



Office of General Counsel

1852 Van Hise Hall
1220 Linden Drive
Madison, WI 53706
(608) 262-2995
(608) 263-3487 Fax
email: counsel@uwsa.edu
website: <http://www.uwsa.edu>

Patricia A. Brady
Christopher L. Ashley
Anne E. Bilder
Jennifer Sloan Lattis
Paige Reed
Tomas L. Stafford

Dave Gessner
Assistant Chancellor for Budget and Finance
University of Wisconsin Eau Claire
105 Garfield Avenue
Eau Claire, WI 54702

Dear Mr. Gessner:

You have asked me if the University of Wisconsin-Eau Claire (UWEC) would be in violation of the United States Health Insurance Portability and Accountability Act (HIPAA) if it were to disclose to internal audit and business officers, the names of autism spectrum clinical study/treatment participants in order to account for meals consumed as a part of the therapy provided. It is my opinion that the UWEC is probably not a HIPAA covered entity for purposes of this study, but that even if HIPAA applies there are exceptions within HIPAA that permit covered entities to share patient information internally for business purposes. Therefore, directors of the study in question can lawfully disclose patient information to the extent it is required for audit or other business purposes.

HIPAA creates certain restrictions on the use and disclosure of protected health information in order to protect the privacy of individuals, but these restrictions only apply to “covered entities.” 45 C.F.R §500. Covered entities include a health plan,¹ a health care clearinghouse,² and a health care provider that transmits any health information in electronic form in connection with a covered transaction. 45 C.F.R. § 160.103. Under this definition, the UWEC, when engaging in the study you have described, is probably not a covered entity.

¹ Health plan means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, [42 U.S.C. 300gg-91\(a\)\(2\)](#)). 45 C.F.R. § 160.103. Health plan includes the following, singly or in combination: (i) A group health plan, as defined in this section, (ii) A health insurance issuer, as defined in this section, (iii) An HMO, as defined in this section, (iv) Part A or Part B of the Medicare program under title XVIII of the Act. . . (xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, [42 U.S.C. 300gg-91\(a\)\(2\)](#)). See 45 C.F.R. § 160.103 for more information on the definition of health plan.

² Health care clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that does either of the following functions: (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction. (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity. 45 C.F.R. § 160.103.

If the UWEC is considered a covered entity when engaging in this study, it would not violate HIPAA regulations by providing the names of the participants to its internal business or audit officers for legitimate management purposes such as federal audit compliance because covered entities may use and disclose protected health information internally for payment and health care operations.

One of the permitted uses of protected health information under HIPPA is “[f]or treatment, payment or health care operations, as permitted by and in compliance with § 164.506.” 45 C.F.R. 164.502(a)(1).. Section 164.506 reiterates that “a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.” 45 C.F.R. 164.506. Audit functions would appear to qualify for this exception because they relate to business planning, development, and analysis. *See* 45 C.F.R. § 164.501.

While a covered entity is permitted to use and disclose protected health information for business purposes, there are two caveats. First, when a covered entity uses or discloses protected health information, it must make a reasonable effort to limit the information to the minimum necessary to accomplish the intended purpose of the use or disclosure. 45 C.F.R 502(b). Second, every covered entity must permit an individual to request that the covered entity restrict uses of disclosures of protected health information about the individual to carry out treatment, payment or health care operations. 45 C.F.R. 164.522(a)(1). However, covered entities are not required to agree to such restriction. *Id.*

Patient information is protected under Wisconsin law from public release. Although state law would also not operate to prevent internal disclosure of participants names to UWEC business officers for billing, payment, or audit purposes, such information would have to be redacted in the event of a public records request. If state or federal auditors or authorities request and receive confidential patient information, they should be informed of its confidential status.

To summarize, the UWEC is likely not a HIPPA covered entity as relates to the autism clinical study even though treatment is provided as part of the study. If HIPPA does apply, the UWEC may nevertheless share protected patient information internally for business purposes, so long as care is taken not to release such information publically.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Sloan Lattis". The signature is written in a cursive, flowing style.

Jennifer Sloan Lattis
Senior System Legal Counsel