



Corporate Compliance

POLICY TITLE: Release of Protected Health Information (e.g., Medical Record) for Deceased Patients	SYSTEM POLICY AND PROCEDURE MANUAL
POLICY #: 800.51	CATEGORY SECTION: Compliance & Ethics
System Approval Date: 6/18/18❖	Effective Date: 8/13
Site Implementation Date: 6/18/18❖	Last Reviewed/Approved: 1/16
Prepared by: Corporate Compliance	Notation(s): N/A

GENERAL STATEMENT of PURPOSE

The purpose of this document is to outline the established requirements for authorizing access to, or the use or disclosure of, Protected Health Information (“PHI”).

POLICY

It is the policy of Northwell Health that a fully executed Authorization for Release of Protected Health Information Pursuant to HIPAA (“Authorization Form”), must be completed and is required to access, use or disclose PHI of a deceased patient subject to limited exceptions, as outlined herein.

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Health; faculty and students of the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell conducting research on behalf of the Zucker School of Medicine on or at any Northwell Health facility; and the faculty and students of the Hofstra Northwell School of Graduate Nursing and Physician Assistant Studies.

DEFINITIONS

Protected Health Information (“PHI”): Any oral, written, or electronic individually identifiable health information. PHI is information created or received by Northwell that (i) may relate to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual; and

(ii) identifies the individual who is the subject or based on which there is a reasonable basis to believe that the individual who is the subject can be identified. The Health Insurance Portability and Accountability Act (HIPAA) further clarifies that PHI includes information that identifies the individual by one or more (depending on context) of the following 18 identifiers:

1. Names;
2. Geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code in certain situations;
3. All elements of date (except year) for dates directly related to an individual, including birth date, discharge date, date of death; and all ages over 89 and all elements of dates indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
4. Telephone numbers;
5. Fax numbers;
6. Electronic mail addresses;
7. Social security numbers;
8. Medical record numbers;
9. Health plan beneficiary numbers;
10. Account numbers;
11. Certificate/license numbers;
12. Vehicle identifiers and serial numbers;
13. Medical Device Identifiers;
14. Web Universal Resource Locators (URLs);
15. Internet Protocol (IP) address numbers;
16. Biometric identifiers, including finger and voice prints;
17. Full face photographic images and any comparable images; and
18. Any other unique identifying number, characteristic, or code.

PROCEDURE

Special Provisions Related to Protected Health Information of Deceased Individuals

PHI of deceased patients will be protected in the same manner in which a living patient's PHI is protected for a period of fifty years following the date of the patient's death.

Release of Deceased Patient's Medical Record and Related Relevant Information:

- Family Members and Individuals Involved in Care: PHI may be released to family members unless doing so is inconsistent with any prior expressed preference of the deceased patient that is known to Northwell Health and upon receipt of an Authorization Form signed by an individual named in Letters of Administration or Letters Testamentary that must also accompany the Authorization Form. In the event Letters of Administration or Letters Testamentary are unavailable, Northwell Health will accept a copy of the Death Certificate along with a Distributee Affidavit indicating that the deceased patient died without a will or that the will is not being probated and that the individual requesting the record would be or is a distributee of

the patient's estate.

- Administrator or Executor: PHI may be released to the legally recognized administrator or executor of a deceased patient's estate upon receipt of a copy of Letters of Administration or Letters Testamentary. PHI may also be released to a person authorized by the administrator or executor pursuant to an Authorization Form validly executed by the administrator or executor, along with a copy of Letters of Administration or Letters Testamentary.
- Attorney Representing Estate. PHI may be released to an attorney upon receipt of a written request from the attorney representing a qualified person or the subject's estate who holds a power of attorney from the qualified person or the subject's estate explicitly authorizing the holder to execute a written request for patient information.
- Distributee's Power of Attorney. PHI may be released to individuals claiming to hold a power of attorney from a distributee upon receipt of: (1) a copy of the power of attorney from the deceased patient's distributee, explicitly authorizing the requestor to receive the deceased Patient's PHI and (2) a certified copy of the death certificate.
- Coroners and Medical Examiners: PHI may be released to a coroner or medical examiner for the purposes of identifying the deceased patient, determining a cause of death, or other duties, as authorized by law.
- Funeral Directors: PHI may be released to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the deceased patient. If necessary for funeral directors to carry out their duties, such PHI may be disclosed prior to, and in reasonable anticipation of, a patient's death.
 - Example: Hospitals may disclose to funeral directors the fact that an individual has donated an organ or tissue because this information has implications associated with embalming.
- Pending Civil Litigation: PHI may be released in the context of civil litigation in accordance with the following:
 - Upon the written request of the administrator or executor of the deceased patient's estate, or the surviving spouse or next of kin; or
 - Upon the written request of the executor for the deceased patient's estate, the deceased patient's surviving spouse, next of kin, or any other party in interest to the will, if the litigation involves a challenge to the validity of the will.
 - *Note: If a request is made pursuant to the above, the deceased patient's health care provider must advise whether the deceased patient's PHI contains information that "tends to disgrace the memory of the deceased patient." If there is no such information, the information may be disclosed. The deceased patient's health care provider may consult the Office of Legal Affairs in making this determination, as needed.

