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**SUBJECT:** Uses and Disclosures Based on Public Policy Which Do Not Require the Patient's Authorization

**HIPAA CITES:** 45 C.F.R. § 164.512

**DEPARTMENT(S):** All Departments of Kewaunee County

**POLICY NUMBER:** 103

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**I. POLICY:**

Under certain circumstances, Kewaunee County may use or disclose protected health information without the written authorization of the individual as detailed in this policy. When the covered entity is required by this policy to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this policy, the covered entity's information and the individual's agreement may be given orally.

**II. PROCEDURES:**

- (a) **Required by Law.** Kewaunee County may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- (b) **Public Health.**
  - (1) Kewaunee County may use or disclose protected health information for the public health activities and purposes described in this paragraph to:
    - (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
    - (ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
    - (iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of

activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

- (A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
  - (B) To track FDA-regulated products;
  - (C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or
  - (D) To conduct post marketing surveillance;
- (iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if Kewaunee County is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
- (v) An employer, about an individual who is a member of the workforce of the employer, if:
- (A) Kewaunee County is a covered health care provider who provides health care to the individual at the request of the employer:
    - (1) To conduct an evaluation relating to medical surveillance of the workplace; or
    - (2) To evaluate whether the individual has a work-related illness or injury;
  - (B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
  - (C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
  - (D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
    - (1) By giving a copy of the notice to the individual at the time the health care is provided; or
    - (2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- (vi) A school, about an individual who is a student or prospective student of the school, if:

- (A) The protected health information that is disclosed is limited to proof of immunization;
  - (B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
  - (C) Kewaunee County obtains and documents the agreement to the disclosure from either:
    - (1) A parent, guardian, or other person acting *in loco parentis* of the individual, if the individual is an unemancipated minor; or
    - (2) The individual, if the individual is an adult or emancipated minor.
- (2) Kewaunee County is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this policy.
- (c) **Victims of Abuse, Neglect or Violence.**
- (1) Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this policy, Kewaunee County may disclose protected health information about an individual whom Kewaunee County reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
- (i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
  - (ii) If the individual agrees to the disclosure; or
  - (iii) To the extent the disclosure is expressly authorized by statute or regulation and:
    - (A) Kewaunee County, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
    - (B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- (2) If Kewaunee County makes a disclosure permitted by paragraph (c)(1) of this policy, Kewaunee County must promptly inform the individual that such a report has been or will be made, except if:
- (i) Kewaunee County, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

- (ii) Kewaunee County would be informing a personal representative, and Kewaunee County reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by Kewaunee County, in the exercise of professional judgment.
- (d) **Health Oversight Activities.**
  - (1) Kewaunee County may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
    - (i) The health care system;
    - (ii) Government benefit programs for which health information is relevant to beneficiary eligibility;
    - (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
    - (iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.
  - (2) For the purpose of the disclosures permitted by paragraph (d)(1) of this policy, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:
    - (i) The receipt of health care;
    - (ii) A claim for public benefits related to health; or
    - (iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.
  - (3) Notwithstanding paragraph (d)(2) of this policy, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this policy.
- (e) **Judicial and Administrative Proceedings.**
  - (1) Kewaunee County may disclose protected health information in the course of any judicial or administrative proceeding:
    - (i) In response to an order of a court or administrative tribunal, provided that Kewaunee County discloses only the protected health information expressly authorized by such order; or
    - (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

- (A) Kewaunee County receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this policy, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
  - (B) Kewaunee County receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this policy, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this policy.
- (iii) For the purposes of paragraph (e)(1)(ii)(A) of this policy, Kewaunee County receives satisfactory assurances from a party seeking protected health information if Kewaunee County receives from such party a written statement and accompanying documentation demonstrating that:
- (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
  - (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
  - (C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
    - (1) No objections were filed; or
    - (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- (iv) For the purposes of paragraph (e)(1)(ii)(B) of this policy, Kewaunee County receives satisfactory assurances from a party seeking protected health information, if Kewaunee County receives from such party a written statement and accompanying documentation demonstrating that:
- (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
  - (B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
- (v) For purposes of paragraph (e)(1) of this policy, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this policy, an

order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to Kewaunee County or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this policy, Kewaunee County may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this policy without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this policy, if Kewaunee County makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this policy or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(v) of this policy.

(2) The provisions of this paragraph do not supersede other provisions of this policy that otherwise permit or restrict uses or disclosures of protected health information.

