

Bruce B. Baniyas, MD, LLC
Policies and Procedures

Title: Patient Written Release of Information and Protection of the Confidentiality of Medical Information

Date Originated: May 2003

POLICY

It is the policy of BRUCE BANIAS, MD, LLC to comply with the Privacy Rule set forth in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Each division and unit shall ensure that its policies and procedures are consistent with this department-wide policy and procedure.

PURPOSE

The purpose of this policy is to provide guidance to providers and other BRUCE BANIAS, MD, LLC employees by setting forth the basic requirements for protecting the confidentiality of medical information as required by the Privacy Rule.

SCOPE

This policy pertains to all individuals in the BRUCE BANIAS, MD, LLC who have access to, use, or disclose protected health information, regardless of BRUCE BANIAS, MD, LLC division or unit. The policy is administered by the BRUCE BANIAS, MD, LLC Compliance Office through the activities of the BRUCE BANIAS, MD, LLC Privacy Officer. It is intended to serve as a foundation for privacy practices of the BRUCE BANIAS, MD, LLC. Divisions or units may impose privacy safeguards in addition to those required by this policy and procedure.

BACKGROUND

The federal Health Insurance Portability and Accountability Act of 1996 established, through its Administrative Simplification provisions, regulations to assure privacy for individuals receiving health care services in the United States. The Privacy Rule, as it may also be called, establishes a national standard for the *minimum* level of protection for medical information. The intent of the statute and the regulatory rule is to expand consumer control over their health information.

The Privacy Rule introduces the term “Protected Health Information”, or “PHI”. PHI covers information relating to an individual’s health, the care received and/or payment for services, including demographic data. It includes all information in any media related to the individual’s health care that can be individually identified as belonging to a particular person.

The basic tenet of the Privacy Rule is that providers may use and disclose PHI without the individual’s authorization only for treatment, payment and health care operations, as well as certain public interest related purposes such as public health reporting. Other uses and disclosures of PHI generally require the written authorization of the individual.

The Privacy Rule also introduces the concept of “minimum necessary”. This requirement mandates that when using or disclosing PHI, or when requesting PHI from external providers or entities, providers will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose. The Privacy Rule does recognize that providers may need to use all of an individual’s health information in the provision of patient care. However, access to PHI by the workforce must be limited based on job scope and the need for the information.

The Privacy Rule also includes a set of rights for consumers of health care services. These include the right to obtain a written notice explaining how BRUCE BANIAS, MD, LLC will use and disclose their information, to access their health information (including requesting copies, requesting amendments, and receiving an accounting of specified disclosures), to request that certain information be restricted from use or disclosure for purposes of treatment, payment and health care operations (this request need not be granted if it is unreasonable or overly burdensome), to request that information be communicated in particular ways to ensure confidentiality, and to refuse to authorize the release of information for most purposes not related to treatment, payment or health care operations.

This policy provides an overview of the requirements of the Privacy Rule. There are more detailed policies on certain issues discussed herein such as authorization for the use and disclosure of PHI, notice of BRUCE BANIAS, MD, LLC privacy practices, and patient rights. There is also a separate policy addressing the requirements the Privacy Rule places on research.

Another section of HIPAA contains a proposed “Security Rule”. This proposed Security Rule focuses on ensuring that electronic health information that pertains to an individual remains secure. BRUCE BANIAS, MD, LLC will develop and/or update other policies to address security issues. These policies will address, among other issues, the maintenance and/or exchange of medical information via e-mail, fax, hand-held devices, and non-BRUCE BANIAS, MD, LLC personal computers and networks.

PROCEDURE

- I. Use and Disclosure of PHI for Treatment, Payment, and Health Care Operations
 - A. BRUCE BANIAS, MD, LLC providers, BRUCE BANIAS, MD, LLC staff, and BRUCE BANIAS, MD, LLC contract providers may use PHI for treatment, payment and health care operations. Use of information applies to internal sharing or utilization of PHI. Disclosure applies to the release of PHI to non-BRUCE BANIAS, MD, LLC providers or entities and is restricted as discussed in this policy.
 - B. Treatment, payment and health care operations are defined as follows:
 1. Treatment means providing, coordinating or managing a patient’s care, including patient education and training, consultations between providers and referrals.
 2. Payment means activities related to being paid for services rendered. These activities include eligibility determinations, billing, claims management, utilization review and debt collection
 3. Health care operations means a broad range of activities such as quality assessment, student training, contracting for health care services, medical

review, legal services, auditing functions, business planning and development, licensing and accreditation, business management and general administrative activities.

