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General Privacy Policy - HIPAA

I. Purpose

The intent of this policy is to outline DHH general guidelines and expectations for the necessary collection, use, and disclosure of confidential information about individuals in order to provide services and benefits to individuals, while maintaining reasonable safeguards to protect the privacy of his/her information in compliance with the Health Insurance Portability and Accountability Act's (HIPAA) Privacy Rule Provisions (Privacy Rule). DHH's HIPAA Privacy Rule Regulations are covered in the following Chapters/Policies:

Chapter 1: General Privacy - DHH Policy #17

Chapter 2: Client Privacy Rights - DHH Policy #18

Chapter 3: Uses and Disclosures of Client or Participant Information - DHH Policy #19

Chapter 4: De-identification of Client and Participant Information and Use of Limited Data – DHH Policy #20

Chapter 5: Uses and Disclosures for External Research Requests, Internal Research Needs & Waiver of Privacy Rights for Research Purposes – DHH Policy #21

Chapter 6: Minimum Necessary Information - DHH Policy #22

Chapter 7: DHH Business Associate Relationships – DHH Policy #23

Chapter 8: Administrative, Technical, and Physical Safeguards Policy – DHH Policy #24

Chapter 9: Enforcement, Sanctions, and Penalties for Violations of DHH HIPAA Privacy Policies – DHH Policy #25

NOTE: Prior to any use or disclosure of Protected Health Information, DHH staff and workforce members should refer to DHH Policy #72 (Public Information). If the workforce member determines that there is a conflict between that policy and DHH HIPAA Privacy Policies, the workforce member must contact his/her supervisor prior to the use or disclosure. The supervisor shall then consult with the Privacy Officer and other appropriate DHH executive management.

I I . A p p l i c a b i l i t y DHH's HIPAA Privacy Policies are applicable

to DHH's workforce and its Business Associates.

III. Implementation

The implementation date of these policies is April 14, 2003.

IV. Definitions

The definitions are included in the body of these policies.

V. Responsibilities

DHH's workforce and its Business Associates are responsible for assuring that DHH's HIPAA Privacy Policies are followed. The DHH Privacy Officer and the Program Privacy Officers are responsible for the implementation, resolution and enforcement of all aspects related to DHH HIPAA Privacy Policies.

VI. Exceptions

The exceptions are listed in the policies.

VII. Policy: General Privacy Policy

DHH will safeguard confidential information about individuals which includes:

A. "Individually Identifiable Health Information" (IIHI)

"IIHI" is any single item or compilation of health information or data that indicates or reveals the identity of an individual, either specifically or that does not specifically identify the individual but from which the individual's identity can reasonably be ascertained.

B. "Protected Health Information" (PHI)

"PHI" is any individually identifiable health information (IIHI), whether oral or recorded in any form or medium that 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 relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and including any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents and all oral communications, or any other form, i.e. screen prints of eligibility information, printed e-mails that have identified individual's health information, claim or billing information, hard copy birth or death certificate.

PHI does not include:

1. School records that are subject to the Family Educational Rights and Privacy Act (FERPA); and

2. Employment records held in DHH's role as an employer.

C. "Other Confidential Information about Individuals (OCII)"

"OCII" is any information, other than that described as PHI, about an individual which is granted confidentiality or privacy protection by Federal or State laws, rules and regulations.

D. IIHI, PHI and OCII are Protected Information under this Policy.

1. DHH will safeguard all confidential information about individuals (IIHI, PHI, and OCII), inform individuals about DHH privacy practices and respect individual privacy rights, to the full extent required under this policy.

2. This policy identifies five types of individuals or entities on which DHH is most likely to obtain, collect or maintain individual information:

- a) Clients,
- b) Participants,
- c) Personal Representatives,
- d) Licensees, and
- e) Providers

3. DHH shall provide training to its workforce on DHH privacy policies and shall require every member of the workforce to sign a DHH "Privacy Program Statement of Understanding" outlining his/her role and responsibilities relating to protecting the confidentiality and privacy of DHH clients and participants.

