

# HIPAA Privacy Policies & Procedures

This sample HIPAA Privacy Policies & Procedures document will help you with your HIPAA Privacy compliance efforts.

This document addresses the basics of HIPAA Privacy Rules that are likely to apply in the typical dental practice. It is best used in combination with the cross-referenced ADA HIPAA Privacy Forms found in this Privacy Kit.

The Definitions of HIPAA Privacy Policies & Procedures document serves as a reference for how HIPAA defines key terms regarding privacy.

This sample Privacy Policies & Procedures document contains educational policies and procedures that you may use or tailor to fit your office's needs. It is based on current federal law, and is subject to change if the law changes. It does not constitute legal advice.

You will need to modify any sample forms in this Privacy Kit to reflect your state privacy laws as well. You may choose to include additional elements in your office's Privacy Policies and Procedures, such as a self-audit provision that, although not required by HIPAA, can help ensure that your policies and procedures are working.

Under the Privacy Rule, dentists are not required to obtain express, written Consent from a patient to use the patient's health information for treatment, payment, or healthcare operations. Rather, dentists are required to attempt to obtain written Acknowledgement of Receipt of the Notice of Privacy Practices. A dentist can rely on his/her good faith attempt to get the Acknowledgement in the event the patient refuses to sign (see Section 2 of the sample Policies & Procedures).

You may also choose to seek written Consent, which is required in some states. If you decide to seek written Consent, you will need to adhere to the terms of any consent document you use. The Policies & Procedures includes an optional section on Consent (Section 15) should you decide to obtain written Consent from your patients to use their protected health information for treatment, payment, and healthcare operations.

These Privacy Policies & Procedures are offered to facilitate your HIPAA compliance, but not to establish or evidence a standard of care.

Remember, guidance from the Department of Health and Human Services has reinforced that you have some flexibility regarding how you choose to comply.

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# HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

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These Health Information Privacy Policies & Procedures implement our obligations to protect the privacy of individually identifiable health information that we create, receive, or maintain as a healthcare provider.

We implement these Health Information Privacy Policies and Procedures as a matter of sound business practice; to protect the interests of our patients; and to fulfill our legal obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), its implementing regulations at 45 CFR Parts 160 and 164 (65 Fed. Reg. 82462 [Dec. 28, 2000]) ("Privacy Rules"), as amended (67 Fed. Reg. 53182 [Aug. 14, 2002]), and state law that provides greater protection or rights to patients than the Privacy Rules.

As a member of our workforce or as our Business Associate, you are obligated to follow these Health Information Privacy Policies & Procedures faithfully. Failure to do so can result in disciplinary action, including termination of your employment or affiliation with us.

These Policies & Procedures address the basics of HIPAA and the Privacy Rules that apply in our dental practice. They do not attempt to cover everything in the Privacy Rules. The Policies & Procedures sometimes refer to forms we use to help implement the policies and to the Privacy Rules themselves when added detail may be needed.

Please note that while the Privacy Rules speak in terms of "individual" rights and actions, these Policies & Procedures use the more familiar word "patient" instead; "patient" should be read broadly to include prospective patients, patients of record, former patients, their authorized representatives, and any other "individuals" contemplated in the Privacy Rules.

If you have questions or doubt about any use or disclosure of individually identifiable health information or about your other obligations under these Health Information Privacy Policies & Procedures, the Privacy Rules or other federal or state law, consult \_\_\_\_\_  
at \_\_\_\_\_ or \_\_\_\_\_, before you act.

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Adopted Effective:

# HIPAA Privacy Policies & Procedures

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

### 1. General Rule: No Use or Disclosure

Our dental office must not use or disclose **protected health information (PHI)**, except as these Privacy Policies & Procedures permit or require.

### 2. Acknowledgement and Optional Consent

Our dental office will make a good faith effort to obtain a written acknowledgement of receipt of our **Notice of Privacy Practices** (see Section 9) from a patient before we use or disclose his or her protected health information (PHI) for treatment, to obtain payment for that treatment, or for our healthcare operations (TPO).

