

The GrayBrier Nursing and Rehabilitation Center
MASTER POLICY ON USES AND DISCLOSURES OF
PROTECTED HEALTH INFORMATION

POLICY:

Our Residents have entrusted their personal and clinical information to us. This information contains highly sensitive material and requires thoughtful and attentive management by those who have access to it. The GrayBrier Nursing and Rehabilitation Center is committed to protecting our Residents' rights to privacy and safeguarding their protected health information. This master policy and other specific, related policies are intended to implement Residents' rights to privacy concerning their protected health information in accordance with federal and state law.

RESPONSIBLE PARTIES AND DUTIES:

Privacy Officer

The Privacy Officer will develop policies and procedures to implement the privacy policies adopted by the GrayBrier and will oversee the implementation of and compliance with these policies. The Privacy Officer will develop and implement initial and on-going training of GrayBrier employees, and, if needed, independent personnel working in or with the GrayBrier. The Privacy Officer may delegate some of his or her responsibilities to the Medical Records Department or other appropriate personnel.

Security Officer

The Security Officer is responsible for overseeing security of GrayBrier's automated data, including maintenance of security passwords, restrictions of access to data files, and design of a system backup program to restore data in the event of loss. The Security Officer is also responsible for protecting the physical security of protected health information.

Administrator

The Administrator will establish privacy policies of The GrayBrier and Rehabilitation Center and supervise the Privacy and Security Officers. The Administrator will determine the scope of access to protected health information for each job position, define violations of the privacy policies, and supervise implementing corrective actions for such violations.

Persons Covered By This Policy

People, who volunteer, work or perform services at or for GrayBrier must respect the privacy of all Residents, become informed and trained regarding all privacy policies, comply with GrayBrier privacy policies, and report any breach of such policies, whether the breach was committed by that individual or another person. No person may have access to protected health information until that person has agreed to adhere to the privacy policies of the GrayBrier and has signed a privacy acknowledgment or confidentiality agreement. This policy covers officers, employees, vendors, independent contractors, trainees, faculty, students, volunteers, independent physicians and health care professionals working in or for the GrayBrier Nursing and Rehabilitation Center and other persons who work or perform services at the GrayBrier.

PROCEDURES:

1. Guiding Principles

- a. Only permitted individuals can have access to, use, or disclose protected health information. Permitted individuals are those whose job description or job responsibilities allow access to protected health information.
- b. Permitted individuals may only use protected health information for proper purposes.
- c. Permitted individuals may only disclose protected health information, if there is appropriate authorization by the Resident or representative or a legal exception permitting such use or disclosure.

2. Definitions

- a. Disclosure means the release, transfer, provision of access to, or divulging in any other manner, of information outside Nursing Home.
- b. Protected Health Information means information relating to the health or condition of a Resident, the provision of care to a Resident, or the payment for the provision of health care to a Resident that identifies the Resident and is transmitted or maintained in any form.
- c. Use means the sharing, employment, application, utilization, examination, or analysis of information within Nursing Home.

3. Access Rights

- a. Access rights to protected health information are limited to that which is necessary to adequately perform one's specific job responsibilities. Access to a function on the computer does not imply that it is proper to search this information at will simply to satisfy curiosity. Hard copy records may be accessed by making a request to the department responsible for safeguarding such documents and should be signed out appropriately.
- b. Access rights to protected health information are defined in:
 - (1) Employee job descriptions;
 - (2) Policies and procedures, contract terms or job descriptions for vendors or independent contractors; or
 - (3) Policies and procedures for volunteers, independent physicians and other independent health care professionals working in the Nursing Home, trainees, faculty and students.
- c. Persons not employed by GrayBrier may have legitimate reasons to access Resident information. Such access will be granted only when proper authorizations are in place. Such access will be time-limited. Non-employees having such access may include, but are not limited to, independent physicians and independent health care professionals working in the GrayBrier Nursing and Rehabilitation Center, faculty, students, accountants, consultants, volunteers, insurers, vendors, and the GrayBrier attorneys.
- d. For purposes other than treatment, the GrayBrier will make reasonable efforts to limit the amount of protected health information provided to persons who are permitted access to such information to ensure that only the minimum necessary amount of information is accessed to accomplish the intended purpose of the use or disclosure.

