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**Human Resources Operating Procedure No. 130**

**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 Access***

***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’s request for access to inspect or to obtain a copy of the Individual’s PHI in a Designated Record Set maintained by the Plan and responding to the request in a timely manner consistent with the requirements of HIPAA as long as the PHI is maintained by the Plan in the Designated Record Set. If the regulations under HIPAA are changed by HHS the Plan will follow the revised regulations.

**PROCEDURES**

1. ***Facilitating Requests for Access***

a. Requests for PHI. An Individual has a right to request access to inspect or to obtain a copy of his or her PHI that is maintained by the Plan (including by a Business Associate on behalf of the Plan) in a Designated Record Set, for as long as the PHI is maintained by the Plan (or Business Associate, if applicable) in the Designated Record Set except for:

i. Psychotherapy notes;

ii. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

iii. PHI maintained by the Plan that is:

I. Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. § 263a, to the extent the provision of access to the Individual would be prohibited by law; or

II. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR § 493.3(a)(2).

b. Requests Directed to Privacy Official. Individuals requesting access to their PHI shall be notified to direct those requests to the Plan’s Privacy Official or, if the PHI is maintained by a Business Associate, to the Business Associate. Individuals requesting access to inspect or to obtain a copy of their PHI that is maintained in a Designated Record Set shall provide the Plan (or Business Associate, if applicable) with a written description of the request on the form provided by the Privacy Official (or Business Associate, if applicable). Employees of the Plan Sponsor who receive a request for PHI shall direct the request to the attention of the Privacy Official.

c. Access Only Provided to Requesting Individual. Except as provided in Section 3.h. of this Procedure, the Plan shall provide access to an Individual’s PHI only to that Individual or his or her personal representative.

***2. Timing of Response to Request for Access***

a. The Plan shall act on a request for access to inspect or to obtain a copy of PHI not later than 30 days after receipt of the request. If the requesting Individual is unsure as to the timing of the response to his or her request, he or she should contact the Privacy Official.

b.Where the Plan is unable to take an action on a request for access to inspect or to obtain a copy of PHI within 30 days after receipt of the request, the Plan may extend the time for such action by no more than 30 days by the Privacy Official or his or her delegate providing the Individual with a written statement of the reasons for the delay and the date by which the Plan will complete its action on the request within 30 days after receipt of the request. The Plan will take an action on a request for access to inspect or to obtain a copy of PHI no later than 60 days after receipt of the request.

***3. Providing Information in Response to a Request for Access***

If the Plan grants an Individual’s request for access to inspect or to obtain a copy of PHI, in whole or in part:

a. The Privacy Official or his or her delegate will alert the appropriate individual(s) handling that data of the details of the request.

b. The Privacy Official or his or her delegate will inform the Individual of the acceptance of the request.

c. The Plan will provide the access requested by the Individual, including inspection and/or obtaining a copy, of the PHI about him or her in Designated Record Sets. If the same PHI that is the subject of a request for access is maintained in more than one Designated Record Set or at more than one location, the Plan is only required to produce the PHI once in response to the request for access.

d. At no time will an Individual be permitted to review his or her PHI on-site without direct supervision by a Workforce Member. Only treating health care providers can give the Individual an interpretation of the meaning of an entry in the Designated Record Set or the care provided. Workforce Members will refer the Individual to discuss such questions with his or her attending physician.

e. The Plan will provide the Individual with access to the PHI in the form and format requested by the Individual, if it is readily producible in such form and format, or, if not, in a readable hard copy form or such other form and format as agreed to by the Plan and Individual.

f. If the PHI that is the subject of a request for access is maintained in one or more Designated Record Sets electronically, and the Individual requests an electronic copy of the information, the Plan must provide the Individual with access to the PHI in the electronic form and format requested by the Individual if it is readily producible in such form and format, or, if not, in a readable electronic form and format as agreed to by the Plan and the Individual.

g. The Plan will provide the access as requested by the Individual in a timely manner as required by Section 2.b., above, including arranging with the Individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing the copy of the PHI at the Individual’s request. The Privacy Official or his or her delegate may discuss the scope, format, and other aspects of the request for access with the Individual as necessary to facilitate the timely provision of access.

h. In cases where the information is archived, stored off-site or backed up at an off-site location, the Privacy Official or his or her delegate will contact the appropriate individuals at that location and obtain the requested information.