- C. Divisions and units within BRUCE BANIAS, MD, LLC may identify higher standards regarding when an individual's signed release or other safeguards for the disclosure of PHI are required. Proposed higher standards must be reviewed and approved by the BRUCE BANIAS, MD, LLC Compliance Office.

II. Minimum Necessary Uses and Disclosures

- A. When using or disclosing PHI, or when requesting PHI from a non-BRUCE BANIAS, MD, LLC provider or entity, BRUCE BANIAS, MD, LLC providers and staff shall make reasonable efforts to limit the PHI requested, used, or disclosed to the minimum necessary to accomplish the patient's care.
- B. BRUCE BANIAS, MD, LLC shall identify those in its workforce who need access to PHI and limit access based on job scope and the need for the information.
- C. The minimum necessary requirement does not apply to the following:
 - 1. Disclosures to, or requests by, a BRUCE BANIAS, MD, LLC health care provider for treatment purposes;
 - 2. Uses or disclosures made to the individual treated, as permitted or required by law;
 - 3. Uses or disclosures made pursuant to the individual's authorization;
 - 4. Disclosures made to the Secretary of DHHS pursuant to an investigation or compliance review; and
 - 5. Other uses or disclosures that are required by law, made pursuant to a subpoena or court order, or for workers' compensation purposes.

III. Special Requirements for Mental Health and Developmental Disability Information, Substance Abuse Information, Sexually Transmitted Disease Information, and Health Information of Minors

A. Mental Health Information

- 1. Although the federal privacy rule largely does not make a distinction between medical and mental health information, California State law does provide special protections for mental health information. Mental health information may be shared among BRUCE BANIAS, MD, LLC providers and contractors for the purposes of treatment. All other uses and disclosures require the specific authorization of the patient to disclose mental health information.
- 2. Mental health information includes psychotherapy notes, medication prescription and monitoring, counseling session start and stop times, modalities/frequencies of treatment, results of clinical tests, or summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, or progress recorded by mental health professionals.

Generally disclosures of mental health information requires the specific authorization from the patient for release. Questions regarding the use or disclosure of mental health information should be referred to the BRUCE BANIAS, MD, LLC Privacy Officer.

B. Substance Abuse Information

1. Although the federal Privacy Rule does not make a distinction between medical and substance abuse information, other federal statutes do provide statutory restrictions for the release of information developed or obtained in the course of providing substance abuse treatment in federally funded substance abuse programs. Substance abuse treatment provided in the course of general medical treatment is not subject to these provisions. Therefore, substance abuse information may be shared among BRUCE BANIAS, MD, LLC providers and to its contracted providers without authorization of the patient for patient care purposes. All other uses and disclosures require specific substance abuse authorization from the patient.
2. Information pertaining to substance abuse patients is subject to special protection under federal statute 42 U.S.C. Section 290dd-2 and under federal regulations found in the “Confidentiality of Alcohol and Drug Abuse Patient Records”, 42 C.F.R. part 2.
3. These federal and state statutes require written authorization for disclosure of substance abuse information in certain circumstances and other special protections for substance abuse information. In these situations, the state law must be followed. Questions regarding the use or disclosure of substance abuse information should be referred to the BRUCE BANIAS, MD, LLC Privacy Officer.

C. Sexually Transmitted Diseases and HIV/AIDS Information

Per state law HIV test results can not be disclosed without specific, written authorization from the patient except for purposes of diagnosis, care, or treatment of the patient by BRUCE BANIAS, MD, LLC providers.

D. Minors

Use and disclosure of protected health information associated with the care of minors should be administered using the same principles as consent for treatment. If the minor can consent for services per federal or state statute or BRUCE BANIAS, MD, LLC policy, then the minor controls his or her privacy rights.