4. Resident Rights

- a. The GrayBrier Residents have the right to be informed of their rights to privacy regarding protected health information and of the GrayBrier's responsibilities to safeguard the confidentiality of a Resident's protected health information. All Residents or their representatives will be provided with the GrayBrier's Notice of Privacy Practices.

- b. GrayBrier Residents have the right to request to restrict or amend their protected health information, request access to or obtain a copy of their information, obtain an accounting of the disclosures by GrayBrier of their information, and request communication of their protected health information by certain means. GrayBrier has specific policies to implement each of these Resident rights.
- c. GrayBrier's Privacy Officer is responsible for responding to any requests from Residents to restrict access to or amend their protected health information or receive communication of their protected health information by certain means, after consulting, as needed, with Nursing Home staff involved in the care of the Resident. The Privacy Officer may delegate responsibility for these duties to the Medical Records Department.
- d. the GrayBrier staff members who receive requests from Residents to restrict access to or amend their protected health information, or to receive communication of their protected health information by certain means, should refer the Residents and the requests to the GrayBrier's Privacy Officer or Medical Records Department, as appropriate.
- e. GrayBrier Residents or their representatives must authorize the use or disclosure of their protected health information to third parties for any purposes other than for treatment, the GrayBrier to get paid by Medicare, Medicaid or another payor or GrayBrier operations, unless there is a legal exception that does not require an authorization by the Resident. For example, health care operations for which the GrayBrier may disclose protected health information without a Resident's written authorization can include accreditation, certification, licensure, utilization review, consideration of the qualifications of health care professionals to treat Residents, risk management and quality assurance.

5. Resident Acknowledgment Required for Receipt of Notice of Privacy Practices

- a. GrayBrier Nursing and Rehabilitation Center must provide each Resident or representative with it's Notice of Privacy Practices no later than the date of admission, except in emergency treatment situations, in which event GrayBrier must provide the Notice as soon as reasonably practical after the delivery of the emergency treatment.
- b. The Admissions Department of GrayBrier Nursing and Rehabilitation Center is responsible, at the time of an admission, for assuring that each Resident or his representative:
 - (1) receives or has already received a copy of the Notice of Privacy Practices ; and
 - (2) signs a written acknowledgment of receipt of the Notice.
- c. If a Resident's acknowledgment of receipt is not obtained, Admissions Department personnel must document their good faith efforts to obtain the acknowledgment and the reason why the acknowledgment was not obtained.
- d. The GrayBrier Nursing and Rehabilitation Center will post its Notice of Privacy Practices in a clear and prominent location where it is reasonable to expect individuals seeking treatment from the facility to be able to read the Notice.
- e. Whenever the Notice is revised, the GrayBrier will make the revised Notice available upon request to existing Residents on or after the effective date of the revision and provide the revised Notice to new Residents at admission.
- f. The GrayBrier Nursing and Rehabilitation Center will display the Notice on its website, if it has one, and make the Notice available to its Residents electronically, if it has the capabilities to do so.

6. Use or Disclose Only the Minimum Necessary

a. Minimum necessary applies when:

- (1) The GrayBrier itself uses or discloses protected health information for a purpose other than treatment; or
- (2) The GrayBrier requests protected health information from another entity for the GrayBrier to get paid or its operations.

b. Minimum necessary does not apply to:

- (1) Disclosures to or requests by another health care provider for treatment of a Resident;
- (2) Uses or disclosures made to the Resident;
- (3) Uses and disclosures made pursuant to a Resident's authorization;
- (4) Disclosures made to the Secretary of United States Department of Health and Human Services; or
- (5) Uses or disclosures that are required by law.

c. When minimum necessary applies, persons working at the GrayBrier Nursing and Rehabilitation Center should limit any request for or provision of protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made.

- (1) For a request that is made on a routine and recurring basis, the GrayBrier will implement policies and procedures that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.
- (2) With regard to all other requests, the GrayBrier will review the request on case-by-case basis to determine that the protected health information sought is limited to the information reasonably necessary to accomplish the purpose for which the request is made.
- (3) When minimum necessary applies, the GrayBrier will not generally use, disclose or request an entire medical record, except when the entire medical record is specifically justified as reasonably necessary to accomplish the purpose of the use, disclosure, or request.