i. In addition, if the Individual chooses to direct the Plan to transmit the copy of PHI directly to an entity or person designated by the Individual, the Plan must do so provided any such choice is in writing, clear, conspicuous, signed by the Individual and specifically identifies the designated person and where to send the copy of the PHI.

j. The Plan may provide the Individual with a summary of the PHI requested, instead of providing access to the PHI or may provide an explanation of the PHI to which access has been provided, if:

i. The Individual agrees in advance to such a summary or explanation; and

ii. The Individual agrees in advance to the fees imposed, if any, by the Plan for such summary or explanation.

k. If the Individual requests a copy of the PHI or agrees to a summary or explanation of such information, the Plan may charge a reasonable, cost-based fee, provided that the fee includes only the cost of:

i. Labor for copying the PHI requested by the Individual, whether in paper or electronic form;

ii. Supplies for creating the paper copy or electronic media if the Individual requests that the electronic copy be provided on portable media;

iii. Postage, when the Individual has requested the copy, or the summary or explanation, be mailed; and

iv. Preparing an explanation or summary of the PHI, if agreed to by the Individual as required by Section 3.j., above.

l. The Privacy Official or his or her delegate shall verify that the PHI was sent to the requesting Individual or that they were otherwise provided access and that the original files will be returned to their original location.

***4. Denial of Access***

In the event the Plan chooses to deny a requesting Individual’s access to his or her PHI, in whole or in part, it must:

a. Review that determination with the Privacy Official and legal counsel to ensure that such action is merited;

b. Give the Individual access to any other PHI requested, to the extent possible, after excluding the PHI that the Plan has grounds to deny access;

c. Provide a timely, written denial to the Individual where the denial is in plain language and contains:

i. The basis for the denial;

ii. If applicable, a statement of the Individual’s right to a review of the decision, including a description of how the Individual may exercise the review right; and

iii. A description of how the Individual may complain to the Plan or the HHS Office of Civil Rights, including the name or title and telephone number of the Privacy Official or his or her delegate;

d. Inform the Individual where to direct his or her the request for access, if the Plan does not maintain the PHI that is the subject of their request for access, and the Plan knows where the requested information is maintained; and

e. If the Individual has requested a review of a denial, inform the Individual of his or her right to have that denial reviewed. The process for doing so is set forth in Section 7, below, of this Procedure.

The Privacy Official or his or her delegate shall maintain a copy of the denial of access and any supporting documentation for at least six (6) years from the date of receipt of the reques

***5. Denials Without an Opportunity for Review***

The Plan may deny a request for access without providing an opportunity for review of the decision in the following circumstances:

a. The PHI is psychotherapy notes, was compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding, is subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. § 263a, to the extent the provision of access to the Individual would be prohibited by law, or is exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR § 493.3(a)(2);

b. An Individual’s access to PHI created or obtained by a covered health care provider in the course of research that includes Treatment may be temporarily suspended while the research is in progress, if the Individual has agreed to the denial of access when consenting to participate in the research that includes Treatment, and the covered health care provider has informed the Individual that the right of access will be reinstated upon completion of the research; or

c. The PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

***6. Denials With an Opportunity for Review***

The Plan may deny an Individual access, so long as he or she is given the right to have that denial reviewed in the following circumstances:

a. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the Individual or another person;

b. The PHI makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

c. The request for access is made by the Individual’s personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the Individual or another person.

***7. Right to Review of Denial***

If the Plan denies a requesting Individual access to his or her PHI as described in Section 6, above, the Individual has the right to have that denial reviewed by a licensed health care professional who is designated by the Plan to act as a reviewing official and who did not participate in the original decision to deny access. The Plan must provide or deny access in accordance with the determination of that official. The process for doing so is as follows:

a. The Individual requesting the review shall be placed in contact with the Privacy Official;

b. The Privacy Official shall designate a licensed health care professional who was not directly involved in the denial to review the decision to deny access;

c. The Privacy Official will promptly refer this request for review to the reviewing official;

d. The reviewing official will determine, within a reasonable period of time, whether or not to deny access; and

e. The Privacy Official must promptly provide written notice to the Individual of the reviewing official’s decision and carry out the decision accordingly.

***8. Request Log***

The Privacy Official or his or her delegate shall maintain a request log and shall keep information on each request for at least six (6) years from the date of receipt of the request. The request log shall document the following with respect to each request for PHI received from a requesting Individual:

a. The date the request was received;

b. A copy of the request for information, if any, or a general description of the request for information;

c. The date of the Plan’s response to the request;

d. A description of the content of the Plan’s response to the request; and

e. Any other information that is pertinent to the request.

