

The “Minimum Necessary” rule in the H I P A A Final Privacy Rules



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Minimum Amount Necessary



- Covered Entities must make all reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request
- Minimum Necessary does not apply to:
 - Disclosures to or requests by a health care provider for treatment
 - Disclosure to the individual
 - Disclosures made to the Secretary
 - Uses and disclosures that are required by law

Minimum Necessary Still Applies To:




- (1) “Payment” Situations**
- (2) “Health Care Operations”**
- (3) Activities Where an “Authorization” is Required**

Definition of “Payment”




- The activities undertaken by:
 - A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan
 - A covered health care provider or health plan to obtain or provide reimbursement for the provision of health care

Examples:

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- **What is the minimum amount of information necessary for a health plan to request from a provider?**
 - **Currently, many health plans ask for the entire medical record.**

Examples:

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- **What is the minimum amount necessary for an outsourced billing company?**
 - **What is the minimum amount necessary for a collection agency?**

Definition of “Treatment”



- The provision, coordination, or management of health care and related services by one or more health care providers including:
 - the coordination or management of health care by a health care provider with a third party
 - consultation between health care providers relating to a patient
 - the referral of a patient for health care from one health care provider to another

Examples:

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- **What is the minimum amount necessary for treatment purposes?**

**NO LIMIT, EXCEPTION ADDED TO
THE FINAL RULES**

Definition of “Healthcare Operations”



- Carrying out the following activities of the covered entity to the extent that the activities are related to covered functions and activities of an organized health care arrangement in which the covered entity participates:

Definition of “Healthcare Operations”



- QA activities
- Qualifications of health care professionals
- Underwriting and premium rating
- Medical review, legal services and auditing functions
- Business planning and development
- Business management and general administrative activities (i.e., customer service)

Definition of “Healthcare Operations” - Limited exceptions to Consent



- **Marketing- The Covered Entity can send marketing materials so long as they:**
 - **identify the materials come from the Covered Entity**
 - **state whether the Covered Entity receives compensation from a third party, and**
 - **if the marketing material is not a newsletter, permit the recipient to opt out of receiving further marketing materials.**

Examples:

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- **What is the minimum amount necessary for marketing?**

Definition of “Healthcare Operations”

Limited exceptions to Consent



- **FUNDRAISING -**

- **A Covered Entity may conduct fundraising efforts if the only information that is used is the patient’s name, address and other demographic information and the dates of treatment.**
- **Patient must be able to opt out of receiving further fundraising materials.**
- **Otherwise, patient authorization required.**

Examples:

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- **What is the minimum amount necessary for fundraising purposes?**

Consent Exceptions



- **The following are situations in which consents are not required:**
 - **Indirect treatment relationship**
 - **Inmates**
 - **Required by law to treat**
 - **Substantial barriers to communicate**
 - **Emergency treatment (must obtain a consent as soon as reasonably practicable after treatment)**

Privacy Preemption



HIPAA will preempt **state laws** relating to the privacy of individually identifiable information except for those that are **contrary to and more stringent** than the federal HIPAA requirements.

“More Stringent Than”



- **Disclosure - more limited use or disclosure (except if to HHS or to the individual)**
- **Info to the patient re: use, disclosure etc.
- greater amount of information**
- **Any other matter - GREATER
PRIVACY FOR THE INDIVIDUAL**

