

**POLICY ON RIGHT TO REQUEST RESTRICTIONS
ON USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

HIPAA/HITECH REFERENCE(S): 45 C.F.R. § 164.522(a)
HITECH § 13405(a)

OTHER RELEVANT LAW(S) AND/OR
REGULATION(S): 42 C.F.R. §§ 483.10(e)(2) &
(3) and
Tag F167

RELATED POLICIES AND FORMS: Request to Restrict Use or
Disclosure Form
Letter Accepting/Denying
Request for Restriction
Notice of Privacy Practices

POLICY:

Covered Entity shall permit residents to exercise their right to request restrictions on the use and disclosure of their protected health information ("PHI"), including the right to direct Covered Entity to restrict certain disclosures to health plans. Covered Entity will not use or disclose PHI in a manner inconsistent with an agreed-upon restriction, except as permitted by law.

PROCEDURES:

1. All residents will be informed in the Notice of Privacy Practices of their right to request restrictions on the use and disclosure of PHI.
2. A resident may request that Covered Entity restrict uses and/or disclosures of PHI associated with treatment, payment or health care operations. This includes the right to request restrictions on disclosures of PHI to a health plan for payment or health care operations if the PHI pertains solely to a health care item or service for which the resident paid out-of-pocket in full. Residents wishing to request to restrict the use and/or disclosure of PHI will complete the *Request to Restrict Use or Disclosure Form*.

3. The *Request to Restrict Use or Disclosure Form* will inform the resident that Covered Entity is not required to agree to the resident's request for restrictions, except if the request is to restrict disclosures of PHI to the resident's health plan for payment or health care operations when the PHI pertains solely to an item or service that the resident paid for out-of-pocket in full. The form will also state that Covered Entity may not release the resident's PHI without the resident's permission, except when the PHI is released in connection with transfer to another health care institution, or when disclosure of the PHI is required by law or for third party payment, or is necessary to provide the resident with emergency treatment.
4. All requests to restrict must be forwarded to Allen Brown, Executive Director. Employees may not agree to or deny a request without authorization from Allen Brown, Executive Director.
5. If the request is granted, the resident will be notified in writing of the agreed-upon restriction and any limitations that Covered Entity has imposed on the restriction.
 - 5.1. The resident will be notified that Covered Entity is not required to comply with the agreed-upon restriction in emergency treatment situations.
 - 5.2. All relevant staff members will be informed of the agreed-upon restriction. Covered Entity will not use or disclose the resident's PHI in a manner inconsistent with the agreed-upon restriction except as permitted by law, and will notify any business associate that performs a function or service affected by the agreed-upon restriction.
 - 5.3. A copy of the notification sent to the resident shall be kept in the resident's medical record.
6. In the event that a request is denied, the resident will be informed in writing of the denial with an explanation of the reason for the denial. A copy of the denial letter will be kept in the resident's medical record.
7. Covered Entity may terminate its agreement to restrict uses and disclosures of PHI if:

- 7.1. the resident agrees to the termination in writing, or
 - 7.2. the resident agrees to the termination orally and the agreement is later documented in writing.
8. Covered Entity shall maintain all documentation regarding requests for restrictions in accordance with the *Policy on Retention of Records and Documentation*.

ISSUES TO CONSIDER

- **Federal OBRA regulations.** Under HIPAA, authorization is not required for disclosures of protected health information made for treatment, payment or health care operations purposes. The federal OBRA regulations are more stringent than HIPAA; they provide that a resident has the right to approve the release of health information to a third party, except (i) in connection with transfer to another health care institution, or (ii) when disclosure is required by law or for third party payment, or is necessary to provide the resident with emergency treatment. Nursing facilities are required to comply with the more stringent provisions of OBRA. The model policy therefore reflects the more stringent OBRA requirements. (See Section 3 of the Model Policy.)