

H2E Guidance Document

Confidential Paper Document Disposal and Resource Conservation In Compliance with the Health Insurance Portability and Accountability Act (HIPAA) OF 2002

The Hospitals for a Healthy Environment program attempts to help health care facilities meet the intent of HIPAA in a manner that promotes environmental performance and that is financial responsible and sustainable. This document is to be used by H2E Partners as a tool to help develop policies and procedures to perform their own facility assessments to ensure confidentiality.

** This document focuses on paper destruction. Attachment A includes a table briefly describing electronic media data destruction alternatives*

Disclaimer: The suggestions outlined in this and other H2E-HIPAA documents are not legally binding but are intended as guidance documents.

HIPAA Standards require health care organizations to establish written policies and procedures, as well as security measures to protect the privacy of patient information as they pertain to the “end-of-life” disposal and destruction of confidential paper documents.* The purpose of this guidance is to help you:

- **Understand the basic requirements for protecting privacy of confidential documents under HIPAA;**
- **Assess your facility’s confidential paper disposal/destruction program’s readiness for compliance with HIPAA requirements;**
- **Evaluate options for “end-of-life” disposal and destruction of confidential documents, and develop an environmentally responsible and fiscally prudent option for your facility;**
- **Develop and implement policies and procedures as they pertain to the “end-of-life” disposal and destruction of confidential paper documents.**

Document Outline:

I. Understanding HIPAA and Document Destruction Options

- What documents are protected by HIPAA?
- What HIPAA says and doesn’t say about the management and disposal/destruction of confidential paper
- Confidential document destruction options

Attachment B: Sample Certificate of Destruction

Attachment C: Due Diligence - Annual Audit of Confidential Paper Recycling

II. Perform a facility assessment

- Perform a facility assessment to help determine policy and procedural requirements, operations and infrastructure requirements.
- Develop facility-wide policy for compliance with confidential material disposal guidelines
- Policy worker codes of conduct concerning violations of policy

Attachment D: Sample Facility Assessment

III. Developing and Implement Policies and Procedures

- Develop chain of custody policies and procedures from point of origin to confirmation of point of destruction, include specific responsibilities for generator, handler, staff at points of transfer, haulers and/or recyclers.
- Considerations for choosing a vendor

Attachment E: Considerations of Shredding On-site

Attachment F: Sample Administrative Policy and Procedures

Attachment G: Sample Confidentiality Agreement facility and vendor

Attachment H: Sample “General Terms and Conditions” with facility and vendor

The variation in the legal definitions of confidential information probably precludes the development of a single practical definition of the term. Each facility must define what documents are considered confidential and make an assessment of how they should be managed and disposed in a way that minimizes potential for breaches in confidentiality.

Supports national Hospital for a Healthy Environment (H2E) initiatives

- Waste minimization – It has been shown that recycling has been greatly enhanced when coupled with the destruction of confidential waste.

- Customer Service – This effort will satisfy the responsibility to assess of our waste streams in conjunction with best practices and confidentiality issues.

I. Understanding HIPAA

What Documents are Protected by HIPAA? Identifying “Protected Health Information” (PHI)

Personal and Reporting Information

1. All patient care record and information which contains patient and/or practitioner identifying information, e.g. mental health records, medical records, practitioner referral slips, appointment records, research records, and records which may contain patient information, such as billing records
2. Peer review, quality management, performance improvement, utilization review, risk management documents, and credentialing information
3. Reports to regulatory agencies such as incident reports or reports of unusual occurrences, child abuse reports and other required protected reports, and some accreditation information
4. Employment documents, particularly letters of reference

Documents Made Confidential by Agreement, Organizational Policy, or Practice

1. Documents containing proprietary information and trade secrets
2. Certain financial records of the corporations, including tax records
3. Business transaction agreements and records

Documents Where Careless Disposal Could Jeopardize a Person's Privacy

1. Social security numbers with names, or addresses of the individual (or family members) who is the subject of the number
2. Members/patients' credit card numbers and personal financial data, including Medicare and Medicaid identifiers
3. Employee directories

What HIPAA says and doesn't say about the management and disposal/destruction of confidential paper

HIPAA regulation does not dictate specific means or provide guidance on acceptability of methods of destruction for confidential materials.

HIPAA does require, however, that organizations assess the potential for information disclosures, and develop policies to prevent such disclosures. It is the responsibility of the organization to assess risks of privacy disclosures, and implement security policies and procedures that will provide a **reasonable** level of safeguards to protect privacy.

Confidential Document Destruction Options

There are three options for destruction of information: pulping (or recycling), shredding, burning*, or some combination.