# 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.

**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.

**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.

**Designated Record Set means a** group of records maintained by or for a Covered Entity that is:

1. The medical records and billing records about Individuals maintained by or for a covered health care provider;

2. The enrollment, payment, claims adjudication, case or medical management record systems maintained by or for a health plan; or

3. Used, in whole or in part, by or for the Covered Entity to make decisions about Individuals.

For purposes of the above, “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.

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

**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.

**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.

**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. 122 (Minimum Necessary Use or Disclosure of Protected Health Information).
* Human Resources Operating Procedure No. 123 (Business Associate Agreements)
* Human Resources Operating Procedure No. 127 (Verification of Individuals Requesting Access to or Disclosure of Protected Health Information)
* Human Resources Operating Procedure No. 128 (Personal Representatives)
* Human Resources Operating Procedure No. 143 (Updates and Record Retention)
* Enterprise Information Security Procedures
* Request for Access to Designated Records Form
* Response to Request for Access to Designated Records Form

**APPROVALS**

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

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

HIPAA PRIVACY

REQUEST FOR ACCESS TO DESIGNATED RECORDS

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

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

**PARTICIPANT’S REQUEST**

Effective [*date*], I, [*please print full name*], am requesting access to that Protected Health Information (“PHI”) contained in the Designated Record Set which the Plan or a Business Associate of the Plan maintains on my behalf and described as follows [*identify the information to be accessed and the requested time and manner of access as specifically as possible*]

[ ]  Additional pages attached.

Signature Date

[OR]

Representative/Relationship Date

**PLEASE DIRECT REQUESTS FOR ACCESS
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

For Plan Use Only

Date Request Received: \_\_\_\_\_\_\_

Response Due Date: \_\_\_\_\_\_\_

Date Response (attached) sent: \_\_\_\_\_\_\_\_\_\_\_\_\_

HIPAA PRIVACY

RESPONSE TO REQUEST FOR ACCESS TO DESIGNATED RECORDS

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

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

**PLAN’S RESPONSE**

On [*date*], the Plan received your request for access to Protected Health Information (“PHI”). As of [*date no later than thirty (30) days following date of receipt*], the Plan takes the following action with respect to your request:

[ ]  Grants all or part of your request. Specifically, the Plan will take the following requested action(s) .

[ ]  Denies all or part of your request. Specifically, the Plan will not take the following requested action(s) , based on the following reason(s):

[ ]  The information is not part of your designated record set.

[ ]  Under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), you are restricted from accessing this information because it falls within one of the following categories:

[ ]  psychotherapy notes;

[ ]  information compiled for a civil, criminal, or administrative action or proceeding;

[ ]  it is subject to the Clinical Laboratory Improvements Amendments of 1988;

[ ]  it was created or obtained by a covered health care provider during the course of research and, as you previously agreed to, your rights to access the information have been temporarily suspended until [*date or event rights reinstated*];

[ ]  it is subject to the Federal Privacy Act (5 U.S.C. § 552a); or

[ ]  it was obtained from someone other than a health care provider under a seal of confidentiality.

You have no right to contest a denial of access by the Plan if based on any of the above-stated reasons.

[ ]  Access is denied in the discretion of the Plan in the health and safety interests of the individual to which the information pertains or another third party. You have the right to have this denial of access reviewed by a licensed health care professional designated by the Plan who did not participate in the original denial of your request by submitting a written statement to the Plan requesting a review of the denial. You also have the right to file a complaint about your denial to us or to the Office of Civil Rights, U. S. Department of Health and Human Services. Please contact the Plan’s Privacy Official at: Client Incorporated, 155 South Limerick Road, Limerick, PA   19468, 610-948-5100, to learn about the applicable complaint procedures.

[ ]  other

[ ]  additional pages attached.

[ ]  The Plan does not maintain the protected health information that is the subject of your request. The information is maintained by, and you should direct your request for access to:

[ ]  The Plan requires a 30-day extension of time within which to respond to your request for the following reason(s) . The Plan will act on your request by [*date no later than sixty (60) days following date of receipt*].

[Trinity Health Corporation Welfare Benefit Plan]

[Trinity Health Corporation Retiree Benefit Plan (Grandfathered]

By:

Its:

Date:

A COPY OF THIS DOCUMENT SHALL BE PROVIDED TO THE INDIVIDUAL TO WHOM THE INFORMATION IN THIS REQUEST PERTAINS.
Please direct questions regarding this form or the applicable complaint procedures 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