

Policy #19

Uses and Disclosures of Client or Participant Information - HIPAA

I. Purpose

The intent of this policy is to specify that client or participant PHI cannot be used or disclosed without the individual's prior authorization and to identify those exceptions that could be applicable.

DHH workforce members should refer to DHH Policy #72 (Public Information) prior to any use or disclosure of PHI. 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.

II. Applicability

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: Uses and Disclosures of Client or Participant Information

A. Individual Authorization

DHH shall not use or disclose any PHI 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 personal representative, unless authorized by this policy, or as otherwise required or permitted by State or Federal laws or regulation.

B. Applicability

Applicable to all members of DHH's workforce and all PHI created, received, stored, and/or otherwise in the possession of DHH.

C. Definitions

1. Client

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

2. DHH Workforce

"DHH workforce" is employees, volunteers, trainees, and other persons who perform work on behalf DHH, the covered entity, and are under the direct control of DHH whether or not they are paid by DHH.

3. "Individually Identifiable Health Information (IIHI)

"IIHI" is any single item or compilation of 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.

4. PHI

"PHI" is any individually identifiable health information, 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.

a) PHI does not include:

(1) School records that are subject to the Family Educational Rights and Privacy Act (FERPA) and State laws applicable to student records governs DHH access to, use, and disclosure of student records and

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

5. Other Confidential Information about Individuals (OCII)

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

6. 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."

D. Use and Disclosure of PHI

1. Uses and disclosures which may be made without authorization by the client, participant or personal representative authorized by law, include the following:

2. DHH clients or participants may access their own PHI, with certain limitations. (See DHH Policy #18, "Client Privacy Rights").

3. Limited uses or disclosures are allowed to the extent not prohibited or otherwise limited by Federal or State requirements applicable to the program or activity: [Other Confidential Information about Individuals (OCII)] DHH HIPAA Policy #22, "Minimum Necessary Information." uses and disclosures that involve OCII may be limited to particular program areas (e.g., alcohol and drug, mental health, and vocational rehabilitation) as required by Federal or State laws.

- a) Public Health. For the purpose of carrying out duties in its role as a public health authority, DHH does not need to obtain an individual's authorization to lawfully receive, use, disclose or exchange individually identifiable health information.
- b) DHH may use or disclose psychotherapy notes in the following circumstances:
 - (1) In training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - (2) When a health oversight agency uses or discloses in connection with oversight of the originator of the psychotherapy notes; or
 - (3) To the extent authorized under Federal or State laws to defend DHH in a legal action or other proceeding brought by the individual.
4. DHH may use or disclose PHI for purposes of payment, treatment and health care operations.
5. If DHH has reasonable cause to believe that a child is a victim of abuse or neglect, DHH may use or disclose PHI to appropriate governmental authorities and/or others authorized by law to receive reports and/or information of child abuse or neglect.
6. If DHH has reasonable cause to believe that an adult is a victim of abuse or neglect, DHH may use or disclose PHI, as required by law, to a government authority and/or others, including but not limited to social service or protective services agencies (which may include DHH) authorized by law to receive such reports and/or information.
7. DHH may use or disclose PHI for health oversight activities authorized by law, including audits; civil, criminal, or administrative investigations, prosecutions, or actions; licensing or disciplinary actions; Medicaid fraud; or other activities necessary for oversight. DHH may use or disclose PHI without authorization to a Business Associate who is involved in a legal or administrative action on behalf of DHH, its workforce or the State or when seeking legal advice and counsel from a Business Associate.
8. Unless prohibited, or otherwise limited, by Federal or State laws applicable to the program or activity requirements, DHH may use or disclose PHI for judicial or administrative proceedings, in response to an order of a court, a subpoena, a discovery request or other lawful process.