E. Safeguarding Information about Clients

"Client" is an individual who requests or receives services from DHH.

1. DHH, its workforce, and Business Associates will respect and protect the privacy of records and information about clients who request or receive services from DHH as provided in DHH's HIPAA Privacy Policies and other applicable Federal and State laws and regulations. This includes, but is not limited to:

- a) Applicants or recipients of public assistance (e.g., Medicaid, LaCHIP, Waiver Services, etc.);
 - b) Individuals receiving protective services from DHH (e.g., Adult Protective Services, etc.);
 - c) Individuals who apply for or are admitted to a State developmental center, a State-operated group home, a State hospital, State care facilities or who are committed to the custody of DHH;
 - d) Individuals in the custody of DHH either on a voluntary or committed basis; and
 - e) Individuals receiving services directly from DHH (e.g., Office of Public Health, Office of Mental Health, Office for Citizens with Developmental Disabilities and Office for Addictive Disorders.)
2. All PHI on DHH clients is confidential and must be safeguarded in accordance with DHH HIPAA Privacy policies and procedures, Federal or State laws and regulations or other DHH policies and procedures.
 3. DHH shall not use or disclose information unless:
 - a) The client has authorized the use or disclosure in accordance with DHH Policy #19 - "Uses and Disclosures of Client or Participant Information";
 - b) The use or disclosure is specifically permitted under DHH Policy #18, "Client and Participant Privacy Rights"; DHH Policy #19, "Use and Disclosures of Client or Participant Information"; DHH Policy #20, "De-identification of Client and Participant Information and Use of Limited Data"; and DHH Policy #21 "Uses and Disclosures for External Research Requests, Internal Research Needs & Waiver of Privacy Rights for Research Purposes"; or
 - c) The use or disclosure is otherwise allowed under Federal or State laws or regulations.
 4. DHH program offices shall adopt written procedures to reasonably safeguard client information.

F. Safeguarding Information about Participants

“Participants” are individuals participating in DHH population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services that are received by a “client.”

1. DHH, its workforce, and Business Associates will respect and protect the privacy of records and information about participants who request or receive services from DHH as provided in DHH’s HIPAA Privacy Policies and other applicable Federal and State laws and regulations. This includes, but is not limited to:
 - a) Birth and death records,
 - b) Participant information contained in registries, and
 - c) Health care provider reviews.
2. All PHI on DHH participants is confidential and must be safeguarded in accordance with DHH HIPAA Privacy Policies and procedures, Federal or State laws and regulations or other DHH policies and procedures.
3. DHH shall not use or disclose information unless:
 - a) The participant has authorized the use or disclosure in accordance with DHH Policy #19, "Use and Disclosures of Client or Participant Information";
 - b) The use or disclosure is specifically permitted under DHH Policy #18, “Client and Participant Privacy Rights”; DHH Policy #19, “Uses and Disclosures of Client or Participant Information”; DHH Policy #20, “De-identification of Client and Participant Information and Use of Limited Data” and DHH Policy #21, “Uses and Disclosures for External Research Requests, Internal Research Needs & Waiver of Privacy Rights for Research Purposes.”
 - c) The use or disclosure is otherwise allowed under Federal or State laws or regulations.
4. DHH program offices shall adopt procedures to reasonably safeguard participant information.

G. Safeguarding Information from a Personal Representative

“Personal Representatives” are individuals who have been authorized to have access to a client or participant’s PHI or OCII either by law or by the client or participant. There are two kinds of Personal Representatives:

1. Those authorized by law. Personal Representatives authorized by law stand in the shoes of the client and have the ability to act for the client or participant and to exercise the client or participant's rights with respect to the privacy and confidentiality of such information to the extent authorized by law.
2. Those authorized by the client or participant.
 - a) Personal Representative is to be treated the same as the client or participant with respect to uses and disclosures of the client's PHI.
 - b) Personal Representatives authorized by the client or participant stand in the shoes of the client or participant and have the ability to act for the client or participant and to exercise the client or participant's rights with respect to the privacy and confidentiality of such information to the extent authorized by the client or participant.
3. DHH will treat information provided by a Personal Representative about the client or participant in the same manner as it would as if the information came from the client or participant.
4. A Personal Representative of a minor is defined as follows:
 - a) For a client or participant who is an adult or an emancipated minor, a Personal Representative is a person who has legal authority to act on behalf of the client or participant in making decisions related to the program, service or activity that DHH provides to the client/participant. Examples would include a person to whom the client or participant has granted a power of attorney which includes the authority to make health care decisions, or a person who has been appointed by a court as the curator or guardian of the client.
 - b) For a client or participant who is an unemancipated minor, a Personal Representative is a person, such as a parent, guardian, or other person acting in *loco parentis*, who has legal authority to act on behalf of the client in making decisions related to health care. However, such a person is not to be treated as a Personal Representative, and the minor has the authority to act on his or her own behalf with respect to PHI pertaining to a particular health care service, if:
 - (1) The minor consents to the health care service and has not requested that such person be treated as the Personal Representative;

- (2) A court or another person authorized by law consents to the health care service; or
- (3) The parent, guardian, or other person acting in loco parentis agrees to a confidential relationship between the minor and DHH with respect to the health care service.

H. Exception For Abuse, Neglect, or Endangerment Situations

1. DHH may elect not to treat a person as the Personal Representative of a client if:

a) DHH reasonably believes that:

- (1) The client or participant has been or may be subjected to domestic violence, abuse or neglect by such person; or
- (2) Treating such person as the Personal Representative could endanger the individual; and

b) DHH decides, in the exercise of professional judgment, that it is not in the best interest of the client or participant to treat the person as the client/participant's Personal Representative.

I. DHH will also recognize a person as the client or participant's Personal Representative if the client or participant indicates that an individual is his/her Personal Representative.

1. DHH may use professional judgment and experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act as a Personal Representative of an individual.

J. The following Louisiana statutes authorize minors to consent to medical treatment without his/her parents' consent:

LA R. S. 40:1065.1: Consent for treatment of venereal diseases

LA R.S. 40:1095: Consent to medical treatment

LA R.S. 40:1096: Treatment for drug abuse

LA R.S. 40:1097: Donation of blood

K. For general DHH policies and procedures regarding requirements for verification of the identity and/or authority of a Personal Representative, see "Uses and Disclosures of Client and Participant Information," DHH HIPAA Privacy Policy #3. Individual program offices may also have their own policies, procedures or rules dealing with such requirements.

L. Safeguarding Information Obtained from Licensees and Providers

1. "Licensee" is a person or entity that applies for and/or receives a license, certificate, registration or similar authority from DHH to perform or conduct a service, activity or function.

2. "Provider" is a person or entity who may seek reimbursement from DHH as a provider of goods, services or supplies to DHH clients.
3. When DHH creates or obtains information about or from licensees or providers, DHH may use and disclose such information consistent with applicable Federal and State laws, rules and regulation.
4. Information regarding the qualifications of licensees and providers are public records.
5. DHH will safeguard information obtained from licensees and providers which contains IIHI or OCII consistent with DHH HIPAA Privacy Policies and other applicable Federal and State laws, rules and regulations.
 - d) When DHH obtains information about individuals that relates to determining payment responsibility when a provider submits a claim to DHH or other request for payment, DHH will safeguard such information consistent with DHH HIPAA Privacy Policies and other applicable Federal and State laws and regulations and DHH policies and procedures.
 - e) DHH is authorized to review the performance of licensees and providers in the conduct of its health oversight activities. DHH will safeguard confidential information about individuals obtained during health oversight activities consistent with DHH HIPAA Privacy policies and other applicable Federal and State laws and regulations and DHH Policies and procedures.
6. IIHI and OCII obtained from or about licensees and providers in the performance of DHH's official duties shall be treated in the same manner as all other IIHI and OCII used or disclosed by DHH.
7. DHH program offices shall adopt procedures to reasonably safeguard information from or about licensees and providers in the performance of DHH's official duties.