(f) **Law Enforcement.**

(1) Kewaunee County may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this policy; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Except for disclosures required by law as permitted by paragraph (f)(1) of this policy, Kewaunee County may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that

(i) Kewaunee County may disclose only the following information:

(A) Name and address;

- (B) Date and place of birth;
  - (C) Social security number;
  - (D) ABO blood type and rh factor;
  - (E) Type of injury;
  - (F) Date and time of treatment;
  - (G) Date and time of death, if applicable; and
  - (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.
- (ii) Except as permitted by paragraph (f)(2)(i) of this policy, Kewaunee County may not disclose for the purposes of identification or location under paragraph (f)(2) of this policy any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
- (3) Except for disclosures required by law as permitted by paragraph (f)(1) of this policy, Kewaunee County may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this policy, if:
    - (i) The individual agrees to the disclosure; or
    - (ii) Kewaunee County is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
      - (A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
      - (B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
      - (C) The disclosure is in the best interests of the individual as determined by Kewaunee County, in the exercise of professional judgment.
  - (4) Kewaunee County may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if Kewaunee County has a suspicion that such death may have resulted from criminal conduct.
  - (5) Kewaunee County may disclose to a law enforcement official protected health information that Kewaunee County believes in good faith constitutes evidence of criminal conduct that occurred on the premises of Kewaunee County.
  - (6) Reporting crime in emergencies.

- (i) Should Kewaunee County provide emergency health care in response to a medical emergency, Kewaunee County may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
    - (A) The commission and nature of a crime;
    - (B) The location of such crime or of the victim(s) of such crime; and
    - (C) The identity, description, and location of the perpetrator of such crime.
  - (ii) If Kewaunee County believes that the medical emergency described in paragraph (f)(6)(i) of this policy is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this policy does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this policy.
- (g) **Coroners and Medical Examiners.**
  - (1) Kewaunee County may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
  - (2) Kewaunee County may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, Kewaunee County may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.
- (h) **Cadaveric, Organ or Tissue Donation.** Kewaunee County may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.
- (i) **Research.** Kewaunee County may use and disclose protected health information to help conduct medical research when the research program is approved according to the approval process set forth in the Code of Federal Regulations or any other applicable federal or state law, rule or order.
- (j) **To Avert a Serious Threat to Health or Safety.**
  - (1) Kewaunee County may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if Kewaunee County, in good faith, believes the use or disclosure:
    - (i)
      - (A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
      - (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
    - (ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

- (A) Because of a statement by an individual admitting participation in a violent crime that Kewaunee County reasonably believes may have caused serious physical harm to the victim; or
  - (B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- (2) A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this policy may not be made if the information described in paragraph (j)(1)(ii)(A) of this policy is learned by Kewaunee County:
    - (i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this policy, or counseling or therapy; or
    - (ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this policy.
  - (3) A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this policy shall contain only the statement described in paragraph (j)(1)(ii)(A) of this policy and the protected health information described in paragraph (f)(2)(i) of this policy.
- (k) **Specialized Government Functions.**
- (1) Kewaunee County may use and disclose protected health information of individual when permitted by law for military and veterans activities.
  - (2) Kewaunee County may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act and implementing authority.
  - (3) Kewaunee County may disclose protected health information to authorized Federal officials for the provision of protective services to the President, foreign heads of state or other similarly authorized persons.
  - (4) OMITTED
  - (5) Kewaunee County may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
    - (i)
      - (A) The provision of health care to such individuals;
      - (B) The health and safety of such individual or other inmates;
      - (C) The health and safety of the officers or employees of or others at the correctional institution;
      - (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
      - (E) Law enforcement on the premises of the correctional institution; or

- (F) The administration and maintenance of the safety, security, and good order of the correctional institution.
  - (ii) Kewaunee County may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.
  - (iii) For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.
- (6)
- (i) Kewaunee County may disclose protected health information relating to eligibility for or enrollment in a health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.
  - (ii) Kewaunee County may disclose protected health information relating to public benefits programs to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.
- (7) Kewaunee County may use or disclose protected health information for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided Kewaunee County:
- (i) Is a State agency or other entity that is, or contains an entity that is:
    - (A) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; or
    - (B) A court, board, commission, or other lawful authority that makes the commitment or adjudication that causes an individual to become subject to 18 U.S.C. 922(g)(4); and
  - (ii) Discloses the information only to:
    - (A) The National Instant Criminal Background Check System; or
    - (B) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and
  - (iii)
    - (A) Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and

(B) Does not disclose diagnostic or clinical information for such purposes.

- (1) **Workers' Compensation.** Kewaunee County may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.