TN Department of Mental Health & Substance Abuse Services

Policies and Procedures

Subject:	Uses and Disclosures of PHI to Business Associates under HIPAA
Policy Number:	HIPAA 4.3
Effective Date:	6/21/04
Entity Responsible:	Division of General Counsel
Revision Date:	1/11/18

1. Purpose:

The purpose of this policy is to set guidelines that the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) must following in sharing protected heath information (PHI) with any business or agency with which the TDMHSAS contracts with to provide services. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, requires that when a covered entity such as the TDMHSAS or a Regional Mental Health Institute (RMHI) enters into a service contract with a business or agency, the TDMHSAS or RMHI must have a business associate agreement (BAA) with that business or agency which meets the requirements of this policy.

2. Policy:

2.1: The TDMHSAS and the RMHIs may disclose PHI to a business associate and may allow the business associate to create, receive, maintain, or transmit the PHI on TDMHSAS' or the RMHIs' behalf, if TDMHSAS or the RMHI obtains satisfactory assurance that the business associate will appropriately safeguard the information. This satisfactory assurance must be included in the terms of the business associate agreement (BAA) between TDMHSAS or the RMHI and the business associate.

2.2: The BAA between the TDMHSAS or the RMHIs and the business associate must be in writing and must establish the permitted and required uses and disclosures of PHI by the business associate. The BAA may not authorize the business associate to use or further disclose PHI in any manner that would violate the procedures and policies of HIPAA if done by TDMHSAS or the RMHI.

2.3: The terms of the BAA may permit the business associate to use and disclose PHI for the proper management and administration of the business associate and provide data aggregation services relating to the health care operations of the TDMHSAS or RMHI provided that:

2.3.1: The business associate will not use or further disclose PHI other than as permitted or required by the BAA, or as required by law;

2.3.2: The business associate will use appropriate safeguards to comply with HIPAA privacy and security rules and prevent the use or disclosure of PHI other than as provided by the BAA;

2.3.3: The business associate will report to TDMHSAS or to a RMHI any use or disclosure of the information not provided for by its BAA of which it becomes aware, including any breaches of unsecured protected health information;

2.3.4: Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information;

2.3.5: Make available PHI to the service recipient to inspect and copy in accordance with 45 CFR § 164.524 and T.C.A § 33- 3-112. *See* TDMHSAS HIPAA Policy 4.7;

2.3.6: Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526 and T.C.A. § 33-3-112. *See* TDMHSAS HIPAA Policy 4.7;

2.3.7: Make available the information to TDMHSAS or the RMHIs required to provide an accounting of disclosures in accordance with 45 CFR §164.528. *See* TDMSAS HIPAA Policy 4.8;

2.3.8: Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the business associate on behalf of TDMHSAS or the RMHIs, available to the Secretary for purposes of determining TDMHSA's or the RMHI's compliance with HIPAA;

2.3.9: At the termination of the contract, if feasible, return or destroy all PHI received from, or created or received by the business associate on behalf of TDMHSAS or the RMHI, and retain no copies of such information; or,

if return or destruction is not feasible, extend the protections to the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of such information infeasible;

2.3.10: To the extent that the business associate is to carry out TDMHSAS's or the RMHI's obligation under HIPAA, the business associate must comply with the privacy requirements of HIPAA that apply to the TDMHSAS or the RMHIs in the performance of such obligation.

2.3.11: Authorize the termination of the contract between TDMHSAS or the RMHI and the business associate, if the TDMHSAS or the RMHI discovers that a business associate has violated a material term of the contract. If the business associate is required by law to perform a function or activity on behalf of TDMHSAS or the RMHIs and this authorization for termination is inconsistent with statutory obligations, then it may be omitted from the contract or agreement with the business associate.

2.4: A business associate may disclose PHI to another business associate that is a subcontractor, and may allow this subcontractor to create, receive, maintain, or transmit PHI if the business associate obtains satisfactory assurance that the subcontractor will appropriately safeguard the information. Such satisfactory assurances must be included in the terms of the written contract between the business associate and the sub-contractor, and the written contract must include the requirements under 2.3 of this policy.

2.5: If the TDMHSAS or the RMHI discovers a material breach pattern of activity or practice of the business associate that constitutes a material breach or violation of the business associate's obligation under the BAA, TDMHSAS or the RMHI must take reasonable steps to cure the breach or the end the violation, and if such steps are unsuccessful, then TDMHSAS or the RMHI must terminate the contract. If termination of the contract is not feasible, the TDMHSAS or the RMHI must report the problem to the Department of Health and Human Services Office for Civil Rights.

2.6: Before PHI may be disclosed to a business associate of a RMHI, the RMHI Privacy Officer must confirm with the TDMHSAS Privacy Officer that a BAA has been executed between the parties. If a BAA has not been executed, PHI may not be disclosed until such agreement has been completed.

2.6.1: The TDMHSAS/ RMHI is not required to enter into a BAA with a health care provider in order to disclosure PHI to the health care provider, if such PHI is related to the treatment of an individual.

2.7: The TDMHSAS Privacy Officer must ensure that a BAA file is maintained at the

Central Office, which must contain originals of all BAAs executed between the TDMHSAS or RMHIs and their business associates. All BAAs must be kept for six (6) years after the BAA is no longer in effect.

3. Procedure/ Responsibility

3.1: The TDMSAS Privacy Officer must ensure that every service contract contains a HIPAA compliance clause that provides for the execution of a BAA.

3.2: The TDMHSAS Privacy Officer must ensure that BAAs are developed as required by HIPAA regulations and this policy for any business associates of TDMHSAS and the RMHIs. The TDMHSAS Privacy Officer must ensure that the terms of the BAAs conform to the requirements above.

3.3: When a member of the TDMHSAS or the RMHI workforce receives a request for use or disclosure of PHI from a business associate for purposes other than treatment, payment, or operations, he or she must check with TDMSAS Privacy Officer or RMHI Privacy Officer to ensure that a BAA is on file. The RMHI Privacy Officer must confirm with the TDMHSAS Privacy Officer that a BAA is on file. If no BAA is on file, PHI should not be shared.

3.4: The TDMHSAS Privacy Officer must ensure that a BAA file is maintained at the Central Office, which must contain originals of all BAAs executed between the TDMHSAS or RMHIs and their business associates. All BAAs must be kept for six (6) years after the BAA is no longer in effect.

4. Other Considerations

4.1: Authority

45 CFR §§164. 500(c); 502(e)(1), (e)(2), and (g); 504 ; T.C.A. § 33-3-112

Approved:

Marie Williams vg
Commissioner

1-11-18
Date