

GUIDE TO DEVELOPING A NOTICE OF PRIVACY PRACTICES

An Instructional Document Written by WorkSmart MD, Inc.

Extracted from the HIPAA Rx™ Compliance Software

The HIPAA privacy rule provides individuals with the right to receive notice of the uses and disclosures of protected health information that may be made by the organization, the individual's rights regarding their health information, and the healthcare provider's legal duties with respect to protected health information.

The HIPAA privacy rule requires healthcare providers to provide a notice that is written in plain language and contains certain key elements. These key elements have been outlined in this instructional document.

Requirements for the Notice of Privacy Practices

The content of the notice should include:

- A header saying, "This notice describes how information about you may be used and disclosed and how you can get access to this information. Please review it carefully."
- A description, including at least one example, of the types of uses and disclosures that the healthcare provider is permitted to make for treatment, payment, and healthcare operations
- A description of each of the other purposes for which the healthcare provider is permitted or required to use or disclose protected health information without the individual's written authorization
- A statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization
- When applicable, separate statements that the healthcare provider may contact the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the individual; raise funds for the healthcare provider, and that the group health plan or health insurance issuer or HMO may disclose protected health information to the sponsor of the plan
- A statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights including:
 - The right to request restrictions on certain uses and disclosures as provided by 45 CFR 164.522(a), including a statement that the healthcare provider is not required to agree to a requested restriction
 - The right to receive confidential communications of protected health information as provided by 164.522(b), as applicable
 - The right to inspect and obtain a copy of protected health information as provided by 164.524
 - The right to amend protected health information as provided in 164.526
 - The right to receive an accounting of disclosures as provided in 164.528

- The right to obtain a paper copy of the notice upon request as provided in 164.520
- A statement that the healthcare provider is required by law to maintain the privacy of protected health information and to provide individuals with a notice of its legal duties and privacy practices with respect to protected health information
- A statement that the healthcare provider is required to abide by the terms of the notice currently in effect
- A statement that the healthcare provider reserves the right to change the terms of its notice and to make the new notice provisions effective for all protected health information that it maintains
- A statement describing how it will provide individuals with a revised notice
- A statement that individuals may complain to the healthcare provider and to the secretary of Health and Human Services if they believe their privacy rights have been violated, a brief description of how one files a complaint with the healthcare provider, and a statement that there will be no retaliation against the individual for filing a complaint
- The name or title and telephone number of a person or office to contact for further information
- An effective date, which may not be earlier than the date on which the notice is printed or otherwise published
- A healthcare provider that is required to have a notice may not use or disclose protected health information in a manner inconsistent with such notice.
- A covered healthcare provider with a direct treatment relationship with an individual must:
 1. Obtain written acknowledgement that the individual has received a copy of the notice
 2. Provide the notice no later than the date of the first service delivery, including service delivered electronically
 3. Post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the covered healthcare provider to be able to read it
- A healthcare provider that maintains a web site providing information about the healthcare provider's customer services or benefits must prominently post its notice on and make it available through the web site.
- Healthcare providers may provide the notice by e-mail if the individual agrees and agreement has not been withdrawn.

Covered entities must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which such material change is reflected.

A healthcare provider with a direct treatment relationship must document compliance with the notice requirements by retaining copies of the notices issued.

Outline for the Notice of Privacy Practices

Header: "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."
Description and at least one example of types of uses and disclosures provider may make for treatment, payment, and operations.
Description of other purposes for which provider is permitted or required to use or disclose protected health information without the individual's written consent or authorization.
Description of any more stringent law that applies.
Descriptions must include sufficient detail to place individual on notice of such uses and disclosures.
Statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization.
Separate statements must be made for certain uses and disclosures if the provider intends to contact the individual to provide appointment reminders, information about treatment alternatives, or other benefits and services that may be of interest to the individual and may contact the individual to raise funds.
Contain statement of individual's rights and a brief description of how the individual may exercise these rights, including right to request restrictions, right to receive confidential communications, right to inspect and copy information, right to amend information, right to receive an accounting of disclosures except for those for treatment, payment, and operations, and right to receive the notice electronically or on paper.
Provider's duties must be included: to maintain the privacy and provide notice, to abide by terms of notice, and to provide revised notice.
Statement that individuals may complain to provider and to secretary of HHS if they believe their privacy rights have been violated.
Name, title, and telephone number of person or office to contact for further information.
Effective date.
Optional elements may include any further limitations the provider makes on uses and disclosures.

Recommendations for the Notice of Privacy Practices

1. Study federal and state requirements for the notice of information practices.
2. Draft a notice that complies with federal and state law and regulations and accurately describes the covered entity's health information practices. The Notice of Privacy Practices that is provided with the HIPAA Rx **Sample Forms** Module should serve as a guideline.
3. Assign an individual or department to serve as an initial point of contact for individuals requesting additional information or filing a complaint relative to information privacy practices.
4. Ask legal counsel to help develop or review the notice.
5. Generate a policy and procedure relative to the notice.
6. Have the patient sign a copy of the notice acknowledging that they have received a copy.
7. Educate and train staff on the Notice of Privacy Practices
8. Prior to making material changes in information practices, generate a new notice and provide that new notice to individuals about whom protected health information is maintained.