Our dental office's use or disclosure of PHI for our payment activities and healthcare operations may be subject to the minimum necessary requirements (see Section 7).

Our dental office will become familiar with our state's privacy laws. If required by our state law, or as directed by the dentist, we will also seek **Consent** from a patient before we use or disclose PHI for TPO purposes — in addition to obtaining an Acknowledgement of receipt of our **Notice of Privacy Practices**.

a) **Obtaining Consent** — If consent is to be obtained, upon the individual's first visit as a patient (or next visit if already a patient), our dental office will request and obtain the patient's written **Consent** for our use and disclosure of the patient's PHI for treatment, payment, and healthcare operations.

Any consent we obtain must be on our **Consent** form, which we may not alter in any way. Our dental office will include the signed **Consent** form in the patient's chart.

b) **Exceptions** — Our dental office does not have to obtain the patient's **Consent** in emergency treatment situations; when treatment is required by law; or when communications barriers prevent **Consent**.

c) **Consent Revocation** — A patient from whom we obtain consent may revoke it at any time by written notice. Our dental office will include the revocation in the patient's chart. There is space at the bottom of our **Consent** form where the patient can revoke the consent.

d) **Applicability** — Consent for use or disclosure of PHI should not be confused with informed consent for dental treatment. This section applies to our practice:

Date: \_\_\_\_\_

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

### 3. Authorization

In some cases we must have proper, written **Authorization** from the patient (or the patient's personal representative) before we use or disclose a patient's PHI for any purpose (except for TPO purposes) or as permitted or required without consent or authorization (see Sections 3, 4, or 5).

Our dental office will use the **Authorization** form. We will always act in strict accordance with an **Authorization**.

- a) **Authorization Revocation** — A patient may revoke an authorization at any time by written notice. Our dental office will not rely on an **Authorization** we know has been revoked.
- b) **Authorization from Another Provider** — Our dental office will use or disclose PHI as permitted by a valid **Authorization** we receive from another healthcare provider.

Our dental office may rely on that covered entity to have requested only the minimum necessary protected PHI. Therefore, our dental office will not make our own "minimum necessary" determination, unless we know that the **Authorization** is incomplete, contains false information, has been revoked, or has expired.

- c) **Authorization Expiration** — Our dental office will not rely on an **Authorization** we know has expired.

### 4. Oral Agreement

Our dental office may use or disclose a patient's PHI with the patient's **Oral Agreement** or if the patient is unavailable subject to all applicable requirements.

Our dental office may use professional judgment and our experience with common practice to make reasonable inferences of the patient's best interest in allowing a person to act on behalf of the patient to pick up dental/medical supplies, X-rays, or other similar forms of PHI.

### 5. Permitted Without Acknowledgement, Consent Authorization or Oral Agreement

Our dental office may use or disclose a patient's PHI in certain situations, without **Authorization** or **Oral Agreement**. In our dental office, these disclosures are not likely to be frequent.

- a) **Verification of Identity** — Our dental office will always verify the identity of any patient, and the identity and authority of any patient's personal representative, government or law enforcement official, or other person, unknown to us, who requests PHI before we will disclose the PHI to that person.

Our dental office will obtain appropriate identification and, if the person is not the patient, evidence of authority. Examples of appropriate identification include photographic identification card, government identification card or badge, and appropriate document on government letterhead. Our dental office will document the incident and how we responded.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

b) **Uses or Disclosures Permitted under this Section 5** — The situations in which our dental office is permitted to use or disclose PHI in accordance with the procedures set out in this Section 5 are listed below.

