

MINIMUM NECESSARY
[45 CFR 164.502(b), 164.514(d)]

Background

The minimum necessary standard, a key protection of the HIPAA Privacy Rule, is derived from confidentiality codes and practices in common use today. It is based on sound current practice that protected health information should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a function. The minimum necessary standard requires covered entities to evaluate their practices and enhance safeguards as needed to limit unnecessary or inappropriate access to and disclosure of protected health information. The Privacy Rule's requirements for minimum necessary are designed to be sufficiently flexible to accommodate the various circumstances of any covered entity.

How the Rule Works

The Privacy Rule generally requires covered entities to take reasonable steps to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. The minimum necessary standard does not apply to the following:

- Disclosures to or requests by a health care provider for treatment purposes.
- Disclosures to the individual who is the subject of the information.
- Uses or disclosures made pursuant to an individual's authorization.
- Uses or disclosures required for compliance with the Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Rules.
- Disclosures to the Department of Health and Human Services (HHS) when disclosure of information is required under the Privacy Rule for enforcement purposes.
- Uses or disclosures that are required by other law.

The implementation specifications for this provision require a covered entity to develop and implement policies and procedures appropriate for its own organization, reflecting the entity's business practices and workforce. While guidance cannot anticipate every question or factual application of the minimum necessary standard to each specific industry context, where it

would be generally helpful we will seek to provide additional clarification on this issue in the future. In addition, the Department will continue to monitor the workability of the minimum necessary standard and consider proposing revisions, where appropriate, to ensure that the Rule does not hinder timely access to quality health care.

Uses and Disclosures of, and Requests for, Protected Health Information. For uses of protected health information, the covered entity's policies and procedures must identify the persons or classes of persons within the covered entity who need access to the information to carry out their job duties, the categories or types of protected health information needed, and conditions appropriate to such access. For example, hospitals may implement policies that permit doctors, nurses, or others involved in treatment to have access to the entire medical record, as needed. Case-by-case review of each use is not required. Where the entire medical record is necessary, the covered entity's policies and procedures must state so explicitly and include a justification.

For routine or recurring requests and disclosures, the policies and procedures may be standard protocols and must limit the protected health information disclosed or requested to that which is the minimum necessary for that particular type of disclosure or request. Individual review of each disclosure or request is not required.

For non-routine disclosures and requests, covered entities must develop reasonable criteria for determining and limiting the disclosure or request to only the minimum amount of protected health information necessary to accomplish the purpose of a non-routine disclosure or request. Non-routine disclosures and requests must be reviewed on an individual basis in accordance with these criteria and limited accordingly.

Of course, where protected health information is disclosed to, or requested by, health care providers for treatment purposes, the minimum necessary standard does not apply.

Reasonable Reliance. In certain circumstances, the Privacy Rule permits a covered entity to rely on the judgment of the party requesting the disclosure as to the minimum amount of information that is needed. Such reliance must be reasonable under the particular circumstances of the request. This reliance is permitted when the request is made by:

- A public official or agency who states that the information requested is the minimum necessary for a purpose permitted under 45 CFR 164.512 of the Rule, such as for public health purposes (45 CFR 164.512(b)).
- Another covered entity.

- A professional who is a workforce member or business associate of the covered entity holding the information and who states that the information requested is the minimum necessary for the stated purpose.
- A researcher with appropriate documentation from an Institutional Review Board (IRB) or Privacy Board.

The Rule does not require such reliance, however, and the covered entity always retains discretion to make its own minimum necessary determination for disclosures to which the standard applies.

Frequently Asked Questions

To see Privacy Rule FAQs, click the desired link below:

[FAQs on Minimum Necessary](#)

[FAQs on ALL Privacy Rule Topics](#)

(You can also go to http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php, then select "Privacy of Health Information/HIPAA" from the Category drop down list and click the Search button.)