Welfare Plan, the benefit programs that constitute health plans are the medical/prescription drug, dental, vision, employee assistance, flexible healthcare spending account and healthcare reimbursement account program components of the Plan. For the Retiree Plan, the benefit programs that constitute health plans are the medical/prescription drug, dental, vision and healthcare reimbursement account program components of the Plan. The Welfare Plan and the Retiree Plan are each a Covered Entity. Whenever reference is made to the Plan’s action, the activities of the Plan Sponsor on behalf of the Plan shall be treated as the action of the Plan.

**Plan Sponsor** **means** the “plan sponsor” as defined in section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16)(B) and means Trinity Health Corporation and, except where context indicates otherwise, employees and agents of Trinity Health Corporation and the other participating employers in the Plan who are responsible for Plan administration functions.

**Privacy Official means** the person designated by the Plan or Plan Sponsor to oversee and administer the Plan’s compliance with these Procedures and HIPAA.

**Protected Health Information or PHI means** Individually Identifiable Health Information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes Individually Identifiable Health Information: (a) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (b) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (c) in employment records held by a the Plan Sponsor or a Covered Entity in its role as employer; and (d) regarding a person who has been deceased for more than 50 years.

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

**Use (or Uses) means**, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

**Workforce or Workforce Member** **means** employees and other persons whose conduct, in the performance of work for the Plan, is under the direct control of the Plan or Plan Sponsor or one of its affiliated entities on behalf of the Plan, whether or not they are paid by the Plan or Plan Sponsor or one of its affiliated entities. The Workforce Members are described in Section 2.a.i. of Human Resources Operating Procedure No. 122 (Minimum Necessary Use or Disclosure of

Protected Health Information).

**RELATED PROCEDURES AND OTHER MATERIALS**

* Human Resources Operating Procedure No. 120 (Use or Disclosure of Protected Health Information)
* Human Resources Operating Procedure No. 122 (Minimum Necessary Use or Disclosure of Protected Health Information)
* Human Resources Operating Procedure No. 123 (Business Associate Agreements)
* Human Resources Operating Procedure No. 143 (Updates and Record Retention)
* Enterprise Information Security Procedures
* Authorization for Use and Disclosure of Protected Health Information
* Request for Restrictions on Use & Disclosure/Confidential Communications Form
* Response for Request for Restrictions on Use & Disclosure/Confidential Communications Form

**APPROVALS**

**Initial Approval: 04/14/2003**

**Subsequent Review/Revisions: December 20, 2016**

**[Trinity Health Corporation Welfare Benefit Plan (“Plan”)]**

**[Trinity Health Corporation Retiree Benefit Plan (Grandfathered) (“Plan”)]**

REQUEST FOR RESTRICTIONS ON USE &

DISCLOSURE/CONFIDENTIAL COMMUNICATIONS FORM

Name of Individual:

Date:

I am requesting that use and disclosure of my Protected Health Information (“PHI”) be restricted in the following manner:

Disclosure of all or part of the information to which this request pertains could endanger me. Therefore, I am requesting that communication involving PHI be provided to me in the following manner or at the following alternative address:

Signature of Individual Requesting Restriction:

Signature of Personal Representative acting on behalf of the Individual, if the Individual is not making the Request for Restriction:

**PLEASE DIRECT REQUESTS FOR RESTRICTIONS ON USE
AND DISCLOSURE/CONFIDENTIAL COMMUNICATIONS
OR QUESTIONS REGARDING THIS FORM TO:**

[Trinity Health Corporation Welfare Benefit Plan]

[Trinity Health Corporation Retiree Benefit Plan (Grandfathered]

Attn: Privacy Official

c/o Trinity Health Corporation

Mail Stop E1C

20555 Victor Parkway

Livonia, MI 48152

Fax: (248) 347-5437

Email: weinerjz@trinity-health.org

**[Trinity Health Corporation Welfare Benefit Plan (“Plan”)]**

**[Trinity Health Corporation Retiree Benefit Plan (Grandfathered) (“Plan”)]**

RESPONSE FOR REQUESTS FOR RESTRICTIONS ON USE &

DISCLOSURE/CONFIDENTIAL COMMUNICATIONS FORM

Date:

Date of Request for Privacy Protection:

Name of Individual Requesting Privacy Protection:

Your Request for Privacy Protection has been denied/accepted:

Your Request was denied for the following reasons:

Name of Privacy Officer:

Signature of Privacy Officer:

ATTENTION

IF THE REQUEST PERTAINS TO
CONFIDENTIAL COMMUNICATIONS, VERIFY
THAT THIS RESPONSE COMPLIES WITH THE
REQUEST, IF THE REQUEST IS ACCEPTED