

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

POLICIES AND PROCEDURES

Subject:
**USES AND DISCLOSURES OF
PROTECTED HEALTH
INFORMATION UNDER HIPAA**

Effective Date:

5/15/04

Policy Number:

HIPAA 04-1

Review Date:

3/22/06

Revision Date:

5/2/06

Entity responsible:

Office of Legal
Counsel

1. **Purpose:**

This policy provides instruction and guidance regarding the uses and disclosures of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended.

2. **Policy:**

- 2.1 It is the policy of the State of Tennessee, Department of Mental Health and Developmental Disabilities (DMHDD), not to use or disclose PHI except as permitted or required by HIPAA regulations and relevant federal and state laws.
- 2.2 All requests for use or disclosure of PHI, regardless of service recipient's authorization, must be in writing.
- 2.3 The DMHDD must verify the identity and authority of the individual or agency representative making the request for use or disclosure of PHI.
- 2.4 The DMHDD must comply with statutory "minimum necessary" requirements in all uses and disclosures of PHI. (See HIPAA Policy 04-2, "Uses and Disclosures of PHI Limited to the Minimum Necessary").
- 2.5 The DMHDD may disclose PHI upon receipt of a completed authorization to release information, that has been signed and dated by the service recipient, the parent(s) of a minor child, or the service recipient's legal representative.
- 2.6 The DMHDD may use or disclose PHI without service recipient authorization as follows:
 - 2.6.1 To the service recipient about whom the PHI relates.
 - 2.6.2 To facilitate treatment, payment or health care activities of the DMHDD.

- 2.6.3 To another health care provider for treatment activities involving the service recipient about whom the PHI relates. In this circumstance, the minimum necessary requirement does not apply. All medical information deemed reasonably necessary by the health care provider may be released to the treating provider.
- 2.6.4 To another covered entity or a health care provider for the payment activities of the entity that receives the information.
- 2.6.5 To another covered entity for health care operational activities of the entity that receives it, if both entities have or have had a relationship with the service recipient who is the subject of the PHI requested, the PHI pertains to such relationship, and the disclosure is for the purpose of:
 - 2.6.5.1 Conducting quality assessment and improvement activities, including outcome evaluations and development of clinical guidelines, provided that obtaining generalizable knowledge is not the primary purpose of any studies resulting from such activities; or
 - 2.6.5.2 Reducing health care costs, protocol development, care management and care coordination, communicating with health care providers and patients with information about treatment alternatives; or
 - 2.6.5.3 Health care fraud and abuse detection or compliance.
- 2.7 For purposes of legal proceedings, and in instances where an individual or agency would not otherwise be entitled to gain access to PHI, it may only be disclosed if:
 - 2.7.1 A court orders the disclosure after a hearing, has determined that disclosure is necessary to conduct proceedings before the court, and that failing to make the disclosure would be contrary to public interest or detrimental to a party to the proceedings; and
 - 2.7.2 The party requesting the PHI provides a written statement to the court and accompanying documentation that demonstrates:
 - 2.7.2.1 The parties to the legal action have agreed to a qualified protective order and have presented it to the court; or
 - 2.7.2.2 The party seeking the PHI has requested a qualified protective order from the court.
 - 2.7.2.3 The DMHDD must make reasonable efforts to limit the PHI used

or disclosed to the minimum necessary to respond to the court order.