***H2E does not recommend burning as 1) it does not promote source reduction and 2) has more negative environmental and health considerations than recycling. The discussions in this document focus on recycling and shredding combinations.**

H2E RECOMMENDS THAT ALL PAPER BE RECYCLED, OR SHREDDED THEN RECYCLED TO ENSURE PROPER DESTRUCTION AND MINIMIZE ENVIRONMENTAL IMPACT!

Source Reduction, Recycling and HIPAA

The relevant JCAHO Standard, under Management of Information standard IM.2, states "Confidentiality, security, and integrity of data and information are maintained." Confidentiality is defined as "Restriction of access to data and information to individuals who have need, a reason, and permission for such access."

with availability of local recycling/ destruction services, onsite or off-site and the availability of sustainable human and financial resources required to maintain a management program. For instance contracting with a for destruction hauler carries the least amount of liability for high volume generators but is not necessarily cost effective. Relative to the risk of the majority of departments a feasible option is providing secure receptacles and having proper polices for the protection of confidential waste in place.

Source reduction of confidential documents -- creating less paper waste in the first place -- is the best way to eliminate exposure of confidential materials and reduce the cost of disposal. Ask, "Does this document need to be created in the first place?" Assess the printing of unneeded reports from computer services and the lab, for example, and encourage users to let these departments know if they don't need reports. Another way to reduce waste paper is through the use of electronic documents. All staff can participate in the conscious decision to prevent the creation of the waste material.

Recycling is an effective way of destroying documents. Recyclable papers can be collected in secured accessible bins, stored in a secure holding container/area and then sent off-site for recycling/destruction. **One approach is to treat ALL recyclable waste paper as confidential -- a "Universal Precautions" approach to paper** -- accomplishing three objectives: minimizes the need for staff to determine if a piece of paper is confidential, fully destroys the document, and minimizes environmental impact by enhancing recycling efforts. There are basically two recycling options that may adequately provide confidential information destruction:

- **Recycling with a bonded/certified destruction service:**

Hauling the paper to a bonded recycler or directly to a bonded paper mill. All paper shipped to the mill or a recycler should be documented with shipping information and a certificate of destruction (*Attachment B – Sample Certificate of Destruction*) to verify that the material was sent directly to a specified locale on a specific date and was destroyed on a specific date.

- **Recycling with a due diligence* approach:**

Where a certificate of destruction is not available from the recycler, or is very costly, an alternative may be to perform due diligence on the recycler. In some cases, their processes may be secure, but they do not want the liability or accountability for providing guarantees. If contracted recyclers that handle and process paper in a manner that meets confidentiality standards for security, then the certificate of destruction may not be needed. **It is extremely important to work closely with your Risk Management Department and your vendors to ensure this option meets with intent of HIPAA while protecting your facility.** See *Attachment C - Sample Due Diligence- Annual Audit form*.

II. Perform a Facility Assessment

One of the few specific requirements outlined in HIPAA is for facilities to conduct a facility assessment to help determine your facility's data collection and disposal infrastructure, which will in turn help you formulate operational and policy requirements that you will need to implement to meet HIPAA requirements. For example, identify areas in your facility where confidential documents may be stored or disposed of, and for each area determine what will be the appropriate measures needed to protect the confidentiality of the documents.

Use the Sample Facility Assessment Tool - Confidential Paper Disposal (Attachment D) to

is key to the any potential minimization of confidential waste disposal. Training and education efforts must be undertaken if a successful source reduction program is to have a sustainable and meaningful impact on reducing the amount of paper generated, whether confidential or not.

of your policies are the underlying determinants of the success of any process implemented to reduce exposure to HIPAA regulations.

The systematic and objective process to evaluate risks associated with using a particular recycling vendor for the purposes of minimizing liability to the facility.

- **Container placement**

The easier the access to collection containers, the higher the level of compliance to the policy. Every office, reception area, conference room should have easy access to the proper container – otherwise confidential materials WILL END UP IN THE TRASH because there ARE trash containers everywhere.

- **What type of containers go where?**

Your facility assessment should inform you of the risk associated with locations at which a container may be placed. For example, an high traffic area with easy public access may warrant a locked bin or shredder, while a locked records room with limited staff access may not warrant such safeguards.

- **Bins – locked vs. unlocked**

Advantages to locked bins:

- paper is secure from point of generation through point of destruction
- the facility can visually and systematically demonstrate to clients that an infrastructure exists to protect information security
- avoids the need to shred at point of generation

Disadvantages to locked bins:

- additional cost to purchase locking containers
- additional labor to collect paper from locked bins or swap out containers
- space needed to store locked bins, space needed to stage locked bins during collection
- finding and keeping track of keys for bins; need to decide if all bins should be keyed alike, or have multiple keys, multiple locks
- Increased cost and labor considerations may limit access to confidential containers, consider whether staff compliance will decrease if participation is not easy and accessible.

