

Permitted Uses and Disclosures: Exchange for Treatment

45 Code of Federal Regulations (CFR) 164.506(c)(2)

The [Health Insurance Portability and Accountability Act \(HIPAA\)](#) governs how [Covered Entities \(CEs\)](#) protect and secure Protected Health Information (PHI). HIPAA also provides regulations that describe the circumstances in which CE's are permitted, but not required, to use and disclose PHI for certain activities *without first obtaining* an individual's authorization: including for **treatment and for health care operations** of the disclosing CE or the recipient CE when the appropriate relationship exists. This fact sheet provides examples of exchange between or among health care providers (hereafter "providers") for **treatment**. There is a companion fact sheet that provides other examples of exchange for the health care operations of the discloser or of the recipient of the PHI that is exchanged.

Other laws may apply. This fact sheet discusses only HIPAA. Under HIPAA, CE's may disclose PHI (whether orally, on paper, by fax, or electronically) to another provider for the treatment activities of that provider, without needing patient consent or authorization ([45 CFR 164.506\(c\)\(2\)](#)). Treatment ([45 CFR 164.501](#)) is broadly defined as the provision, coordination, or management of health care and related services by one or more providers, including the coordination or management of health care by a provider with a third party; consultation between providers relating to a patient; or the referral of a patient for care from one provider to another. When providers share a patient in common and this rule applies, an illustration of how this rule works looks like this.

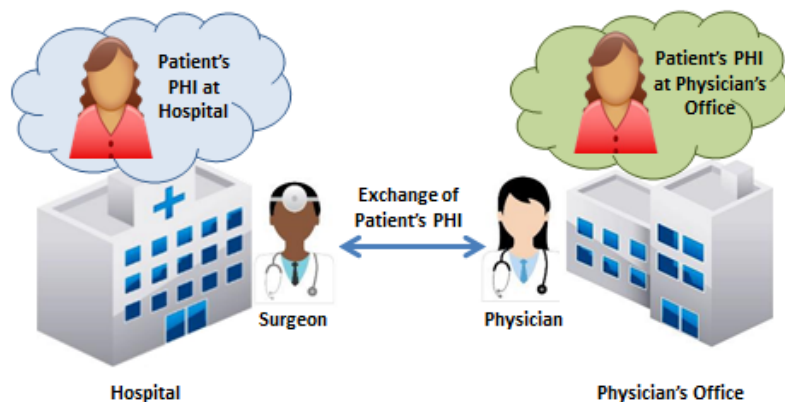


Figure 1: Hospital and Treating Physician exchange information scenario

A common question that arises is whether, in the above illustration, the disclosing hospital will be held responsible under HIPAA for what the receiving provider does with the PHI once the hospital has disclosed it in a permissible way under HIPAA. For example, what if the receiving physician experiences a breach of the PHI? Under HIPAA, after the receiving physician has received the PHI in accordance with HIPAA, the receiving physician, as a CE itself, is responsible for safeguarding the PHI and otherwise complying with HIPAA, including with respect to subsequent uses or disclosures or any breaches that occur. The disclosing hospital is responsible under HIPAA for disclosing the PHI to the receiving physician in a permitted and secure manner, which includes sending the PHI securely and taking reasonable steps to send it to the right address.

The information in this fact sheet is not intended to serve as legal advice nor should it substitute for legal counsel. The fact sheet is not exhaustive, and readers are encouraged to seek additional technical guidance to supplement the information contained herein.

Exchange for Treatment through Care Planning by a Health Care Provider

A provider wants to ensure that discharged patients have a comprehensive care plan for the immediate post-acute period. The provider hires a care planning company (i.e., a [Business Associate \(BA\)](#)) to develop comprehensive care plans for her patients, and signs a business associate agreement (BAA) with the care planning company.

To develop the plan, the BA requests pertinent PHI about the patient from the patients' other providers, such as hospitals the patients have been admitted to for the same or similar medical care, and the patients' health plans. Each of these CEs may disclose the relevant PHI for care planning purposes, using Certified Electronic Health Record Technology (CEHRT) or other electronic means. Disclosure of electronic PHI by CEHRT or other electronic method requires [Security Rule](#) compliance.

Note: In this scenario, a BAA is only required between the CE that hires the BA and the BA. The responding CEs may make permissible disclosures directly to the provider's BA for the provider's care planning purposes (without the need to execute their own BAA with the care planning company), just as they could share this information directly with the provider.

Under HIPAA, the patient's other providers and health plans, which have sent PHI to the initial treating provider's BA, are not responsible for what the BA does with the PHI once it has been disclosed permissibly and securely.