- 2.8 For purposes of law enforcement:
 - 2.8.1 PHI may be disclosed without a court order, subject to certain limitations, to authorized federal officials for national security purposes, including intelligence, armed forces, public health, or protective services for the President, if the DMHDD, in good faith believes, that the disclosure of PHI would prevent or lessen a serious and imminent threat of harm to a person or to the public. The minimum necessary standard must be applied.
 - 2.8.2 A court order is required before the DMHDD may disclose PHI to state and local law enforcement, or to appointed elected government officials. (See HIPAA Policy 04-6, “Uses and Disclosures of Protected Health Information Required by Law”).
 - 2.8.3 When a service recipient is transferred to an RMHI from the Department of Correction (DOC), the Department of Children’s Services (DCS), or is known to have come from a county detention facility, once the service recipient no longer meets the criteria for care or treatment at the RMHI, as determined by a licensed physician, the chief officer of the RMHI shall then order the service recipient’s return to DOC, DCS, or county detention facility.
- 2.9 Tennessee courts will not recognize out-of-state court orders, unless the order has been domesticated in a Tennessee court, pursuant to the Uniform Enforcement of Foreign Judgments Act, Tenn. Code Ann. §§ 26-6-101, *et seq.*, by the party seeking to enforce the court order. Tennessee courts do recognize the orders of federal courts.
- 2.10 When the DMHDD is a participant in an organized health care arrangement (OHCA), PHI about a service recipient may be disclosed without authorization to another covered entity that participates in the OHCA, for any health care activities of the OHCA.
- 2.11 The DMHDD is required to disclose PHI to:
 - 2.11.1 The service recipient, the parent(s) of a minor child, or the service recipient’s legal representative when a request has been made to inspect and/or obtain a copy of the record, or for an accounting of disclosures of PHI, except to the extent that access may be denied pursuant to Tenn. Code Ann. § 33-3-112.

- 2.11.2 The Secretary of the U. S. Department of Health and Human Services, when investigating complaints or determining the DMHDD's compliance with HIPAA.
- 2.11.3 Notwithstanding anything in this policy to the contrary, the DMHDD must receive a separate, written authorization for release, from the service recipient, the parent(s) of a minor child, or the service recipient's legal representative, before using or disclosing psychotherapy notes or PHI for marketing purposes.
- 2.12 In the case of a known accusation of physical or sexual abuse of a child service recipient, the child's PHI shall not be accessible to the accused without one of the following:
 - 2.12.1 A court order; or
 - 2.12.1.1 The authorization of the child's qualified mental health professional; and
 - 2.12.1.2 The accused is the child's parent, legal guardian or legal custodian of the child.

3. Procedure/Responsibility:

- 3.1 All requests for disclosure of PHI from the DMHDD Central Office or Regional Mental Health Institutes (RMHIs) must be directed to the Central Office Privacy Officer or RMHI Privacy Officer, or their designee, as applicable.
- 3.2 Before disclosure of PHI, the Privacy Officer or designee must determine whether an authorization is required.
- 3.3 If an authorization for the use or disclosure of PHI is required, the Privacy Officer or designee must confirm that a valid written authorization has been received by DMHDD from the service recipient, the parent(s) of a minor child, or the service recipient's legal representative. The uses or disclosures of the PHI requested must strictly conform to the authorization. If a valid authorization is necessary but not received, the PHI must not be used or disclosed.
- 3.4 The Privacy Officer or designee must ensure that health care records, requested and deemed appropriate for release, are released within thirty (30) days of the request.
- 3.5 The Chief Officer or designee at each RMHI must assure that when PHI from their facility is disclosed or released for use, all required documentation is maintained in written or electronic form for not less than ten (10) years after the termination of

the service recipient's treatment.

