

# Verification

## Where Is The Policy in the Privacy Rule (Title 45, Part 164)?

### **45 C.F.R. §164.514 (h)**

(h)(1) Standard: verification requirements. Prior to any disclosure permitted by this subpart, a covered entity must:

(i) Except with respect to disclosures under §164.510 [uses and disclosures requiring an opportunity to agree or disagree], verify the identity of a person requesting protected health information and the authority of any such person to have access to protected health information under this subpart, if the identity or any such authority of such person is not known to the covered entity; and

(ii) Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the protected health information when such documentation, statement, or representation is a condition of the disclosure under this subpart.

(2) Implementation specifications: verification. (i) Conditions on disclosures. If a disclosure is conditioned by this subpart on particular documentation, statements, or representations from the person requesting the protected health information, a covered entity may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

(A) The conditions in §164.512(f)(1)(ii)(C) [disclosures for law enforcement purposes] may be satisfied by the administrative subpoena or similar process or by a separate written statement that, on its face, demonstrates that the applicable requirements have been met.

(B) The documentation required by §164.512(i)(2) [uses and disclosures for research purposes] may be satisfied by one or more written statements, provided that each is appropriately dated and signed in accordance with §164.512(i)(2)(i) and (v).

(ii) Identity of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

(A) If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;

(B) If the request is in writing, the request is on the appropriate government letterhead;

or

(C) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.

(iii) Authority of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify authority when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

(A) A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority;

(B) If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.

(iv) Exercise of professional judgment. The verification requirements of this paragraph are met if the covered entity relies on the exercise of professional judgment in making a use or disclosure in accordance with §164.510 or acts on a good faith belief in making a disclosure in accordance with §164.512(j) [uses and disclosures to avert a serious threat to health or safety].

**Department:**

**Title:** Verification

**No.**

**Effective Date:** April 14, 2003

**Authorized By:** \_\_\_\_\_

***Verification of Entities Requesting Use or Disclosure of Protected Health  
Information***  
**45 C.F.R. §164.514 (h)**

## **Why Do We Need This Policy?**

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Covered Entities must establish and use written policies and procedures (which may be standard protocols) that are reasonably designed to verify the identity and authority of the requestor where the Covered Entity does not know the person requesting the Protected Health Information. The knowledge of the person may take the form of a known place of business, address, phone or fax number, as well as voice recognition. Where documentation, statements or representations, whether oral or written, from the person requesting the Protected Health Information is a condition of disclosure under this rule or other law, this verification must involve obtaining such documentation statement, or representation. In such a case, additional verification is only required where this regulation (or other law) requires additional proof of authority and identity.

Covered Entities are permitted to rely on the required documentation of IRB or privacy board approval to constitute sufficient verification that the person making the request was a researcher and that the research is authorized.

For most disclosures, verifying the authority for the request means taking reasonable steps to verify that the request is lawful under this regulation. Additional proof is required where the request is made pursuant to §164.512 for national priority purposes. Where the person requesting the Protected Health Information is a public official, Covered Entities must verify the identity of the requester by examination of reasonable evidence, such as a written statement of identity on agency letterhead, an identification badge, or similar proof of official status. Similarly, Covered Entities are required to verify the legal authority supporting the request by examination of reasonable evidence, such as a written request provided on agency letterhead that describes the legal authority for requesting the release. Where §164.512

written evidence of legal process or other authority before a disclosure may be made, a public official's proof of identity and the official's oral statement that the request is authorized by law are not sufficient to constitute the required reasonable evidence of legal authority; under these provisions, only the required written evidence will suffice.

In some circumstances, identity or authority will be verified as part of meeting the underlying requirements for disclosure. For example, a disclosure to avert an imminent threat to safety is lawful only if made in the good faith belief that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and to a person reasonably able to prevent or lessen the threat. If these conditions are met, no further verification is needed. In such emergencies, the covered entity is not required to demand written proof that the person requesting the Protected Health Information is legally authorized. Reasonable reliance on verbal representations are appropriate in such situations.