Generally, a parent or assigned guardian controls a minor’s privacy rights. However, there are a number of exceptions that apply in which a minor holds the right to consent and therefore controls all consequent privacy rights. These exceptions include the following:

1. Emancipated minors are those 14 years of age and older who have been emancipated by court order, are serving in the active U.S. military, or are married or have been married.
2. Self-sufficient minors are those youth 15 years of age or older living on their own, and managing their own financial affairs.

3. Minors 12 years of age or older receiving certain 'sensitive services' regarding reproductive health, mental health, substance abuse, pregnancy, reportable diseases, rape, or sexual assault.

IV. Disclosures to Family, Other Relatives, Close Personal Friends, and Personal Representatives

A. BRUCE BANIAS, MD, LLC providers may disclose PHI to an individual's family members or other relatives, close personal friends, or any other person identified by the individual:

- 1) upon the individual's oral agreement;
- 2) if there is no objection when the individual is provided with an opportunity to object.

B. Such disclosures shall be limited to information directly relevant to that person's involvement with the individual's care or payment for that care.

C. If the individual is not present (e.g., the provider is in an outpatient setting) or is incapacitated, the provider may disclose information to family members, relatives, or close personal friends if the provider believes and can substantiate disclosure is in the best interest of the individual.

D. Generally, no information may be disclosed to a family member, relative, or close personal friend regarding mental health, substance abuse, or sexually transmitted disease, or HIV/AIDS services, or a developmental disability without the individual's specific authorization.

E. BRUCE BANIAS, MD, LLC providers shall disclose information to an individual's personal representative (i.e. those granted legal authority to make health care decisions on behalf of another) in the same manner as they would for the individual.

V. Permitted Disclosures for Public Interest Related Purposes

A. BRUCE BANIAS, MD, LLC providers and staff may disclose PHI without authorization for a variety of public interest related purposes including the following:

1. Public health activities that involve safety or communicable disease;
2. To report victims of abuse, neglect, or domestic violence;
3. Judicial and administrative proceedings;
4. Law enforcement purposes;
5. Organ and tissue donations;
6. National security and intelligence activities;
7. Workers' compensation; and
8. Requests related to decedents.

B. Limitations regarding minimum necessary use, mental health and substance abuse information may apply to these public interest related disclosures.

VI. De-Identified Information

A. De-identified information may be used or disclosed as long as no means of re-identification is disclosed.

B. In order to meet the definition of "de-identified" under the federal HIPAA Privacy Rule, all of the following specified identifiers must be removed: names, geographic designations smaller than a state (except for the initial

three digits of zip codes if the first three digits cover an area having more than 20,000 people), dates (other than years), ages over 89 (although all persons over 89 may be aggregated into a single category), telephone and fax numbers, e-mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate and license numbers, vehicle identification numbers, device identifiers and serial numbers, URLs and IP addresses, biometric identifiers, identifiable photographs and any other unique identifiers.

- C. BRUCE BANIAS, MD, LLC providers and staff may disclose PHI to a business associate for the purpose of de-identifying such information. Business associate relationship exists when an individual or non-BRUCE BANIAS, MD, LLC entity, acting on behalf of the BRUCE BANIAS, MD, LLC, assists in the performance of a function or activity involving the use or disclosure of PHI. In order to have access to PHI, however, the business associate must have been formally recognized by BRUCE BANIAS, MD, LLC administration as such.
- D. If all of the required identifiers are not removed, information can still be treated as de-identified if a qualified statistician determines that the risk of re-identification is very small. This analysis must be documented.