- Our dental office may disclose a patient's PHI to that patient on request.
- Our dental office may disclose to a patient's personal representative PHI relevant to the representative capacity. We will not disclose to a personal representative we reasonably believe may be abusive to a patient any PHI we reasonably believe may promote or further such abuse.
- Our dental office will not use or disclose a patient's PHI for fundraising purposes without the patient's **Authorization**.
- Our dental office will not use or disclose PHI for marketing without a patient's **Authorization** unless the marketing is in the form of a promotional gift of nominal value that we provide, or face-to-face communications between us and the patient.
- Our dental office may use or disclose PHI in the following types of situations, provided procedures specified in the Privacy Rules are followed:
  - (1) For public health activities;
  - (2) To health oversight agencies;
  - (3) To coroners, medical examiners, and funeral directors;
  - (4) To employers regarding work-related illness or injury;
  - (5) To the military;
  - (6) To federal officials for lawful intelligence, counterintelligence, and national security activities;
  - (7) To correctional institutions regarding inmates;
  - (8) In response to subpoenas and other lawful judicial processes;
  - (9) To law enforcement officials;
  - (10) To report abuse, neglect, or domestic violence;
  - (11) As required by law;
  - (12) As part of research projects; and
  - (13) As authorized by state worker's compensation laws.

### 6. Required Disclosures

Our dental office will disclose protected health information (PHI) to a patient (or to the patient's personal representative) to the extent that the patient has a right of access to the PHI (see Section 10); and to the U.S. Department of Health and Human Services (HHS) on request for complaint investigation or compliance review.

Our dental office will use the disclosure log to document each disclosure we make to HHS.

### 7. Minimum Necessary

Our dental office will make reasonable efforts to disclose, or request of another covered entity, only the **minimum necessary** protected health information (PHI) to accomplish the intended purpose.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

There is **no minimum necessary** requirement for: disclosures to or requests by one another in our dental office or by a healthcare provider for treatment; permitted or required disclosures to, or for disclosures requested and authorized by, a patient; disclosures to HHS for compliance reviews or complaint investigations; disclosures required by law; or uses or disclosures required for compliance with the HIPAA Administrative Simplification Rules.

- a) **Routine or Recurring Requests or Disclosures** — Our dental office will follow the policies and procedures that we adopt to limit our routine or recurring requests for or disclosures of PHI to the minimum reasonably necessary for the purpose.
- b) **Non-Routine or Non-Recurring Requests or Disclosures** — No non-routine or non-recurring request for or disclosure of PHI will be made until it has been reviewed on a patient-by-patient basis against our criteria to ensure that only the minimum necessary PHI for the purpose is requested or disclosed.
- c) **Others' Requests** — Our dental office will rely, if reasonable for the situation, on a request to disclose PHI being for the minimum necessary, if the requester is: (a) a covered entity; (b) a professional (including an attorney or accountant) who provides professional services to our practice, either as a member of our workforce or as our **Business Associate**, and who represents that the requested information is the minimum necessary; (c) a public official who represents that the information requested is the minimum necessary; or (d) a researcher presenting appropriate documentation or making appropriate representations that the research satisfies the applicable requirements of the Privacy Rules.
- d) **Entire Record** — Our dental office will not use, disclose, or request an entire record, except as permitted in these Policies & Procedures or standard protocols that we adopt reflecting situations when it is necessary.
- e) **Minimum Necessary Workforce Use** — Our dental office will use only the minimum necessary PHI needed to perform our duties.

### 8. Business Associates

Our dental office will obtain satisfactory assurance in the form of a written contract that our **Business Associates** will appropriately safeguard and limit their use and disclosure of the protected health information (PHI) we disclose to them.

These **Business Associate** requirements are not applicable to our disclosures to a healthcare provider for treatment purposes. The **Business Associate Contract Terms** document contains the terms that federal law requires be included in each **Business Associate Contract**.

- a) **Breach by Business Associate** — If our dental office learns that a **Business Associate** has materially breached or violated its **Business Associate Contract** with us, we will take prompt, reasonable steps to see that the breach or violation is cured.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

If the **Business Associate** does not promptly and effectively cure the breach or violation, we will terminate our contract with the **Business Associate**, or if contract termination is not feasible, report the **Business Associate's** breach or violation to the U.S. Department of Health and Human Services (HHS).

### 9. Notice of Privacy Practices

Our dental office will maintain a **Notice of Privacy Practices** as required by the Privacy Rules.

