Children's Hospital and Health System, Inc.
Administrative Policy and Procedure

This policy applies to the following entity(s):

☒ Children's Hospital of Wisconsin	☒ Children's Hospital of WI-Kenosha	☒ Children's Hospital of WI-Fox Valley
☒ Children's Medical Group	☒ Children's Health Education Center	☒ Seeger Health Resources
☒ Children's Hospital Foundation	☒ Surgicenter of Greater Milwaukee	☐ National Outcomes Center

SUBJECT: Privacy - Uses And Disclosures Of Protected Health Information With And Without An Authorization

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POLICY

PURPOSE:

1. To protect patient confidentiality and the privacy of protected health information (PHI).
2. To prevent improper uses and disclosures of PHI in accordance with Federal and State laws.
3. To limit the use and disclose of PHI to the minimum amount necessary to accomplish the intended purpose.

DEFINITIONS:

Individual

The patient or the patient's Legal Representative

Legal Representative
A parent, guardian or other person who has authority to act on behalf of a minor patient in making decisions related to health care, unless the minor patient can legally consent to health care services without the consent of an adult (See consent policy-pg. 7). For adult patients, Legal Representative means the legal guardian of an incompetent patient, the health care agent designated in an incapacitated patient's health care power of attorney, or the personal representative or spouse of a deceased patient. If no spouse survives a deceased patient, Legal Representative also means an adult member of the deceased patient's immediate family. (45 CFR 164.502(g) and Wis. Stat. §146.81(5)).

Protected Health Information (PHI)
Any information, whether oral, written, electronic, magnetic, or recorded in any form, that:

1. Is created or received by CHHS as a health care provider,
2. Relates to an individual's past, present or future;
   a) Physical or mental condition
   b) Health care treatment
   c) Payment for health care services, and

   That either clearly identifies a patient (such as name, social security number or medical record number) or can be used to find out the patient's identity (address, telephone number, birth date, e-mail address, and names of relatives or employer).

Health Care Operations
Those activities that are directly related to treatment or payment; those activities, which are necessary for treatment and payment to occur within the hospital. Examples are:

1. Quality assurance and improvement activities, including outcome evaluation and development of clinical guidelines and related functions that do not primarily aim to obtain generalized knowledge (unlike research).
2. Population - based activities relating to improving health or reducing health care costs;
3. Clinical Protocol development
4. Care Coordination;
5. Competence and performance reviews;
6. Training, accreditation, certification, licensing, credentialing or other related activities;
7. Underwriting and other insurance related activities;
8. Medical review and auditing functions, including fraud and abuse detection and compliance programs;

9. Conducting or arranging for medical review, legal services, and auditing functions;
10. Business planning and development;
11. Business management and general administrative activities;
12. Internal grievance resolution;
13. Creating de-identified health information;
14. Fundraising for the covered entity's benefit; and
15. Marketing activities for which an individual's authorization is not required.

GENERAL POLICY:

1. Children's Hospital and Health System (CHHS) will not redisclose information received from other healthcare facilities or external providers except as courtesy to the patient or legal representative. CHHS will redisclose a History and Physical completed by an external primary care physician prior to a CHHS procedure.

2. Workforce, physicians, residents, and business associates engaged in collecting, handling or disseminating PHI will be informed of their responsibility to protect patient data and of civil and federal penalties. *Refer to CHHS Policy: "Privacy - Confidentiality – Patient Information".*

Minimum Necessary:

1. Requests for PHI from hospital workforce or business associates will be limited to individuals who need information to carry out treatment, payment and operations of CHHS. Their access to PHI will be determined by CHHS and will be limited to the minimum amount necessary to perform their designated task or function.

2. Children's Hospital and Health System reserves the right to deny access to PHI that is not deemed to be within the minimum necessary standards for the given task or function. *Refer to CHHS Policy, "Protected Health Information (PHI), Disclosure of Minimum Necessary Information*".

Use or Disclosure Consistent with Privacy Notice:

1. CHHS will not use or disclose PHI in a manner inconsistent with the Notice of Privacy Practice.

2. CHHS will make reasonable efforts to obtain written acknowledgment of the Notice of Privacy Practice prior to using or disclosing PHI to carry out treatment, payment, or healthcare operations, consistent with restrictions provided under Wisconsin law for mental health records (Wis. Stats. 51.30)

and for HIV test results (Wisconsin Stats 252), alcohol and drug treatment (42 CFR, Part 2, HSS 92), developmental disabilities.

