



*Issuing Department:* Internal Audit, Compliance, and Enterprise Risk Management

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## **Right to Request an Accounting of Disclosures of PHI**

### **Policy**

Patients have a right to an accounting of Disclosures of their Protected Health Information (“PHI”). NYU Langone Health must provide patients with such an accounting made during the six (6) years prior to the date of request.

NYU Langone Health will provide the first accounting of Disclosures requested by a patient within a twelve-month period free of cost; all subsequent requests within a twelve-month period may be subject to a reasonable, cost-based fee (e.g., supplies, labor, postage). The patient will be informed of any fee in advance and provided with an opportunity to withdraw or modify the request for the subsequent accounting in order to avoid or reduce the fee.

Workforce Members must record Disclosures of PHI in the patient’s medical record or in the Accounting for Disclosures Database as required by the *Accounting for Disclosures of PHI* policy.

Types of Disclosures that will be included are those made:

- as required by law (e.g. reporting certain types of wounds),
- for public health activities (e.g., reporting communicable diseases or births/deaths),
- to report victims of abuse, neglect, and domestic violence,
- for health oversight activities (e.g., requested by the Federal Office of Inspector General or the New York State Department of Health),
- for judicial and administrative proceedings (e.g., pursuant to a valid subpoena),
- for reports about decedents (e.g., to coroners, medical examiners, and funeral directors),
- for cadaveric organ, eye, or tissue donation purposes,
- for research conducted under an Institutional Review Board Waiver of Authorization,
- to avert a serious threat to health and safety,
- for certain specialized government functions (e.g., military and veterans affairs; medical suitability determinations),
- for workers compensation purposes,
- any other Disclosure that is not specifically excluded (including mistaken or unauthorized Disclosure), as provided below.

Types of Disclosures that will not be included are those made:

- for Treatment, Payment, or Health Care Operations,
- to the patient or their Personal Representative,
- in accordance with the patient's written Authorization,
- incidental to a permitted disclosure,
- to family or friends involved in the patient's care or for notification purposes,
- for national security or intelligence purposes,
- to law enforcement or correctional institutions about an inmate or other person in legal custody, and
- made for the creation of De-Identified Information or a Limited Data Set.

NYU Langone Health must temporarily suspend a patient's right to receive an accounting of Disclosures that are made to a health oversight agency or to a law enforcement agency if the agency so requests as follows:

- The agency provides NYU Langone Health with a written statement that providing an accounting of Disclosures is reasonably likely to impede the agency's activities. The agency must specify the time for which suspension is required.
- The agency orally informs NYU Langone Health that providing an accounting of Disclosures is reasonably likely to impede the agency's activities. If an oral statement is made, Workforce Members must document the statement and the identity of the agency making the statement. NYU Langone Health must temporarily suspend the patient's right to an accounting of the particular Disclosures covered by the statement for no longer than 30 days. If the agency provides a written statement within 30 days of the oral statement, NYU Langone Health must temporarily suspend the patient's right to an accounting of the particular Disclosures for the time specified in the written statement.

The request form and the accounting provided to the patient will be retained by IACERM.

### **Procedure**

1. All requests for an accounting of Disclosures must be submitted in writing, using the *Request for an Accounting of Disclosures* form, to the Office of Internal Audit, Compliance, and Enterprise Risk Management ("IACERM").
2. Upon receipt of the completed form IACERM will gather the requested information by:
  - obtaining a Patient Disclosure Report from Epic,
  - obtaining a report from the Accounting for Disclosures Database (including any reports with respect to archived database within the covered timeframe),
  - obtaining the Protocol List from the Institutional Review Board ("IRB"),
  - contacting Business Associate(s) as necessary to request the information required (or providing the Business Associate(s)' contact information to the patient for direct submission of their request), and
  - querying any other system or paper records that contain patient disclosures (e.g., CDC National Healthcare Safety Network; the Electronic Clinical Laboratory Reporting System).

3. IACERM will attach the Protocol List to the accounting of Disclosures. The IRB must, at the patient's request, assist the patient in contacting the research sponsor and the researcher if there is a reasonable likelihood that the patient's PHI was actually disclosed for the Research protocol or activity.
4. Each Disclosure must include:
  - the date of the Disclosure,
  - the name of the entity/person receiving the PHI and, if known, the address of such entity or person (to the extent this does not violate the HIPAA Rules),
  - a brief description of the PHI that was Disclosed, and
  - a brief description of the purpose of the Disclosure or, in lieu of such statement, a copy of a written request for a Disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.
    - If, during the accounting period requested, multiple Disclosures were made to the same person or entity for a single purpose, the accounting may list the information above in addition to the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.
5. Each disclosure made to an external researcher for a particular Research purpose involving 50 or more individuals pursuant to an IRB Waiver of Authorization must include:
  - the name of the protocol or other Research activity,
  - a brief description in plain language of the Research protocol or other Research activity, including the purpose of the Research and the criteria for selecting particular records,
  - a brief description of the type of PHI that was Disclosed,
  - the date or period of time during which Disclosures occurred,
  - the name, address, and telephone number of the entity that sponsored the Research and of the researcher to whom the information was Disclosed, and
  - a statement that the PHI of the patient may or may not have been Disclosed for a particular protocol or Research activity.
6. IACERM will provide the accounting of Disclosures to the patient within 60 days of receipt of the form. If IACERM cannot respond within 60 days, IACERM will notify the patient in writing of the reasons for the delay and the date by which the accounting of Disclosures will be provided. NYU Langone Health is only permitted one 30 day extension per request.
7. An invoice will be attached to the accounting of Disclosures if applicable.

### **Related Documents**

Accounting for Disclosures of PHI

HIPAA Privacy Policies, Procedures, and Documentation

HIPAA Privacy Policies and Procedures Definitions

Request for an Accounting of Disclosures form

**Legal Reference**

45 C.F.R. §164.528

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This version supersedes all NYU Langone Health (as defined in this Policy) previous policies, including but not limited to NYU Hospitals Center, New York University School of Medicine, Lutheran Medical Center, and Winthrop University Hospital.