VII. Authorization for Use and Disclosure

- A. BRUCE BANIAS, MD, LLC shall obtain an individual's authorization prior to the use or disclosure of PHI for reasons other than BRUCE BANIAS, MD, LLC treatment, payment or health care operations or for purposes required by law.
- B. Common situations in which an individual's written authorization is required include disclosures to a life insurance company or an employer.
- C. Because it is focused on a particular use or disclosure, an authorization must be specific with regard to the information to be disclosed, who may disclose it, and who may receive it. It must also be time limited.
- D. Individuals may revoke their authorizations at any time if they do so in writing.
- E. BRUCE BANIAS, MD, LLC shall document and retain all authorizations for a minimum of seven years.
- F. Individuals have a right to a copy of authorizations signed at the request of BRUCE BANIAS, MD, LLC or one of its providers.
- G. BRUCE BANIAS, MD, LLC shall not deny treatment based on the refusal of an individual to authorize the use or disclosure of his/her PHI.
- H. Oral authorizations are permissible in the following circumstances:
 - 1. For an inpatient facility directory;
 - 2. For disclosure of information to family members, relatives and close personal friends;
 - 3. To notify a family member, personal representative or other person responsible for the care of an individual about the individual's location, general condition or death (if the patient has the capacity to make decisions, BRUCE BANIAS, MD, LLC shall obtain the individual's authorization or provide the individual with an opportunity to object); and

4. To assist in disaster relief efforts.

VIII. Notice of Privacy Practices

- A. B. This “Notice of Privacy Practices” shall be posted in prominent places in BRUCE BANIAS, MD, LLC care facilities and on the BRUCE BANIAS, MD, LLC web site.
- B. BRUCE BANIAS, MD, LLC will provide the notice to each of its patients (or their agents) upon their first encounter for health care services.
- C. BRUCE BANIAS, MD, LLC shall make a good faith effort to obtain a written acknowledgement from each individual who receives health care services that he/she received a copy of the Notice of Privacy Practices

IX. Patient Rights Regarding PHI

- A. BRUCE BANIAS, MD, LLC shall provide patients with certain rights pertaining to their PHI. These rights are as follows:
 - 1. The right to obtain a written notice explaining how BRUCE BANIAS, MD, LLC will use and disclose their information;
 - 2. The right to access their medical information (this includes seeing their records, requesting copies, requesting amendments to their records, and getting an accounting of specified disclosures);
 - 3. The right to request that certain information be restricted from use or disclosure for purposes of treatment, payment, and health care operations (BRUCE BANIAS, MD, LLC may not grant this request if it is deemed unreasonable or overly burdensome);
 - 4. The right to request that information be communicated in particular ways to ensure confidentiality; and
 - 5. The right to refuse to authorize the release of PHI for purposes not related to treatment, payment or health care operations or those required by law.

X. Administrative and Operational Measures

- A. BRUCE BANIAS, MD, LLC shall implement administrative and operational measures to ensure compliance with the Privacy Rule as follows:
 - 1. Develop policies, procedures and systems to protect patient privacy;
 - 2. Train staff on these procedures;
 - 3. Appoint a Privacy Officer to make sure privacy procedures are developed, adopted, and followed;
 - 4. Secure records that contain PHI and implement reasonable safeguards to limit access to PHI to those BRUCE BANIAS, MD, LLC employees whose jobs require such access.
 - 5. Account for specified disclosures of PHI;
 - 6. Establish a complaint mechanism for privacy concerns; and
 - 7. Establish and enforce a system of sanctions for employees who violate privacy policies and procedures.

XI. Enforcement

- A. Each BRUCE BANIAS, MD, LLC employee is responsible for understanding and complying with this policy and the Privacy Rule. It is the responsibility of BRUCE BANIAS, MD, LLC managers and supervisors

that appropriate privacy training is provided to all employees on an ongoing basis and that employees reporting to them are complying with BRUCE BANIAS, MD, LLC privacy policies.

- B. Any BRUCE BANIAS, MD, LLC employee who knows of, suspects, or has a question regarding a possible violation of the Privacy Rule may contact the BRUCE BANIAS, MD, LLC Privacy Officer. No employee shall be retaliated against for reporting a possible violation. If the employee wishes to remain anonymous, that employee may call the BRUCE BANIAS, MD, LLC Compliance Hotline.
- C. BRUCE BANIAS, MD, LLC employees who violate the Privacy Rule shall be disciplined

REFERENCES: 45 C.F.R. § 164.508

Bruce B. Banias, MD, LLC

Date Approved

Reviewed/Approved

Date