- a) **Our Notice** — Our dental office will use and disclose PHI only in conformance with the contents of our **Notice of Privacy Practices**. We will promptly revise a **Notice of Privacy Practices** whenever there is a material change to our uses or disclosures of PHI to our legal duties, to the patients' rights, or to other privacy practices that render the statements in that Notice no longer accurate.

Form 1, Notice of Privacy Practices, found in this Privacy Kit, contains the terms that federal law requires.

- b) **Distribution of Our Notice** — Our dental office will provide our **Notice of Privacy Practices** to any person who requests it, and to each patient no later than the date of our first service delivery after April 14, 2003.

Our dental office will have our **Notice of Privacy Practices** available for patients to take with them. We will also post our **Notice of Privacy Practices** in a clear and prominent location where it is reasonable to expect patients seeking service from us will be able to read the Notice.

- c) **Acknowledgement of Notice** — Our dental office will make a good faith effort to obtain from the patient a written Acknowledgement of receipt of our **Notice of Privacy Practices**.

Our dental office shall use Form 2, **Acknowledgement of Receipt of Notice of Privacy Practices**, found in this Privacy Kit, to obtain the Acknowledgement. If we cannot obtain written Acknowledgement from the patient, we will use the form to document our attempt and the reason why written Acknowledgement was not signed by the patient.

### 10. Patients' Rights

Our dental office will honor the rights of patients regarding their PHI.

- a) **Access** — With rare exceptions, our dental office must permit patients to request access to the PHI we or our **Business Associates** hold.

No PHI will be withheld from a patient seeking access unless we confirm that the information may be withheld according to the Privacy Rules. We may offer to provide a summary of the information in the chart. The patient must agree in advance to receive a summary and to any fee we will charge for providing the summary. Our dental office will contact our **Business Associates** to retrieve any PHI they have on the patient.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

- b) **Amendment** — Patients have the right to request to amend their PHI and other records for as long as our dental office maintains them.

Our dental office may deny a request to amend PHI or records if: (a) we did not create the information (unless the patient provides us a reasonable basis to believe that the originator is not available to act on a request to amend); (b) we believe the information is accurate and complete; or (c) we do not have the information.

Our dental office will follow all procedures required by the Privacy Rules for denial or approval of amendment requests. We will not, however, physically alter or delete existing notes in a patient's chart. We will inform the patient when we agree to make an amendment, and we will contact our **Business Associates** to help assure that any PHI they have on the patient is appropriately amended. We will contact any individuals whom the patient requests we alert to any amendment to the patient's PHI. We will also contact any individuals or entities of which we are aware that we have sent erroneous or incomplete information and who may have acted on the erroneous or incomplete information to the detriment of the patient.

When we deny a request for an amendment, we will mark any future disclosures of the contested information in a way acknowledging the contest.

- c) **Disclosure Accounting** — Patients have the right to an accounting of certain disclosures our dental office made of their PHI within the 6 years prior to their request. Each disclosure we make, that is not for treatment payment or healthcare operations, must be documented showing the date of the disclosure, what was disclosed, the purpose of the disclosure, and the name and (if known) address of each person or entity to whom the disclosure was made. The **Authorization** or other documentation must be included in the patient's record. We use the patient's chart to track each disclosure of PHI as needed to enable us to fulfill our obligation to account for these disclosures.

We are not required to account for disclosures we made: (a) before April 14, 2003; (b) to the patient (or the patient's personal representative); (c) to or for notification of persons involved in a patient's healthcare or payment for healthcare; (d) for treatment, payment, or healthcare operations; (e) for national security or intelligence purposes; (f) to correctional institutions or law enforcement officials regarding inmates; (g) according to an Authorization signed by the patient or the patient's representative; or (h) incident to another permitted or required use or disclosure.

We will temporarily suspend the accounting of any disclosure when requested to do so pursuant according to the Privacy Rules by health oversight agencies or law enforcement officials. We may charge for any accounting that is more frequent than every 12 months, provided the patient is informed of the fee before the accounting is provided. We will contact our **Business Associates** to assure we include in the accounting any disclosures made by them for which we must account.



## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

- d) **Restriction on Use or Disclosure** — Patients have the right to request our dental office to restrict use or disclosure of their PHI, including for treatment, payment, or healthcare operations. We have no obligation to agree to the request, but if we do, we will comply with our agreement (except in an appropriate dental/medical emergency).

We may terminate an agreement restricting use or disclosure of PHI by a written notice of termination to the patient. We will contact our **Business Associates** whenever we agree to such a restriction to inform the **Business Associate** of the restriction and its obligations to abide by the restriction. We will document in the patient's chart any such agreed to restrictions.

- e) **Alternative Communications** — Patients have the right to request us to use alternative means or alternative locations when communicating PHI to them. Our dental office will accommodate a patient's request for such alternative communications if the request is reasonable and in writing.

Our dental office will inform the patient of our decision to accommodate or deny such a request. If we agree to such a request, we will inform our **Business Associates** of the agreement and provide them with the information necessary to comply with the agreement.

- f) **Applicability** — Our dental office will be aware of and respect these patients' rights regarding their PHI, even though in most situations patients are unlikely to exercise them.

### 11. Staff Training and Management, Complaint Procedures, Data Safeguards, Administrative Practices

#### a) Staff Training and Management

- **Training** — Our dental office will train all members of our workforce in these Privacy Policies & Procedures, as necessary and appropriate for them to carry out their functions. We will complete the privacy training of our existing workforce by April 14, 2003.

After April 14, 2003, our dental office will train each new staff member within a reasonable time after the member starts. We will also retrain each staff member whose functions are affected either by a material change in our Privacy Policies and Procedures or in the member's job functions, within a reasonable time after the change.

Form 7, **Staff Review of Policies and Procedures**, can be used to have workforce members acknowledge they have received and read a copy of these Policies and Procedures.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

- **Discipline and Mitigation** — Our dental office will develop, document, disseminate, and implement appropriate discipline policies for staff members who violate our Privacy Policies & Procedures, the Privacy Rules, or other applicable federal or state privacy law.

Staff members who violate our Privacy Policies & Procedures, the Privacy Rules or other applicable federal or state privacy law will be subject to disciplinary action, possibly up to and including termination of employment.

- b) **Complaints** — Our dental office will implement procedures for patients to complain about our compliance with our Privacy Policies & Procedures or the Privacy Rules. We will also implement procedures to investigate and resolve such complaints.

The **Complaint** form can be used by the patient to lodge the complaint. Each complaint received must be referred to management immediately for investigation and resolution. We will not retaliate against any patient or workforce member who files a **Complaint** in good faith.

- c) **Data Safeguards** — Our dental office will “add to” and strengthen these Privacy Policies & Procedures with such additional data security policies and procedures as are needed to have reasonable and appropriate administrative, technical, and physical safeguards in place to ensure the integrity and confidentiality of the PHI we maintain.

Our dental office will take reasonable steps to limit incidental uses and disclosures of PHI made according to an otherwise permitted or required use or disclosure.

- d) **Documentation and Record Retention** — Our dental office will maintain in written or electronic form all documentation required by the Privacy Rules for six years from the date of creation or when the document was last in effect, whichever is greater.

- e) **Privacy Policies & Procedures** — Only {name of Dentist} may change these Privacy Policies & Procedures.

### 12. State Law Compliance

Our dental office will comply with the privacy laws of each state that has jurisdiction over our practice, or its actions involving protected health information (PHI), that provide greater protections or rights to patients than the Privacy Rules.

## HEALTH INFORMATION PRIVACY POLICIES & PROCEDURES

### 13. HHS Enforcement

Our dental office will give the U.S. Department of Health and Human Services (HHS) access to our facilities, books, records, accounts, and other information sources (including individually identifiable health information without patient authorization or notice) during normal business hours (or at other times without notice if HHS presents appropriate lawful administrative or judicial process).

We will cooperate with any compliance review or complaint investigation by HHS, while preserving the rights of our practice.

### 14. Designated Personnel

Our dental office will designate a **Privacy Officer** and other responsible persons as required by the Privacy Rules.