Release of Deceased Patient's Drug and/or Alcohol Abuse-Related PHI:

Authorization of such a disclosure may be given by the executor or administrator of a deceased patient's estate, the deceased patient's spouse, or a responsible family member. The authorization must be written and include the following: (1) name of deceased patient; (2) name of person to whom information may be disclosed; (3) name or description of person/entity that is authorized to disclose; (4) purpose of disclosure; (5) description of information that may be disclosed; (6)

date on which consent will expire; (7) signature and date consent signed; and (8) a statement that consent is subject to revocation at any time. The standard Authorization Form for the release of medical or other information discussed elsewhere in this policy is NOT sufficient for this purpose.

- Any disclosure of a deceased patient’s drug and/or alcohol abuse-related PHI must be accompanied by the following statement:
“This information has been disclosed to you from records protected by Federal confidentiality rules (42 C.F.R. §2.61). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2.”
- If any of the individuals above are not available to provide such written authorization, a court order and subpoena are required (subpoena alone is not sufficient). The court order must state: (1) other ways of obtaining the information are not available or would not be effective; and (2) public interest and need for disclosure outweigh potential injury to the patient, the physician-patient relationship and the treatment services.

Release of Deceased Patient’s PHI related to HIV/AIDS:

- A court order is required to disclose PHI related to HIV/AIDS of deceased patients. Such court order must state: (1) compelling need; (2) clear and imminent danger; or (3) applicant is lawfully entitled to the disclosure.
- Any disclosure of a deceased patient’s PHI related to HIV/AIDS must be accompanied by the following statement:
“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in fine or jail sentence, or both. A general authorization for the release of medical or other information is NOT sufficient for further disclosure.”

Release of Deceased Patient’s Mental Health-Related PHI:

- A deceased patient’s mental health-related PHI can be released by a court order or a so-ordered subpoena which is required to disclose mental health-related PHI of deceased patients, either of which must state on its face that the “interests of justice outweigh need for confidentiality.” The relevant mental health-related treatment provider must be notified of all such requests. If such health care provider determines that disclosure of such PHI is reasonably expected to cause substantial and identifiable harm to the patient or to a third party or disclosure would otherwise have a detrimental effect, a redacted medical record must be provided.
- If a family member of a deceased patient seeks information from the patient’s record and the family member is the executor of the deceased patient’s estate, or otherwise

has legal authority to act on behalf of the patient or his/her estate, (e.g. such as letters testamentary issued by a court), PHI may be released to the family member upon his/her written request which documents and attests to the legal authority to act on behalf of the deceased patient. PHI may also be released to a family member who obtains and provides written consent from the executor or legal representative of the deceased patient. Secondly, if a family member of a deceased patient seeks information from the patient's record because it is relevant to the family member's own health care, HIPAA permits providers to release the information to the family member's physician, provided the physician submits a written request to the provider on the family member's behalf. The patient's provider shall be notified if such a request is made to review the PHI prior to release. If there is an explicit request from the deceased patient not to release such information to the family member, this request will be honored. Additionally, if the provider determines that the release may cause substantial harm, a redacted medical record will be provided.

Training

The Office of Corporate Compliance will provide HIPAA training on, at least, an annual basis and as needed for any updates.

Sanctions

In compliance with HIPAA, violations of this policy will be subject to disciplinary action as outlined in the Human Resources Policy and Procedure Manual and in the Bylaws, Rules and Regulations of the Medical Staff.

Documentation

The Northwell Health facility must document the medical record(s) that are subject to restriction.

Any documentation generated in compliance with this policy will be retained for a minimum of 6 years from the date of its creation.

Applicability of Policy to PHI of Northwell Health Employees who are also Northwell Health Patients

The provisions contained in this policy, and in all Northwell Health policies regarding PHI, apply equally to the PHI of Northwell Health employees who also are, or have been, patients of Northwell Health.

Questions related to the approval or denial of requests for confidential communications or restrictions on access to, or the use or disclosure of, PHI will be directed to the facility Privacy Officer.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

- Final HIPAA Omnibus Rule (78 Fed. Reg. 5566)
- Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164
Health Information Technology for Economic and Clinical Health (HITECH) Act,
Title XIII of Division A and Title IV of Division B of the American Recovery and
Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009)
- NYS Mental Hygiene Law §33
- NYS Public Health Law §18
- Human Resources Policy and Procedure Manual, Part 5
- Northwell Health Bylaws, Rules and Regulations of the Medical Staff
- Northwell Health Corporate Compliance Policy #800.02 – Release of
Protected Health Information for Living Patients
- Northwell Health Corporate Compliance Policy #800.42 – Confidentiality of Protected
Health Information

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES

N/A

ATTACHMENTS

N/A

FORMS:

VD001 – Authorization for Release of Information Pursuant to HIPAA

APPROVAL:	
Northwell Health Policy Committee	6/18/18❖
System PICG/Clinical Operations Committee	6/18/18❖

Standardized Versioning History:

*= Northwell Health Policy Committee Approval; ** =PICG/Clinical Operations Committee Approval

*1/21/16

- ❖ Expedited Approval Granted by:
Winifred Mack, SVP/Operations – Chair, Northwell Policy Committee
Morris Rabinowicz, MD, Co-Chair, - System PICG/Clinical Operations Committee