3. CHHS may disclose PHI to a business associate and may allow a business associate to create or receive PHI on its behalf pursuant to a signed Business Associate Agreement. *Refer to Administrative Policy – "Business Associates Use and Disclosure of PHI".*

Use or Disclosure with Authorization:

1. Unless a specific exception applies (see below), CHHS will not release PHI without a valid authorization from the individual or Legal Representative for reasons other than treatment, payment or health operations.
2. A valid authorization must contain all of the following elements (Wisconsin Statute 146.81-.84):
    a. The name of patient whose record is being disclosed.
    b. The type of information to be disclosed.
    c. The types of health care providers making the disclosure.
    d. The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment for insurance of a claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.
    e. The individual, agency or organization to which disclosures may be made.
    f. The signature of the patient or legal representative and the relationship or authority of that person to the patient.
    g. The date on which the consent is signed.
    h. The time period during which the consent is effective.

3. CHHS must obtain an authorization for any use or disclosure of PHI, in the following situations:

A. For disclosures made to the individual.
B. For certain research
C. For marketing, as defined in [HIPAA 164.501) except when the communication is:
    - Face-to-face with the individual
    - A promotional gift of nominal value
    Refer to CHHS Policy, "Use and Disclosures of PHI for Fundraising".
D. To a deceased Adult patient's personal representative or spouse or, if no spouse survives, an adult member of the deceased patient's immediate family.

Use or Disclosure with an Opportunity to Agree or Disagree (Authorization Not Required):

In situations described below, CHHS may use and disclose PHI without an authorization of the individual, provided that the individual is informed in advance, in writing or orally, of the use or disclosure and is provided an opportunity to agree to, prohibit or restrict the disclosure.

1. CHHS will maintain a directory of patients in its facility, which may be disclosed to any person who asks for the patient by name and includes:

    A. The individual's name;
    B. The individual's location in the facility; and
    C. The individual's General Condition.

2. CHHS may allow a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, or X-rays.

3. A healthcare provider may disclose to a family member, the adult who accompanies a minor patient to CHHS, or any other person identified by the individual, the PHI directly relevant to such person's involvement with the individual's care or with payment related to the individual's health care.

   If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, CHHS may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant to the person's involvement with the individual's health care.

4. CHHS may use or disclose PHI to notify or assist in the notification of (Including identifying or locating), a family member, Legal Representative, or another person responsible for the care of the individual of the Individual's location, general condition, or death.

5. CHHS may disclose PHI to its own foundation for fundraising purposes when the information is limited to demographic information relating to an individual and the dates health care was provided to an patient; provided that the individual has the ability to opt out of the use of information relating to him/her for fundraising purposes.

   (Refer to Policy, Uses & Disclosures of PHI for Fundraising)

Use or Disclosure: (Without Authorization):

In the situations described below, CHHS may use or disclose PHI **without** written authorization or an opportunity for the individual to agree or object to the use or disclosure.

1. CHHS may use or disclose PHI for its own treatment, payment, or healthcare operations.

2. CHHS may disclose PHI for treatment activities of a healthcare provider.

3. CHHS may disclose PHI to another healthcare provider for payment activities of the healthcare provider who receives the information.

4. CHHS may use or disclose health information that meets the specifications for de-identification and is considered not to be individually identifiable health information. *Refer to CHS Policy – "Privacy - Use & Disclosure of PHI for Research Purposes".*

5. PHI may be disclosed to indirect treatment providers without written permission for treatment, payment and certain health review purposes of the indirect treatment provider as specified in Wis. Stat. 146.82(2) and HIPAA 164.506 © (4).

6. HIV test results may be used by or disclosed to a healthcare provider. Reporting HIV positive results shall be done in accordance with the HIV testing policy of CHHS.

7. A prisoner's medical record may be disclosed after discharge without written authorization to a prisoner's healthcare provider, a member of the prison's medical staff, intake staff and prison's medical records staff. The PHI used or disclosed must be limited to that needed for record keeping purposes and continuance of care.
   - To healthcare providers to the extent necessary for the performance of their duties if the person is assisting the individual, the person is being consulted regarding;
     a) The health of the individual
     b) If there are substantial barriers to communicating with the individual
     c) If the life or health of the individual appears to be in danger
     d) The information contained in the medical record may aid the person in rendering assistance.

