preauthorization of services, concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:

(A) Name and address;
(B) Date of birth;
(C) Social security number;
(D) Payment history;
(E) Account number; and
(F) Name and address of the health care provider and/or health plan.

Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

Treatment means 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; or the referral of a patient for health care from one health care provider to another.


§164.502 Uses and disclosures of protected health information: general rules.

(a) Standard. A covered entity may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Permitted uses and disclosures. A covered entity is permitted to use or disclose protected health information as follows:

(i) To the individual;
(ii) For treatment, payment, or health care operations, as permitted by and in compliance with §164.506;
(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §164.502(b), §164.514(d), and §164.530(c) with respect to such otherwise permitted or required use or disclosure;
(iv) Pursuant to and in compliance with a valid authorization under §164.508;
(v) Pursuant to an agreement under, or as otherwise permitted by, §164.510; and
(vi) As permitted by and in compliance with this section, §164.512, or §164.514(e), (f), or (g).

(2) Required disclosures. A covered entity is required to disclose protected health information:

(i) To an individual, when requested under, and required by §164.524 or §164.528; and
(ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity’s compliance with this subpart.

(b) Standard: Minimum necessary—(1) Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must
make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) Minimum necessary does not apply. This requirement does not apply to:

(i) Disclosures to or requests by a health care provider for treatment;

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under §164.508;

(iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;

(v) Uses or disclosures that are required by law, as described by §164.512(a); and

(vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

(c) Standard: Uses and disclosures of protected health information subject to an agreed upon restriction. A covered entity that has agreed to a restriction pursuant to §164.522(a)(1) may not use or disclose the protected health information covered by the restriction in violation of such restriction, except as otherwise provided in §164.522(a).

(d) Standard: Uses and disclosures of de-identified protected health information. (1) Uses and disclosures to create de-identified information. A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.

(2) Uses and disclosures of de-identified information. Health information that meets the standard and implementation specifications for de-identification under §164.514(a) and (b) is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of §164.514, provided that:

(i) Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and

(ii) If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.

(e)(1) Standard: Disclosures to business associates. (i) A covered entity may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information.

(ii) This standard does not apply:

(A) With respect to disclosures by a covered entity to a health care provider concerning the treatment of the individual;

(B) With respect to disclosures by a group health plan or a health insurance issuer or HMO with respect to a group health plan to the plan sponsor, to the extent that the requirements of §164.504(f) apply and are met; or

(C) With respect to uses or disclosures by a health plan that is a government program providing public benefits, if eligibility for, or enrollment in, the health plan is determined by an agency other than the agency administering the health plan, or if the protected health information used to determine enrollment or eligibility in the health plan is collected by an agency other than the agency administering the health plan, and such activity is authorized by law, with respect to the collection and sharing of individually identifiable health information for the performance of such functions by the health plan and the agency other than the agency administering the health plan.

(iii) A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity will be in noncompliance with the standards, implementation specifications, and requirements of this paragraph and §164.504(e).
(2) Implementation specification: documentation. A covered entity must document the satisfactory assurances required by paragraph (e)(1) of this section through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of §164.504(e).

(f) Standard: Deceased individuals. A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual.

(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with §164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with §164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other applicable law, provided that such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) Implementation specification: Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual’s estate, a covered entity must treat such person as a personal representative under this subchapter with respect to protected health information relevant to such personal representation.
§ 164.504 Uses and disclosures: Organizational requirements.

(a) Definitions. As used in this section:

Plan administration functions means administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

Summary health information means information, that may be individually identifiable health information, and:

(A) That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and

(B) From which the information described in §164.514(b)(2)(i)(B)

(b) Plan administration functions. A covered entity that administers a group health plan on behalf of the plan sponsor and that possesses summary health information that is individually identifiable for individuals covered by the group health plan, may use or disclose such information for the plan administration functions of the plan sponsor, consistent with the applicable requirements of this subpart, if the plan administration functions of the plan sponsor would otherwise have been authorized or required to use or disclose such information under applicable State or local law or by applicable Federal law.

(c) Disclosures by workforces who are victims of crime. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i) The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii) The protected health information disclosed is limited to the information listed in §164.512(f)(2)(i).