- **To Shred or Not to Shred...**

Shredding On Site. Shredding as a method of information destruction is no doubt, very effective but it's also expensive and labor intensive, and if other options are available, it may not be necessary. Facilities can shred onsite with small, departmental shredders and in a centralized are using a large, industrial centralized shredder. Facilities may also opt to minimize shredding on-site by working with a recycling hauler that provides secure services.

Shredding off site (or mobile on-site shredding systems). A variety of firms offer shredding services. Typically, they pick up the paper from a central point at the facility and either shred on-site in mobile units or transport it to a bulk shredding facility. These firms fall under the category of destruction firms, and they should always provide a certificate of destruction.

Using the *Due Diligence Audit* combined with the *Facility Assessment* will help weigh the options and come up with a combination of services that balances cost, security and recycling as a preferred option.

recycling as a preferred option.

NOTE: all shredded paper should still be recycled whether shredded onsite or off.

See *Attachment E – Considerations for Shredding Paper Onsite*.

First consider ways of reducing the amount of confidential documents that you generate; Directly recycling, or a combination of shredding/recycling are H2E's preference for HIPAA compliance while reducing environmental impact.

III. Operations and Infrastructure

Develop facility-wide policy and training programs for compliance with confidential material disposal guidelines

Work with Risk Management, Administration, Environmental Services, Facilities and others to develop and implement overall policy and procedures.

- All employees need to sign a HIPAA confidentiality document and receive training on handling of confidential information.
- Consider including violations of policy in personnel policies. Determine problem identification and resolution strategies.
- Develop training and education programs starting at new employee orientation to annual and as-needed training.

See *Attachment F – Sample Administrative Policy and Procedures for Confidential Document Destruction*

Chain of Custody

Define and understand **chain of custody**, both **internal and external**. Develop a list of who is responsible for the confidential materials at all times, until the information is destroyed. All staff generating, using, collecting and/or hauling confidential documents have some responsibility to ensure that confidential materials are secure until chain of custody it transferred externally. At which point, having good contracts and auditing processes becomes critical.

- **Internal Chain of Custody**

It is the responsibility of the facility managers to ensure that all staff are trained so that they understand their individual responsibilities.

Generators: The generator will be the first and most vital link in a long chain of custody of confidential waste. Generator compliance is essential to maximize institution compliance with the policy. They must be held accountable for proper document handling and disposal practices. (Housekeepers for instance, are not responsible to, and MAY NOT, remove confidential materials that the generator mixed with “trash.”

Material Handling: High volume generators such as Pharmacies, Labs and Medical Records should work with the waste management department to determine hauling procedures and schedules. Waste may be collected in tied liners, in boxes or loose but

“Vendor/Recycler Due Diligence for examples of specific questions xxxx facility should ascertain before they enter into an agreement. Checks include compliance issues, handling, final disposition, paper work and personnel policies

(Admission Cards) – Collect these separately from the paper – one suggestion is to use inter-office mail to a central location where an appropriately sized shredder can be used to destroy the cards. Or you can hire a document destruction company to shred. Consider replacing these plastic cards with an electronic admission system.

must **NOT** be left in corridors, entrances, exits or any area with public access. Typically the housekeeping department assumes responsibility for secure management when they remove the paper from the generator area. Likewise for transportation or other staff that haul the paper to the loading dock.

Liners: Using opaque colored bags for collection of confidential materials will assist Environmental Services collect both trash and paper together in one trash cart on the same rounds. When they get to the trash storage area it will be easy, due to the color-coded liners, to distinguish the recyclable material from the trash material. However, many facilities choose clear liners for all materials -- trash or recyclables, confidential or not – because it allows for a visual inspection of all bags. It's easy enough to determine the proper category of the bag. Bags of materials (trash or recyclables) regardless of bag color, should not be left in corridors.

Loading Dock Area: Secure your solid waste compactors or containers. Have the specifications of the compactor set so that the "Ram" will end in the forward position leaving all the trash compacted inside the compactor. Lock all accessible openings to the compactor. Metal doors can be welded on the compactors to allow for it to be easily locked. All compactors should be "self contained" versus a receiving box so that there is no opening when the unit is picked up by the hauler. Ensure the loading dock is secure at all times.