- 3.6 The DMHDD/RMHI may provide the service recipient, or his/her representative, with the Department's Authorization to Release Information form, which can be found at: http://www.state.tn.us/mental/t33/mhdd_lawforms.html, or the service recipient may present his/her own written request. A valid authorization to release medical information form provided by the DMHDD, must include the following information:
 - 3.6.1 A description of the specific information to be used or disclosed.
 - 3.6.2 The name or other specific identification of the person(s) or class of persons authorized to make the requested use or disclosure.
 - 3.6.3 The name or other specific identification of the person(s), class of persons, or agency to whom the information is to be disclosed.
 - 3.6.4 A description of the purpose for each requested use and disclosure. The statement "at the request of the" is sufficient when a service recipient, or his/her representative, initiates the authorization and does not, or elects not, to provide a statement of the purpose.
 - 3.6.5 An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.
 - 3.6.6 Signature of the service recipient and the date signed. (If the authorization is signed by the parent(s) or guardian of a minor child, conservator, or legal representative, as appropriate, evidence of the authority of the representative to act for the service recipient must be provided.)
 - 3.6.7 Notice to the service recipient that s/he has the right to revoke the authorization in writing at any time.
 - 3.6.8 Information that the service recipient is not required to sign the authorization, and that treatment, payment, enrollment or eligibility for benefits is not conditioned on the service recipient's execution of the authorization.
- 3.7 A separate signed authorization from the service recipient or legal representative, must be given for use or disclosure of psychotherapy notes. (HIPAA regulations prohibit authorization for use or disclosure of psychotherapy notes to be combined with other authorizations for release of PHI).
- 3.8 The authorization must notify the service recipient that information disclosed under the authorization could be subject to re-disclosure, and thus and no longer protected by HIPAA.

- 3.9 If the DMHDD/RMHI seeks an authorization from the service recipient to use or disclose his or her PHI, a copy of the signed authorization must be provided to the service recipient.

4. Definitions:

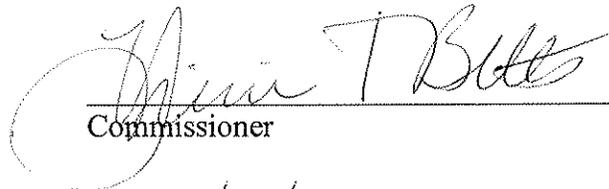
- 4.1 Covered Entity: A public or private agency or individual subject to HIPAA's Privacy Rules. Covered entities include health plans, health care clearinghouses, and health care providers who perform certain financial and administrative transactions electronically. The DMHDD is a covered entity.
- 4.2 Health Care Clearinghouse: A public or private entity that processes or facilitates the processing of health information received from another entity.
- 4.3 Health Care Provider: A provider of services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
- 4.4 Health Plan: An individual or group plan that provides or pays the cost of medical care.
- 4.5 Legal Representative: The conservator of the service recipient; attorney-in-fact under a power of attorney who has the right to make disclosures under the power; parent, guardian or legal custodian of a minor child; guardian *ad litem* for the purposes of the litigation in which the guardian *ad litem* serves; treatment review committee for a service recipient who has been involuntarily committed; executor or administrator of an estate; caregiver under Title 34, Chapter 6, Part 3; or guardian under the Uniform Veteran's Guardianship Law (Title 34, Chapter 5, Part 1).
- 4.6 Organized Health Care Arrangement (OHCA): A clinically integrated health care setting in which service recipients typically receive care from more than one health care provider. Also, an OHCA is a system in which more than one covered entity participates in a joint arrangement which involves utilization review, quality assessment and improvement activities or payment activities.
- 4.7 Qualified Protective Order: An order of a court, or a stipulation by the parties, that prohibits the parties from using or disclosing PHI for any purpose other than the litigation or proceeding for which such information was requested; and requires its return to the DMHDD or RMHI, as applicable, or the destruction of the PHI (including any copies), at the end of the litigation or proceeding.

5. Other Considerations:

Authority:

HIPAA Regulations 45 C.F.R. §§ 164.502, 164.506, 164.508, 164.512, 164.514;
Executive Order 12333; 18 U.S.C. §§ 871, 879, and 3056; 22 U.S.C. § 2709; National
Security Act, 50 U.S.C. §§ 401, *et seq.*; Uniform Enforcement of Foreign Judgments Act,
Tenn. Code Ann. §§ 26-6-101, *et seq.*; Tenn. Code Ann. §§ 33-1-303, 33-3-101, 33-3-
104, 33-3-111, 33-3-112; 33-3-408; 33-3-409; 68-11-304, 68-11-305.

Approved:



Commissioner

5/2/06

Date