7. Resident Authorization is Required For:

a. Disclosure to third parties outside the facility for purposes other than

- (1) To a health care professional or provider who is currently involved in treatment of the Resident;
- (2) To another health care facility to which the Resident is being transferred;
- (3) As required in a third party payment contract for the GrayBrier Nursing and Rehabilitation Center to get paid; or
- (4) As permitted by law.

b. Use of psychotherapy notes by anyone other than the writer or creator of the notes within the GrayBrier and among health care professionals involved in treating the Resident at the GrayBrier.

c. Research where the Resident will be identified.

8. Use and Disclosure Permitted or Required by Law without Resident Authorization

a. The GrayBrier must report information to the police in cases involving bullet wounds, gunshot wounds, powder burns, poisoning, and knife wounds, if it appears that a criminal act was involved; and other wounds, illnesses, or injuries in which there is grave bodily harm or grave illness, if such harm or illness appears to have resulted from a criminal act of violence.

b. The GrayBrier must report information when there is reasonable cause to believe that a child or disabled adult has been the subject of abuse or neglect.

- c. The GrayBrier must provide protected health information in response to, in compliance with and as limited by the relevant requirements of:
 - (1) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer or administrative law judge; or
 - (2) A grand jury subpoena.
- d. The GrayBrier may disclose the following protected health information concerning the Resident in response to a law enforcement official's request for information to identify or locate a suspect, fugitive, material witness, or missing person:
 - (1) Name and address;
 - (2) Information available in the facility directory concerning the Resident unless the Resident has restricted disclosure of such information; and
 - (3) Date and time of death, if applicable.
- e. The GrayBrier may disclose protected health information to provide evidence of criminal conduct that occurred on the premises the GrayBrier.
- f. The GrayBrier must provide protected health information in response to requests from the Medical Examiner or his/her deputy, the Coroner or his/her deputy, or their respective appointees, relating to the identification of deceased individuals, investigation of a death and/or the determination of a cause of death (not necessarily that of a GrayBrier Resident).
- g. The GrayBrier must allow various agencies access to protected health information so that the agencies may audit the GrayBrier's operations. For example, the local health department may access medical records to investigate a disease or health hazard that may present a clear danger to the public health. The Joint Commission on Accreditation of Health Organizations may review protected health information when surveying the GrayBrier for accreditation. State or federal fraud abuse agencies and state licensure or certification agencies may have the right to review protected health information to fulfill their responsibilities.
- h. The GrayBrier must allow licensure and certification surveyors to review a Resident's records unless the Resident or his representative object.
- i. The GrayBrier must report certain protected health information to state agencies to report deaths, cancer and other conditions.
- j. The GrayBrier must provide to the recipient of an organ or tissue donation the medical records of the resident who donated the organ or tissue.
- k. The GrayBrier must report communicable diseases and conditions that have been declared to be dangerous to the public health to the local health director of the county or district within the time period specified by law after the disease or condition is reasonably suspected to exist.

9. Situations Where a Personal Representative May Act for a Resident regarding Protected Health Information

- a. Capable Adults. A competent and capable adult (age 18 or older) has the right to authorize the use and release of his or her health information and his or her directions control over those of any person acting in a representative capacity.
- b. Powers of Attorney.
 - (1) If a person holds a valid Power of Attorney, its terms govern if, when and how that person may authorize the use and release of protected health information. The Power of Attorney is valid only so long as the Resident is capable of making his or her own decisions and has not revoked the Power of Attorney.