- **External Chain of Custody: Choosing a Vendor**

Waste disposal and recycling functions are most often contracted services. At that point in the process, chain of custody passes from an internal process to an external one so having clear and specific contract language and processes becomes even more important. But the facility's responsibility does not end when the waste is removed from the property. Ensuring secure and reasonable processes until the information is destroyed is still the facility's responsibility.

Business Associates Agreements. All vendors, including waste haulers, recycling facilities, landfill and incinerator owners should sign a business associate agreement that states that they know that they will be handling confidential information from the facility and they agree to maintain the confidentiality of the information. The agreement must limit the vendor to use and disclosure of PHI to those uses stated by a contract. The agreement can be a paragraph within a contract or can be made an addendum or exhibit to an already existing contract.

The BAA should state the definitions of Individually Identifiable Health Information and Protected Health Information as well as stating that the business associate would:

- Not use or disclose PHI in a manner that would violate any state, federal, or local law, including the HIPAA guidelines;
- Ensure that there are appropriate safeguards to prevent use or disclosure of the PHI;
- Immediately inform the facility of any use or disclosure of the PHI that happens that they become aware of;
- Ensure that any subcontractors (including trucking companies and paper mills) and employees are aware to not use or disclose PHI;
- If required, make the PHI available to the appropriate parties in accordance with the HIPAA Guidelines.
- Have its internal practice, books and records relating to the use and disclosure of PHI received from facility available to for purposes of determining facilities compliance

IV and Medications bags all have PHI on the labels. This information can be de-identified by placing a blank label of the same size over the label that contains the PHI.

De-identify any patient information on vials, bottles, or other general waste by covering with self-adhesive labels or black magic marker

with the HIPAA Guidelines.

*Work with Risk Management Department to determine whether HIPAA's "Business Associate" rule applies to your haulers or vendors.

HIPAA does not stipulate that confidential material be destroyed, only that the use and disclosure of the information be controlled according to their guidelines.

Contractual language protecting the confidentiality of the waste should be built into all contracts with solid waste and recycling haulers and include the following elements:

- Specify the method of destruction/disposal.
- Specify the time that will elapse between acquisition and destruction/disposal of data/media.
- Establish safeguards against breaches in confidentiality.
- Indemnify the organization from loss due to unauthorized disclosure.
- Require that the business associate maintain liability insurance in specified amounts at all times the contract is in effect.
- Provide proof of destruction/disposal.

The following attachments provide sample of contract language with haulers. Regardless of the destruction method or vendor you choose, ensure good contract language, reasonable secure processes, and use the Due Diligence Audit referred to in Section I to help track the compliance of the vendor.

A note on archiving

Many facilities send documents to an archiving/retention facility for storage. It should be written into any archiving contract that scheduled destruction will include recycling all paper that has been archived.

Attachment G - Sample Confidentiality Agreement facility and vendor

Attachment H – Sample "General Terms and Conditions" with facility and vendor

Haulers/Recycling Vendors: Using the *Sample Due Diligence- Annual Audit form* found in Attachment C, audit your hauler/vendors about every 6 months. You need to have assurance that their processes have not dramatically changed. Also, look out for the following issues, for example:

- Your container of paper from your facility be emptied inside a building where the wind will not blow the paper;
- the security of the building,
- the stability and staff turn-over rates,
- how long the material will be loose prior to being baled,
- whether contracted paper mills have long- term contracts.

If your recycling facility is shipping your paper to another location, baling the paper should be a requirement (versus shipping it loose. The bales are compacted and normally secured with heavy gauge steel wire. The bales need to be stored indoors. You should ask how long the bales are at the recycling facility prior to being sent to the paper mill and how they will be sent to the mill. Bales have been known to withstand and be kept intact through accidents. The wire securing the bales is not taken off until the paper bale is in the hopper feed at the mill.

Leased Space Contracts And Janitorial Services Contracts

This area is one of the biggest challenges. A high risk scenario, for example, is the leased space that contains a pharmacy or financial services department in which the facility has no part in the collection, handling and transportation of waste. This can be even further complicated by the presence of dumpsters that are used by multiple tenants that are not associated with the facility. Each individual situation should be evaluated for potential exposure.

potential exposure.

Options available to the organization:

- If the lease is a triple net lease where the facility is responsible for both the janitorial service and the trash pickup, a locked dumpster may be all that is necessary.
- In the situation where both the janitorial service and the trash pickup are provided by the landlord, proper policies and contract language must be in place to ensure confidential waste disposal.
- Separate locking bins are necessary.
- In situations where space constraints or lease stipulations prohibit the amendment of contract language the generating departments and facilities services must work together to ensure off site destruction or secure pickup.