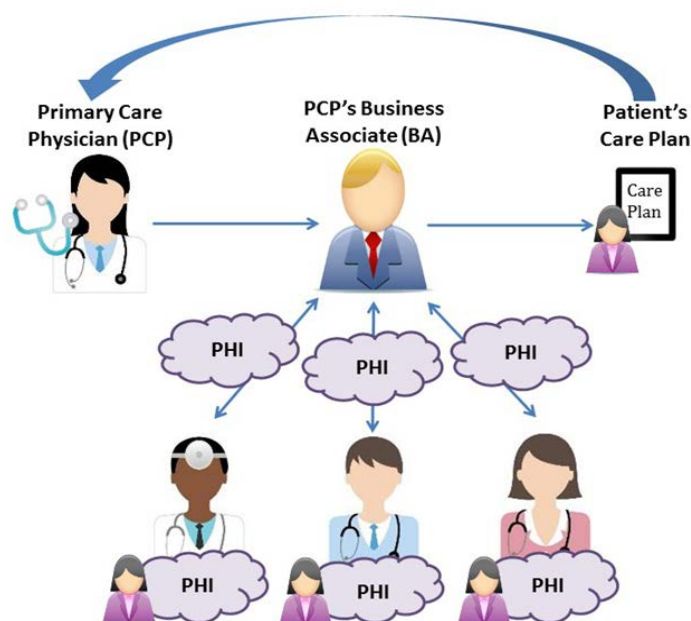


Figure 2: Provider Hires a Care Planner Scenario

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Treatment Includes Prospective Downstream Health Care Providers

When a hospital (an inpatient facility) is preparing to discharge a patient who will need ongoing, facility-based care, the inpatient facility, patient, and patient’s family will need to identify a new facility to accept the patient, and the prospective rehabilitation facilities will need protected health information (PHI) about the needs of the patient to determine whether they can provide appropriate care.

The current hospital may disclose the relevant PHI to prospective recipient facilities, such as by using CEHRT. Disclosure of electronic PHI by CEHRT or other means requires HIPAA Security Rule compliance. This disclosure is a treatment disclosure (in anticipation of future treatment of the patient by the rehabilitation facility) and thus may be carried out under [45 CFR 164.506\(c\)\(2\)](#).

The inpatient facility is responsible for complying with HIPAA in disclosing the PHI to the rehabilitation facility, which includes sending the PHI securely and taking reasonable steps to send it to the right recipient. After the rehabilitation facility has received the PHI in accordance with HIPAA, the rehabilitation facility, as a CE itself, is responsible for safeguarding the PHI and otherwise complying with HIPAA, including with respect to any breaches that occur. The sending provider/CE in this scenario would not be not responsible for the PHI once it has been received.

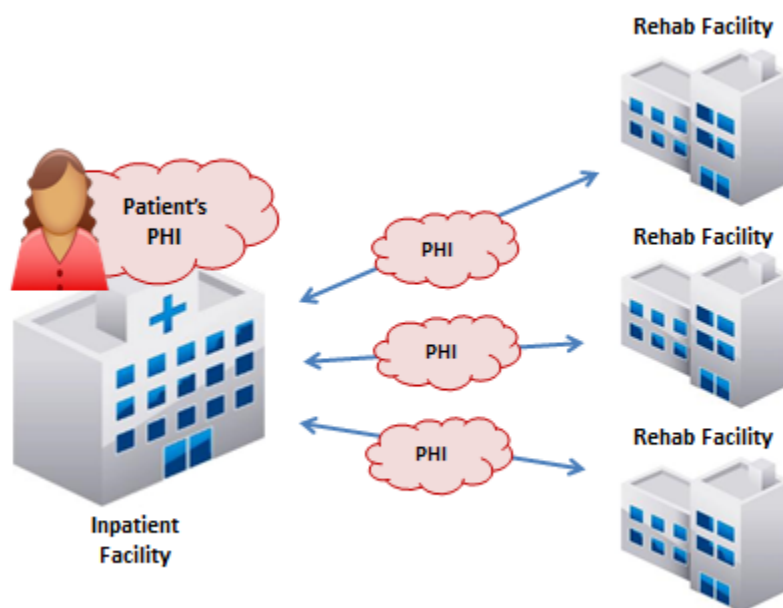


Figure 3: Inpatient Hospital plans Transfer to Rehab Hospital

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Using Certified Electronic Health Record Technology and Health Information Exchange

Two providers who need to share PHI for treatment may use CEHRT to send the information to the requesting provider, or may use a health information exchange. Disclosure of electronic PHI by CEHRT or other electronic means requires HIPAA Security Rule compliance.

Additional Resources

- [Office for Civil Rights HIPAA Regulations Website](#)
- [ONC Guide to Privacy & Security of Electronic Health Information \(2015\)](#)

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