M. Conflict with Other Requirements Regarding Privacy and Safeguarding

1. DHH has adopted reasonable policies and procedures for administration of its programs, services and activities. If any State or Federal laws or regulation, or order of a court having appropriate jurisdiction imposes a stricter requirement upon any DHH policy regarding the privacy or safeguarding of information, DHH shall act in accordance with that stricter standard.
2. DHH workforce shall act in accordance with established DHH policy and procedures regarding the safeguarding and confidentiality of an individual's information, whether health-related or not, in all DHH programs, services and activities.

3. In the event that more than one policy applies, and compliance with all such policies cannot reasonably be achieved, the DHH workforce member will seek guidance from supervisors according to established DHH policy and procedures. The DHH workforce members should consult with his/her Privacy Officer or the DHH Privacy Officer as appropriate.

N. DHH Notice of Privacy Practices

1. DHH will make available a copy of the form, "Notice of Privacy Practices" (DHH HIPAA Privacy 101P) to any client applying for or receiving services from DHH.
2. The "Notice of Privacy Practices" shall contain all information required under Federal regulations regarding the notice of privacy practices for PHI under HIPAA.
3. Where DHH is a provider, DHH will seek to obtain a signed "Notice of Privacy Practices, Acknowledgement of Receipt" (DHH HIPAA Privacy 1 02P) from each client on first date of service on or after April 14, 2003.

O. Client/Participant Privacy Rights

DHH policies and procedures, as well as other Federal and State laws and regulations, outline the client/participant's right to access his/her own information, with some exception. This policy also describes specific actions that a client/participant or Personal Representative may take to request restrictions or amendments to his/her information, and the method for filing complaints. These specific actions are outlined in "Client and Participant Privacy Rights," DHH Policy #18.

P. Use and Disclosures of Client or Participant Information

DHH shall not use or disclose any information about a client or participant of DHH programs or services without a signed authorization for release of that information from the individual, or the individual's authorized representative, unless authorized by this policy, or as otherwise allowed or required by State or Federal laws, as outlined in "Uses and Disclosures of Client or Participant Information," DHH Policy #19; "De-identification of Client and Participant Information and Use of Limited Data," DHH Policy #20; and "Uses and Disclosures for External Research Requests, and Internal Research Needs & Waiver of Privacy Rights for Research Purposes," DHH Policy #21.

Q. Minimum Necessary Information

1. DHH will use or disclose only the minimum amount of information necessary about clients/participants, and only to the extent provided in DHH policies and procedures.
2. When using or disclosing an individual's health information, or when requesting an individual's health information from a provider or health plan, DHH workforce

must make reasonable efforts to limit the amount of information to the minimum necessary needed to accomplish the intended purpose of the use, disclosure, or request, as outlined in DHH HIPAA Policy #22, "Minimum Necessary Information."

3. The "Minimum Necessary Requirement" does not apply to:
 - a) Disclosures to or requests by a health care provider for treatment;
 - b) Uses or disclosures made to the individual or his/her authorized representative;
 - c) Uses or disclosures authorized by the individual or his/her authorized representative;
 - d) Disclosures made to the Secretary of the United States Department of Health and Human Services in accordance with Federal HIPAA regulations at 45 CFR 160, Subpart C.
 - e) Uses or disclosures that are required by law; and
 - f) Uses or disclosures that are required for compliance with Federal HIPAA regulations at 45 CFR, Parts 160 and 164.

R. Administrative, Technical and Physical Safeguards

DHH program offices and workforce must take reasonable steps to safeguard confidential information from any intentional or unintentional use or disclosure, as outlined in DHH HIPAA Policy #24, "Administrative, Technical, and Physical Safeguards."

