ORGANIZATION POLICY

POLICY TITLE: ONSLOW MEMORIAL HOSPITAL USING OR DISCLOSING THE MINIMUM NECESSARY AMOUNT OF PROTECTED HEALTH INFORMATION

POLICY NUMBER: 1301

(1) **AUTHORITY**: This Policy is enacted pursuant to authority delegated to the management of Onslow Memorial Hospital, Inc. ("OMH") by its board of directors.

(2) **DEFINITIONS**: Certain terms having specific definitions are used in this Policy, and these terms and definitions are as follows:

a. Individually identifiable health information means information that is a subset of health information, including demographic information collected from an individual, and:

   i. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

   ii. Relates 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 past, present or future payment for the provision of health care to an individual; and

      1. That identifies the individual; or

      2. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

b. Protected health information means individually identifiable health information:

   i. Except as provided in paragraph (ii) of this definition, that is:

      1. Transmitted by electronic media;

      2. Maintained in any medium described of *electronic media* at § 162.103; or

      3. Transmitted or maintained in any other form or medium.

   ii. Protected health information excludes individually identifiable information in:

      1. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and

      2. Records described at 20 U.S.C 1232g(a)(4)(B)(iv).

(3) **APPLICABILITY**: This Policy shall apply to all employees and agents of OMH. This Policy shall become effective when approved and signed by the President and Chief Executive Officer of OMH.

(4) **PURPOSE AND APPLICABLE LAW**: The purpose of this Policy is to establish OMH's use or disclosure of the minimum necessary amount of protected health information.

All OMH staff are generally expected to limit their use and disclosure of protected health information, and requests for protected health information, to the minimum amount of information necessary to perform their duties at the hospital. This general expectation does not mean that OMH staff should restrict exchanges of information required in order to treat patients quickly and effectively.

The minimum necessary rule is not a strict standard; it is intended to make covered entities evaluate their current practices and implement protections, as needed, to prevent unnecessary disclosures of PHI.

Department supervisors are expected to help ensure that all members of the workforce limit their uses and disclosures of protected health information, and requests for protected health information, to the minimum amount of information necessary to accomplish their respective duties at the hospital. Each department will develop specific policies and procedures explaining how much information may be used, disclosed or requested to carry out routine duties, and who may disclose such information. Department supervisors are expected to ensure that the members of their respective departments follow these policies and procedures.

Exceptions

The following uses, disclosures and requests are not limited by the minimum necessary standard explained in this policy.

- ***Requesting*** patient information from, or ***disclosing*** patient information to, another health care provider for treatment purposes.
- ***Disclosing*** patient information to the patient, or to a personal representative who is authorized to make health care decisions for the patient or the patient's estate.
- ***Using*** or ***disclosing*** patient information pursuant to a patient's written authorization.
- ***Disclosing*** protected health information required by the Department of Health and Human Services in connection with its investigation or determination of the hospital's compliance with the HIPAA privacy regulations.
- ***Using*** or ***disclosing*** protected health information as required by law (not just using or disclosing protected health information in a manner that is permitted by law).
- ***Using*** or ***disclosing*** protected health information in order to complete standard electronic transactions.
- ***Incidental uses*** or ***disclosures*** of protected health information that occur in the course of other permitted uses or disclosures of protected health information.

Department managers nevertheless should do their best to limit the amount of information used, disclosed or requested in these situations to what is appropriate under current medical and ethical guidelines.

Uses Of Protected Health Information

All OMH departments must identify the persons or classes of persons within their operations who need access to protected health information to carry out their job duties, the categories or types of protected health information that each of these classes of people require, and under what conditions such persons will need to access the protected health information necessary to perform their jobs. Policies and procedures must be implemented on a departmental level to ensure that the use of protected health information remains limited to the necessary scope as identified in the audit.

If a member of OMH's workforce must access protected health information beyond that which is identified as a category of protected health information inappropriate for access by the individual, then the person may only access such information if approved by the person's supervisor and the person can demonstrate to the supervisor that access to the information is necessary to perform the person's workforce duties. The supervisor must document that the individual required access to protected health information beyond the category of protected health information identified as appropriate for the individual.

Routine Disclosures of Protected Health Information

For routine or recurring requests and disclosures, each department must develop standard protocols, policies and procedures which limit the PHI disclosed or requested to the minimum necessary to achieve the purpose of that particular disclosure or request. Each disclosure does not have to be individually reviewed. Please refer to the guideline following this policy for further details regarding the development of department policies.

OMH staff are instructed to notify their department supervisors if they believe they need to use or disclose protected health information in a way that is not addressed by the hospital's or their departments' policies and procedures. If necessary, the department supervisor should consult with OMH's Privacy Officer to determine how much information may be accessed and used to appropriately address the situation, and by whom. If there is insufficient time to consult with the Privacy Officer without jeopardizing patient care, the department supervisor may make this determination and notify the Privacy Officer as soon as possible afterwards.