8. Admission for Mental Health or AODA Services:

Confirmation of an individual's admission for such services may be disclosed to an individual's parents, child, spouse, guardian, or law enforcement official who are seeking to determine whether an individual is on an unauthorized absence. No other information may be released. Limited information may be disclosed to any appropriate person when an individual who is in an inpatient because he or she was found incompetent to be tried for a crime, not guilty by reason of insanity, or found to be sexually violent, is on a unauthorized leave. The disclosure shall be limited to the amount of information necessary to assist in the apprehension of the individual. (WI Stat. 51.30 (4) (b) 12m)

9. Admission for Mental Health Services:

   Limited information from mental health treatment records will be disclosed upon submission of a written request from a spouse, parent, adult child or sibling who is directly involved in providing care or monitoring the individual's treatment. The information will be limited to a prognosis and diagnosis, medication list, and treatment plan. The individual must be notified about the release, unless adjudged incompetent. (WI Stat 51.30 (b)(4)(20))

10. When required by law, including;
    A. Reporting suspected child abuse or neglect to the proper authorities. This includes to a county department, a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for the purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. [Wis. Stat. 146.82(2)(11)]
    B. Reporting births to the state.
    C. Reporting certain communicable diseases to the appropriate public agency.
    D. Reporting cancer and pre-cancerous conditions to the state.
    E. reporting certain deaths to the state. (Refer to State Form "Notice of Removal of A Human Corpse From an Institution")
    F. Reporting gunshot and other suspicious wounds, including burns, if a person has reasonable cause to believe that the suspicious wound occurred as a result of a crime.
    G. Reporting of elder abuse and neglect and for investigations for elder abuse when necessary to prevent serious harm (Wis. Stat. 46.90).
    H. To the Food and Drug Administration as required or directed by law.
    I. To any federal or state governmental agency to perform a legally authorized function including but not limited to management audits, financial audits, program monitoring and evaluation, facility or individual licensure or certification.
       - Request must be in writing.

- A private pay patient may deny such access by annually submitting a signed, written request on form provided by the Wisconsin Department of Health and Family Services (DHFS). [Wis. Stat. 146.82(2)(5)]
- HIV test results may not be provided to federal or state governmental agencies or health oversight activities except to the state epidemiologist.

J. To the party specified in a court ordered subpoena.
Note: A subpoena or attorney request without the individual's authorization or a court order will not be authorized for disclosure.

K. To law enforcement official requesting PHI for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. The information will be limited to:
- Name
- Address
- Physical characteristics.

L. To law enforcement official who is seeking information to determine if an individual is on unauthorized absence from a treatment facility. Information will be limited to whether or not the individual is:
- A patient at the inpatient facility
- Identifying information
- The charged crime
- The whereabouts of a patient under treatment pursuant to a criminal or juvenile commitment.

M. To law enforcement if there is reasonable cause to believe that a patient's death was related to the use of:
- A physical restraint
- Use of a psychotropic medication
- Suicide.

N. To a sheriff or police department for purposes of investigating a death of:
- A child who resides in a building operated by a child welfare agency
- A resident of a community-based residential facility
- A resident of a nursing home
- A person admitted or committed to a mental health treatment facility.

O. To a coroner, deputy coroner, medical examiner or medical examiner's assistant for the purpose of completing a medical certificate or investigating a death. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information.

Mental Health records cannot be released without authorization or court order. [Wis. Stat. 146.82(2)(18)]

P. To organ procurement organizations, except for mental health records.

Q. To research programs for purposes of certain research.

R. To the Wisconsin Department of Transportation, if a physician or optometrist believes that the patient's ability to exercise reasonable or ordinary control over a motor vehicle is present.

S. To worker's compensation authority, CHHS can disclose any records reasonably related to any injury for which the employee claims compensation. This does not include HIV test results unless related to the injury.

Procedure:

1. CHHS departments that have access to PHI will maintain departmental procedures as to how they use and disclose information.

2. External requests for PHI and requests for disclosure of HIV or mental health records should be forwarded to the Patient Health Information Department or CMG or SGM record site to process.

3. Disclosure of information needs to be documented in order to account/track the disclosure. This is a state and federal law requirement. *Refer to CHHS Policy, "Accounting for Disclosures of Protected Health Information."*

4. CHHS will provide the notice of privacy practice to all registering hospital individuals outlining how the facility uses and discloses protected health information.

5. If any law enforcement officer, state or federal agent, attorney, or individual serving a subpoena, etc. presents to your department-requesting PHI, refer them to your manager.

DISTRIBUTION: Administrative Policy Manual

AUTHORIZATION: Director, Patient Health Information
Corporate Compliance Officer
Corporate Vice President –General Counsel
Directors of Clinical Operations

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