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**Human Resources Operating Procedure No. 128**

**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:

***Personal Representatives***

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

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

**REVIEW BY: January 1, 2020**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 when the Plan may Disclose PHI to an Individual’s personal representative. If the regulations under HIPAA are changed by HHS the Plan will follow the revised regulations.

**PROCEDURES**

1. The Plan will abide by applicable state law and HIPAA in determining who has the authority to act on behalf of a deceased Individual or deceased Individual’s estate, an adult or an emancipated minor or an unemanicipated minor, including authority to provide an Authorization.
2. If an Individual has a representative, then the Plan will treat the person who is determined to have the authority to act in accordance with this Personal Representatives Procedure as the personal representative of the Individual for purposes of HIPAA and the Plan’s HIPPA Procedures regarding the Use and Disclosure of the Individual’s PHI.
3. ***Deceased Individuals***

a. The Plan will ensure its Use and Disclosure of the PHI of deceased Individuals is in accordance with both applicable state law and the Privacy Rule. The Plan will abide by applicable state law and the Privacy Rule in determining who has the authority to act on behalf of a deceased Individual or deceased Individual’s estate (*e.g.,* an executor, administrator or other person).

b. The Plan must verify the identity and authority of a person holding himself or herself out as the executor, administrator or other person with authority to act on behalf of the deceased Individual in accordance with Human Resources Operating Procedure No. 127 (Verification of Individuals Requesting Access to or Disclosure of Protected Health Information).

c. After the person has been properly identified as the personal representative, the Plan must provide a Notice of Privacy Practices to the personal representative. The Plan also must obtain an Authorization as applicable from the personal representative regarding the Use and Disclosure of the decedent’s PHI in accordance with Human Resources Operating Procedure No. 120 (Use or Disclosure of Protected Health Information).

d. There are four general exceptions that permit the Plan to Disclose the PHI of a deceased Individual without an Authorization from the personal representative. These include:

i. Disclosures of PHI needed by coroners;

ii. Disclosures of PHI needed by medical examiners;

iii. Disclosures of PHI needed by funeral directors; and

iv. Disclosures of PHI needed to facilitate an organ donation.

e. If any of the exceptions in d., above, apply, the Plan must document the Disclosure.

***4. Personal Representatives of Adults or Emancipated Minors***

a. The Plan will ensure its Use and Disclosure of the PHI of adults and emancipated minors is in accordance with both applicable state law and HIPAA. The Plan will abide by applicable state law and HIPAA in determining who has the authority to act on behalf of an adult or emancipated minor (*e.g.,* the personal representative, guardian or other person).

b. The Plan will verify the identity and authority of a person holding himself out as the personal representative of the Individual in accordance with Human Resources Operating Procedure No. 127 (Verification of Individuals Requesting Access to or Disclosure of Protected Health Information).

c. After the person has been properly identified as the personal representative, the Plan will provide a Notice of Privacy Practices to the personal representative. The Notice also shall be provided to the Individual. The Plan also must obtain an Authorization, as necessary, from the personal representative for Plan’s Use and Disclosure of the PHI in accordance with Human Resources Operating Procedure No. 120 (Use or Disclosure of Protected Health Information).

***5. Personal Representatives of Unemancipated Minors***

a. The Plan will ensure its Use and Disclosure of the PHI of unemancipated minors is in accordance with both applicable state law and HIPAA. The Plan will abide by applicable state law and HIPAA in determining who has the authority to act on behalf of an unemancipated minor (*e.g.,* a parent, guardian, custodian, person acting *in loco parentis* or other person).

b. The Plan will verify the identity and authority of a person holding himself out as a parent, guardian or acting *in loco parentis* in accordance with Human Resources Operating Procedure No. 127 (Verification of Individuals Requesting Access to or Disclosure of Protected Health Information).

c. After the person has been properly identified as the personal representative of an unemancipated minor, the Plan will provide a Notice of Privacy Practices to the personal representative. The Notice also shall be provided to the Individual if not deceased. The Plan also must obtain an Authorization, as necessary, from the personal representative regarding the Use and Disclosure of the unemancipated minor’s PHI in accordance with Human Resources Operating Procedure No. 120 (Use or Disclosure of Protected Health Information).

d. Exceptions. An unemancipated minor has the authority to act on his or her own behalf with regard to PHI and a parent, guardian or other person acting *in loco parentis* cannot act as the unemancipated minor’s personal representative if:

i. The unemancipated minor consents to the health care service(s) and no other consent is required by law and the minor has not requested that any other person be treated as the personal representative;

ii. The unemancipated minor may lawfully obtain the health care service(s) without the consent of a parent, guardian or other person acting *in loco parentis* and the minor, a court, or another person authorized by law consents to such healthcare service(s); or

iii. A parent, guardian or person acting *in loco parentis* assents to an agreement of confidentiality between the Plan and the unemancipated minor with respect to the health care service(s).

***6. Situations Warranting Disregard of Personal Representative***

a. The Plan may elect not to treat a person as an Individual’s personal representative if the Plan has a reasonable belief that:

i. The Individual has been or may be subjected to domestic violence, abuse or neglect by the person holding himself or herself out as the personal representative;

ii. Treating the person as the personal representative could endanger the Individual; or

iii. In its professional judgment, the Plan decides that it is not in the best interest of the Individual to treat the person as the Individual’s personal representative.

b. If Section 6.a. applies, the following steps should be taken:

i. The Plan will notify the person that the Plan will not consider that person as the Individual’s personal representative;

ii. The Plan will document the reasons why it has chosen to disregard the personal representative and must clearly state the basis of the reasonable belief that warrants disregard of the personal representative; and

iii. The Plan, with advice from legal counsel, may, in certain instances, as soon as practicable, petition the court to appoint a temporary guardian pending resolution of the matter in the event that another personal representative must be appointed to make decisions regarding the Individual’s PHI.

**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.

**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

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. 127 (Verification of Individuals Requesting Access to or Disclosure of Protected Health Information)
* Enterprise Information Security Procedures

**APPROVALS**

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

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