- (2) If a person holds a valid Durable Power of Attorney, the terms of the Durable Power of Attorney govern if, when and how that person may authorize the use and release of protected health information for the Resident. The Durable Power of Attorney will apply if the Resident is unable to make his or her own decisions and remains valid after the Resident is no longer capable of making his or her own decisions.
- c. Personal Representatives. Health care information may be released to a Resident's personal representative, who does not have legally conferred authority but who is involved in a current Resident's care, for the purpose of providing health care to the Resident if:
- (1) The Resident has authorized orally or in writing the disclosure; or
 - (2) The Resident is in a physical or mental condition such that he or she is not capable of objecting, and there are no prior indications that he or she would object.
- d. Family Members.
- (1) Under State law, the Resident's written consent is not required for release of a current Resident's personal and medical records to family members. When applying this provision of State law, the GrayBrier staff should consider "family members" to be those family members who have been involved with Resident and/or in the Resident's care at the GrayBrier but do not otherwise have a legally conferred authority to act for the Resident, such as a Power of Attorney. The GrayBrier staff have discretion and should use reasonable judgment in making this determination.
 - (2) The GrayBrier staff should verify the identity and relationship of any person who claims to be a family member of a current Resident in accordance with the Master Policy.
 - (3) For any family member who has not previously been involved with a current Resident and/or in the current Resident's care at the GrayBrier, the facility staff should advise any current Resident, who is capable of understanding and making a decision, of a family member's request for protected health information or access to or copies of records and afford the Resident the opportunity to consent or object. If the Resident consents, the GrayBrier staff should document the Resident's consent by obtaining the Resident's signature on a consent form or documenting the Resident's verbal consent, if the Resident is unable to sign.
 - (4) If the Resident objects to the disclosure requested by the family member, the GrayBrier staff should obtain confirmation of the Resident's ability to make a choice from the Resident's attending physician or the GrayBrier's Medical Director and have a second staff person at the facility confirm with the Resident that the Resident does object and what protected health information the Resident does not want disclosed to the family member. If confirmation is obtained, the GrayBrier staff should not make the disclosure in accordance with the Resident's wishes and should document the Resident's choice and the Resident's ability to make the choice. If the Resident's objection is not confirmed, the GrayBrier staff should exercise reasonable judgment in determining whether the Resident consents to the disclosure requested by the family member and whether the disclosure is in the Resident's best interests and act accordingly in responding to the family member's request.
 - (5) The GrayBrier Nursing and Rehabilitation Center's Administrator, Privacy Officer, senior social worker, or Director of Nursing may perform the duties under this section.
- e. Deceased Individuals. The executor or administrator of a deceased individual's estate has the authority to determine the disclosure of confidential information in the deceased individual's medical record. If the estate is unadministered, the closest next of kin has such authority.
- f. In cases or suspected cases of abuse, neglect, or endangerment, the GrayBrier may decide not to treat a person as the personal representative with authority to act for a Resident.
10. Verification Requirements for Disclosure of Protected Health Information
- a. The GrayBrier is required by federal and state laws to verify the identity of a person requesting protected health information and the authority of that person to have access to protected health information, if the identity or authority of the person is not known to the GrayBrier staff.

b. When verifying identity or family relationship, the GrayBrier may rely on representations or documentation of identity such as, but not limited to: photo identification, driver's license, birth certificate, marriage license, or other documentation, statements, or representations that, on their face, meet the applicable requirements so long as such reliance is reasonable under the circumstances.

c. The GrayBrier may rely, if the reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of protected health information is to a public official or person acting on behalf of a public official:

- (1) If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;
- (2) If the request is in writing, the request is on the appropriate government letterhead; or
- (3) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.

d. The GrayBrier may rely, if the reliance is reasonable under the circumstances, on any of the following to verify authority when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

- (1) A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority; or
- (2) If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.

e. The GrayBrier personnel will satisfy the verification requirements of this policy if they use their professional judgment when making a use or disclosure for the facility's Resident directory, in emergency circumstances, to a family member involved in the Resident's care, for notification purposes, or for disaster relief purposes.

f. The GrayBrier personnel will meet the verification requirements of this policy if they act on a good faith belief in making a disclosure to avert a serious threat to health or safety.

RESPONSIBILITY:

Responsibility for the content and administration of this policy resides with the GrayBrier's Privacy Officer and Administrator.

ENFORCEMENT:

Violation of Resident confidentiality policies will be grounds for disciplinary action, up to and including termination. In addition, persons violating Resident confidentiality practices may be subject to civil and criminal liability under applicable law.

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