S. Use and Disclosures for Research Purposes and Waivers

DHH may use or disclose an individual's health information for research purposes as outlined in DHH Policy #19, "Uses and Disclosures for Research Purposes and Waivers." This policy specifies requirements for using or disclosing health information with and without an individual's authorization, and identifies some allowable uses and disclosure of information when DHH is acting as a Public Health Authority.

T. De-Identification of Client or Participant Health Information and Use of Limited Data Sets

DHH's workforce will follow standards under which client or participant information can be used and disclosed if that information that can identify a person has been removed or restricted to a limited data set. Unless otherwise restricted or prohibited by other Federal or State laws, DHH can use and share information as appropriate for the work of DHH,

without further restriction, if DHH or another entity has taken steps to de-identify the information as outlined in DHH Policy #20, "De-identification of Client Information and Use of Limited Data Sets."

U. Business Associate Relationships

DHH may disclose PHI to Business Associates with whom there is a written contract or memorandum of understanding as outlined in DHH Policy #23, "DHH Business Associate Relationships."

V. Enforcement, Sanctions and Penalties for Violations of Individual Privacy

All employees, volunteers, interns or other members of the DHH workforce must guard against improper uses or disclosures of DHH client or participant's information or be subject to disciplinary action as outlined in DHH Policy #25, "Enforcement, Sanctions, and Penalties for Violations of DHH HIPAA Privacy Policies."

W. DHH Privacy Office

1. DHH shall establish a Privacy Office which shall be headed by the DHH Privacy Officer and such other staff as deemed necessary by the Secretary.
2. The Privacy Officer shall be answerable to the Secretary, but may report through the Secretary's designee.
3. The Privacy Officer shall be responsible for DHH compliance with confidentiality and privacy requirements imposed on DHH and for oversight of internal enforcement.
4. The Privacy Officer shall have the authority to:
 - a) Investigate complaints related to confidentiality and privacy;
 - b) Conduct internal compliance audits related to confidentiality and privacy;
 - c) Advise DHH and its workforce on issues related to confidentiality and privacy;
 - d) Arbitrate any and all disputes related to confidentiality and privacy;
 - e) Advise the general public and public officials on DHH confidentiality and privacy policies and practices;
 - f) Modify or change DHH confidentiality and privacy policies and practices as need or as required by law, and
 - g) Any other duties assigned by the Secretary.
5. In the performance of these duties, the Privacy Officer may consult with DHH's Bureau of Legal Affairs when deemed necessary by the Privacy Officer.
6. The Privacy Officer shall have the authority to delegate tasks to members of the

DHH workforce. When such delegation occurs, that member of the DHH workforce shall be directly answerable to the Privacy Officer when performing those tasks.

7. The Privacy Officer may perform his duties through authorized designees.

X. Changes to DHH's HIPAA Privacy Policies

The Department of Health and Hospitals may change its Privacy Practices and make that change effective for all information maintained by the DHH.

Policy:

DHH Policy #18 - "Client and Participant Privacy Rights"

DHH Policy #19 - "Use and Disclosures of Client or Participant Information"

DHH Policy #20 - "De-identification of Client and Participant Information and Use of Limited Data Sets"

DHH Policy #21 – "Uses and Disclosures for External Research Requests, Internal Research Needs and Waiver of Privacy Rights for Research Purposes"

DHH Policy #22 - "Minimum Necessary Information"

DHH Policy #23 - "DHH Business Associate Relationships"

DHH Policy #24 - "Administrative, Technical, and Physical Safeguards"

DHH Policy #25 - "Enforcement, Sanctions, and Penalties for Violations of DHH HIPAA Privacy Policies"

Form(s):

DHH HIPAA Privacy form #101P- "Notice of Privacy Practices"

DHH HIPAA Privacy form #102P - "Notice of Privacy Practices, Acknowledgement of Receipt"

Reference(s):

45 CFR Parts 160 and 164

Contact(s):

State of Louisiana
Department of Health and Hospitals
Office of the Secretary
Privacy Office
P.O. Box 629
Baton Rouge, LA 70821-0629
Phone : 1-877-559-9664
Email : privacy-dhh@dhh.la.gov