Note: Many disclosures to persons outside the hospital or requests for information from persons outside the hospital will require a written authorization from the patient whose protected health information is involved. This policy discusses only how much information may be disclosed or requested and does not discuss when such authorizations are required. Please refer to *OMH Organization Policy No. 102: Confidentiality* for guidance on uses and disclosures requiring authorizations.

Non-Routine Disclosures of Protected Health Information

Unlike the preceding category, non-routine requests must be evaluated on an individual case-by-case basis in accordance with the criteria developed by OMH to ensure the minimum necessary disclosure. OMH is required to develop criteria that will allow each department to consistently

determine the minimum amount of PHI necessary to accomplish the intended purpose of the disclosure in response to non-routine requests. Department managers and staff should consider the following questions when releasing protected health information for non-routine disclosures:

- What is the *purpose* of the disclosure?
- What *type* of information does the recipient need to accomplish the purpose of the disclosure?
- Where is this information *located*? For example, is it in an X-ray? Is it in a medical record? Is it on an electronic database?
- Is other information *attached* to this information? If so, is the attached information also needed to accomplish the purpose of the disclosure? *If the attached information is not needed, a copy of the record should be made and the extraneous information should be redacted (whether electronically or by manually blacking out the information on the hard copy).*

OMH Requests For Protected Health Information

When OMH requests disclosure of protected health information from another covered entity (e.g., another health care provider) for reasons other than for treatment purposes, OMH may only request the minimum necessary amount of protected health information to accomplish OMH's purposes. Further, when OMH requests disclosure of protected health information from another covered entity, OMH may not request the individual's entire medical record or the entire designated record set unless the entire record is needed to accomplish OMH's purposes.

Uses or Disclosures Of and Requests For Entire Medical Record

In those instances for which the minimum necessary standard applies, only if the entire medical record can be specifically justified as the minimum amount of information needed can it be provided to the requester or used. OMH staff must contact their supervisor if they believe the entire medical record should be used, disclosed or requested in a way not covered by their department's policies and procedures. Uses of and requests for the entire medical record must be reviewed on an individual basis and should occur in rare instances.

Whenever an entire medical record is disclosed for a purpose that is subject to the minimum necessary standard (i.e., not for treatment purposes) the specific justification for disclosure of the entire medical record shall be documented in the medical record.

GUIDE TO DEVELOPING DEPARTMENT POLICIES:

The Privacy Rule requires that covered entities take reasonable steps to limit the use or disclosure of, and requests for, protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request. The preceding policy serves only to inform OMH staff of their general obligations with respect to minimum necessary use and disclosure.

Each department must create policies and procedures implementing the minimum necessary standard for their routine activities. The Privacy Officer, or a designee, will be responsible for reviewing all departmental policies and procedures related to the minimum necessary rule.

Routine Uses. Each department shall identify the persons or groups of persons within that department who will be permitted to access and use protected health information to carry out their respective duties. The department policies should also specify what categories of protected health information each person or group may access and use, and under what conditions. These policies should reflect reasonable determinations regarding the persons or classes of persons who require protected health information, and the nature of the health information they require, consistent with their job responsibilities. These policies should be consistent with, not override, professional judgment and standards. For example, policies shall allow persons involved in treatment to have access to the entire record, as needed.

While drafting a policy, each department shall consider the following factors:

(1) Who may access the protected health information?
(2) Which types of protected health information may be accessed?
(3) In the records of which patients?
(4) During what time period or for what activities?

For example, a department could implement a policy that permitted (1) *nurses* to access (2) *all* protected health information of (3) *patients in their ward* (4) *while they are on duty.*

Note: These policies are intended to place real limitations on unnecessary access to, and use of, patient information. Departments should be careful, therefore, not to draft policies authorizing access to a patient's full medical record where such access would not be reasonable.

Routine Disclosures. Each department shall develop policies identifying routine disclosures of protected health information that are made in that department. Each department policy should specify the minimum amount of protected health information that may be disclosed in each situation. It is suggested that these policies identify the types of protected health information to be disclosed, the types of persons who would receive the protected heath information, and the conditions that would apply for such access.

Routine Requests. Each department shall develop policies identifying routine requests for protected health information that are made in that department. Each department policy should specify the minimum amount of protected health information that may be requested in each situation. It is recommended that the department identify the types of information to be requested, the persons who may request the information, and the conditions for making such a request.

Routine Uses/Disclosures/Requests Of The Entire Medical Record. The Privacy Rule requires that hospital policies identify a "specific justification" for using, disclosing or requesting the entire medical record. A disclosure of the entire medical record absent such documented justification is a violation of this rule. Departments should be careful, therefore, to specify in the policies and procedures, the specific circumstances under which staff in each department will be

permitted to use, disclose or request the entire medical record. Department managers should use their professional and ethical judgment to ensure that access to the entire medical record is permitted as necessary to ensure quality patient care. This does not mean, however, that hospitals may permit free access to the entire medical record for all treatment situations. Departments will need to think carefully about what treatment situations justify full access to the medical record.

This document has been reviewed for
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