Similarly, disclosures permitted for facility directories may be made to the general public; the Covered Entity's policies and procedures do not need to address verifying the identity and authority for these disclosures. In §164.510(b), the regulation does not require verification of identity for persons assisting in an individual's care or for notification purposes. For disclosures when the individual is not present, such as when a friend is picking up a prescription, the Covered Entity is allowed to use professional judgment and experience with common practice to make reasonable inferences

Under §164.524, a Covered Entity is required to give individuals access to Protected Health Information about them (under most circumstances). Under the general verification requirements of §164.514(h), the Covered Entity is required to take reasonable steps to verify the identity of the individual making the request. The regulations do not mandate particular identification requirements (e.g., drivers license photo ID), but rather leave this to the discretion of the Covered Entity. The Covered Entity must also establish and document procedures for verification of identity and authority of personal representatives, if not known to the entity. For example, a health care provider can require a copy of a power of attorney, or can ask questions to determine that an adult acting for a young child has the requisite relationship to the child.

Subpart C of Part 160 requires disclosure to DHHS for purposes of enforcing this regulation. When a Covered Entity is asked by DHHS to disclose Protected Health Information for compliance purposes, the Covered Entity must verify the same information that it is required to verify for any other law enforcement or oversight request for disclosure.

In the final regulation, the verification provisions apply only to disclosures of Protected Health Information. The requirements in §164.514(d), for implementation of policies and procedures for 'minimum necessary' uses of Protected Health Information, are sufficient to ensure that only appropriate persons within a Covered Entity will have access to Protected Health information.

## **Purpose**

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CDHS is committed to ensuring the privacy and security of and individual's Protected Health Information. In the normal course of business and operations, we will receive many requests to disclose patient health information for various purposes. To support our commitment to patient confidentiality, CDHS will ensure that the appropriate steps are taken to verify the identity and authority of individuals and entities requesting Protected Health Information, as required under 45 C.F.R. §164.514(h) and other applicable federal, state, and/or local laws and regulations

## **Policy**

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1. CDHS will take necessary steps to verify the identity and legal authority of persons requesting disclosure of Protected Health Information.

## **Procedures**

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1. In verifying the identity and legal authority of a public official or a person acting on behalf of the public official requesting disclosure of protected health information, CDHS personnel may rely on the following, if such reliance is reasonable under the circumstances, when disclosing Protected Health Information:
  - (a) documentation, statements, or representations that, on their face, meet the applicable requirements for a disclosure of Protected Health Information;
  - (b) presentation of an agency identification badge, other official credentials, or other proof of government status if the request is made in person;
  - (c) a written statement on appropriate government letterhead that the person is acting under the government's authority;
  - (d) other evidence or documentation from an agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official;
  - (e) a written statement of the legal authority under which the information is requested;
  - (f) if a written statement would be impracticable, an oral statement of such legal authority;
  - (g) a request that is made pursuant to a warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal that is presumed to constitute legal authority.
2. CDHS personnel may rely on the exercise of professional judgment and follow the requirements of applicable state and other law in making the following uses or disclosures of Protected Health Information:
  - (a) a use or disclosure for facility directories;
  - (b) a use or disclosure to others for involvement in the individual's care; or
  - (c) a disclosure to avert a serious threat to health and safety.
3. Personnel receiving a request from an individual or entity for use or disclosure of Protected Health Information will utilize [FILE/SYSTEMS] to determine whether CDHS has a knowing relationship with the requesting individual.
4. Personnel will report any discrepancies in the verification of the identity and/or legal authority of an individual or entity requesting Protected Health Information to the [PRIVACY OFFICER] in a timely manner.
5. Once it is determined that use or disclosure is appropriate, [MEDICAL RECORDS] personnel with appropriate access clearance will access the individual's Protected Health Information using proper access and authorization procedures.
6. The requested Protected Health Information will be delivered to the individual in a secure and confidential manner, such that the information cannot be accessed by employees or other persons who do not have appropriate access clearance to that information.

7. [MEDICAL RECORDS] personnel will appropriately document the request and delivery of the Protected Health Information.
8. In the event that the identity and legal authority of an individual or entity requesting Protected Health Information cannot be verified, personnel will refrain from disclosing the requested information and report the case to the [PRIVACY OFFICER] in a timely manner.
9. Knowledge of a violation or potential violation of this policy must be reported directly to the [PRIVACY OFFICER] or [COMPLIANCE OFFICER], or to the employee compliance hotline.

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