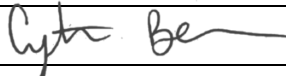




Department of Finance & Administration
Division of TennCare

Policy Number: PRIV 008	
Policy Subject: Accounting of Disclosures of Enrollee Records	
Printed Name: Cynthia Beeler	Effective Date: 09/16/2024
Position: Chief Privacy and Compliance Officer	
Signature: 	

I. PURPOSE

This policy addresses how the Division of TennCare (TennCare) will account for disclosures of enrollee Protected Health Information (PHI), including electronic Protected Health Information (ePHI), or Personally Identifiable Information (PII) when required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or other federal and state laws, regulations, and polices.

II. SCOPE

The policy applies to all TennCare employees, consultants, contractors, and other persons who are under the direct or indirect control of TennCare.

III. POLICY

TennCare shall respond to enrollee requests for accounting of disclosures of PHI or PII maintained by TennCare in the manner provided by this policy. TennCare will provide enrollees with all the privacy rights granted by federal and state laws and regulations.

IV. DEFINITIONS

Any term that is capitalized in this policy without a definition in the section below is to be defined as it appears in HIPAA.

Authorized Representative: An individual or entity legally authorized to act on behalf of the individual enrollee (See the PRIV 030 - Authorized Representatives in Agency Interactions policy).



Electronic Protected Health Information (ePHI): Electronic health information (ePHI) is any PHI that is created, stored, transmitted, or received electronically.

Enrollee: Those currently enrolled in any category of TennCare Medicaid and TennCare Standard, including an individual eligible for and enrolled in the TennCare Program or in any Tennessee federal Medicaid waiver program pursuant to Sections 1115 or 1915 of the Social Security Act; and, for purposes of TennCare Privacy policies, the term may also be used to reference one who was previously an enrollee during a period for which there is a privacy request or compliance inquiry.

Incidental Disclosure: A term of art used to describe inadvertent or uncalculated releases of information that may occur incidentally during TennCare operations, such as when a person overhears a nearby TennCare employee discuss health information on the phone.

Limited Data Set: PHI that excluded direct identifiers (e.g, Names, address, Social Security numbers) of the individual, relatives, employers, or household members.) *See* 45 C.F.R. § 164.514.

Payment: Activities undertaken to obtain premiums, determine eligibility and benefits or provide reimbursement for the provision of health care.

Personally Identifiable Information (PII): Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

Protected Health Information (PHI): Information that is: (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual and that:

- (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) relates to the health or the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. *See* 45 C.F.R. § 160.103.

SSA-Provided Information: Information such as an individual's Social Security number supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally funded program.

V. DISCUSSION & LEGAL BASIS

TennCare complies with HIPAA and federal and state laws and regulations in responding to

enrollee requests for accounting of disclosures. Pursuant to HIPAA, TennCare is not compelled to provide an accounting of PHI disclosures made as described in 45 CFR 164.528, to include:

- a) to carry out treatment, payment, or health care operations;
- b) to enrollees or their authorized representatives;
- c) pursuant to an authorization;
- d) for national security or intelligence purposes;
- e) to correctional institutions or law enforcement in limited circumstances;
- f) as part of a limited data set (see definitions);
- g) incidental to a use or disclosure permitted by HIPAA and TennCare policy; or
- h) more than six (6) years prior to the date of request or prior to April 14, 2003.

Some disclosures may be temporarily excluded from an accounting of disclosures if requested by a law enforcement agency or a health care oversight agency.

VI. PROCEDURES

1. The Privacy Office is responsible for receiving and processing requests for accountings of disclosures, and for responding to reports of disclosures that may not be permitted by HIPAA or by TennCare policies and procedures.
2. TennCare staff must be able to report the following disclosures to the Privacy Office and record any disclosures of PHI not otherwise allowed by either:
 - i) an enrollee's authorization; or
 - ii) to carry out treatment, payment, or health care operations.All improper disclosures are to be reported to the Privacy Office.
3. TennCare must act on an enrollee's request for an accounting of disclosures within sixty (60) days of receipt. If TennCare is unable to provide the accounting within sixty (60) days, it has one (1) opportunity to extend the time by giving the enrollee a written statement of the reasons for the delay, extending the time by no more than thirty (30) days.
4. Enrollee requests for accounting of disclosures should be submitted to:

Division of TennCare
Attention: Privacy Office
310 Great Circle Road
Nashville, TN 37243
Privacy.TennCare@tn.gov*

In the event of disclosure of an enrollee's PII or PHI not permitted under HIPAA or other federal or state laws or regulations, TennCare will attempt to mitigate any potential harmful effects and will log such a disclosure in a manner consistent with this policy.

Enrollees should be aware that confidentiality of email transmissions is not assured unless encrypted. Unencrypted emails sent by most email services (e.g. Gmail, Hotmail, Yahoo, etc.) are subject to interception by third parties, and are transmitted at the sender's risk.

**If you wish to request an accounting of disclosures via email, please contact our office first so we may respond with a secure email portal. If you submit the request directly via email rather than through the secure email portal, there is some risk that the personal information could be read or otherwise accessed by a third party while in transit.*

5. For all disclosures covered by this policy, TennCare shall track and record the date, nature, and purpose of each disclosure of a record, and to whom the disclosure was made. Records of disclosures shall be retained for a minimum of six (6) years after the disclosure was made. If TennCare has made multiple disclosures of enrollee protected health information to the same person or entity for a single purpose, the accounting of disclosures must include:
 - i) The frequency, date range, or number of the disclosures made during the accounting period; and
 - ii) The date of the last such disclosure during the accounting period.

If TennCare has made disclosures of enrollee protected health information for research purposes involving 50 or more people, the accounting of disclosures must contain:

- i) The name of the protocol or other research activity;
- ii) A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
- iii) A brief description of the type of protected health information that was disclosed;
- iv) The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;

- v) The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
- vi) A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity.

If TennCare believes that it is reasonably likely that an enrollee's protected health information was disclosed for a research protocol or activity, TennCare can assist in contacting the entity that sponsored the research and the researcher at the request of the individual.

- 6. Enrollees may receive one (1) accounting of disclosures free of charge per year. Additional accountings of disclosures are subject to applicable fees.

OFFICE OF PRIMARY RESPONSIBILITY

TennCare Privacy Office, Office of General Counsel (OGC)

REFERENCES

45 C.F.R. § 160.103

45 C.F.R. § 164.501

45 C.F.R. § 164.512

45 C.F.R. § 164.514

45 C.F.R. § 164.528

45 C.F.R. § 164.530

42 U.S.C.A. § 1320d-5

5 U.S.C. § 552a (c)(1), (c)(3), (j), (k)

The Privacy Act of 1974

NIST SP800-53

OMB Circular A-130

PRIV 030 - Authorized Representatives in Agency Interactions

State of Tennessee, Comptroller of the Treasure, Office of Open Records Counsel, Schedule of Reasonable Charges