9. For limited law enforcement purposes, to the extent authorized by applicable Federal or State laws, DHH may report certain injuries or wounds; provide PHI to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide PHI which constitutes evidence of criminal conduct on DHH premises.
10. DHH may use or disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law. If DHH personnel are performing the duty or function of a coroner or medical examiner, they may use an individual's information for such purposes.
11. DHH may use or disclose PHI to funeral directors, consistent with applicable laws, as needed to carry out their duties regarding the decedents. DHH may also disclose such information prior to, and in reasonable anticipation of, the death.
12. DHH may use or disclose PHI to organ procurement organizations or other entities engaged in procuring, banking, or transplantation of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation.
13. DHH may use or disclose PHI for research purposes and information contained in a limited data set, as specified in DHH Policy #19, "Uses and Disclosures for Research Purposes," and DHH Policy #20, "De-identification of Client and Participant Information and Use of Limited Data Sets".
14. To avert a serious threat to health or safety, DHH may use or disclose PHI if:
 - a) DHH believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - b) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
15. DHH may use or disclose PHI for other specialized government functions, including authorized Federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities that Federal law authorizes. DHH may use or disclose PHI for medical suitability determinations requested by the US Department of State.
16. DHH may use or disclose limited PHI to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of individuals or other inmates.

17. In case of an emergency, DHH may use or disclose PHI to the extent needed to provide emergency treatment.
18. DHH may use or disclose PHI among and between government health plans for the purpose of eligibility determinations.
19. DHH may use or disclose PHI when same is not prohibited by Federal or State laws or regulations.
20. Uses and disclosure which **do not** require the client or participant's authorization **if** he/she is informed in advance and given a chance to object.
 - a) In limited circumstances, DHH may use or disclose PHI without authorization if:
 - (1) DHH informs the client, participant or his/her personal representative authorized by law in advance and the person has been given an opportunity to object.
 - (2) Unless otherwise prohibited by law, DHH may orally inform the client, participant or his/her personal representative authorized by law and obtain and document the individual's oral agreement.
 - b) Limited use or disclosure of PHI to a family member, other relative, or close personal friend of the individual, or any other person named by the individual or, for the purposes of lists, directories or other similar disclosures.
 - c) For individuals receiving alcohol and drug, mental health, or some rehabilitation services, oral permission may not be sufficient and written authorization may be required, if required by Federal or State laws or regulation (OCII).
 - d) DHH may use or disclose PHI for purposes of disaster relief to public or private entities authorized by law or charter to provide disaster relief.

E. Re-disclosure of an Individual's Information

1. Unless prohibited by State and Federal laws, information held by DHH and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by DHH policy. Whether or not the PHI remains protected depends on whether the information is subject to other Federal or State privacy laws, court protective orders or other lawful process.

2. Vocational Rehabilitation and Alcohol and Drug Rehabilitation information: Federal regulations (42 CFR part 2 and 34 CFR 361.38) prohibit DHH from making further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

F. Revocation of Authorization

1. An individual can revoke an authorization at any time.
2. Revocations shall be in writing and signed by the individual.
3. No such revocation shall apply to information already released while the authorization was valid and in effect.
4. DHH HIPAA Privacy form #403 P “Revocation of Authorization” form should be used as documentation.

G. Verification of Individuals Requesting Information

1. PHI may not be disclosed without making a reasonable effort to verify the identity of the person requesting the information AND determining that the requestor has the right to access the information that is being sought. If the identity and authority of the requestor is known to the DHH workforce member, then reasonable effort to verify has been met.
2. If the requestor is a provider, he/she will need to supply a name and telephone number or electronic address or their his/her provider identification number for verification purposes.
3. For all other requestors, reasonable evidence should be supplied in the form of one or more of the following:
 - a) Visual Verification – face-to-face or written requests
 - (1) Identification badge;
 - (2) Driver's license or other official picture identification;
 - (3) Written statement of identity on entity letterhead; or
 - (4) Similar proof.
 - b) Audio Verification – telephone
 - (1) Call-back number;

- (2) Social Security #;
 - (3) Birth date; or
 - (4) Other similar personalized information.
- c) Public Official
- (1) Identification badge, credentials, or other proof of status,
 - (2) Request made on appropriate government letterhead,
 - (3) If the request is from an entity or individual acting on behalf of a public official, a written statement on government letterhead that the person or entity is acting on behalf of the public official or other evidence or documentation from the agency that establishes such authority (e.g., contract for services, memorandum of understanding), or
 - (4) A written statement of legal authority (or, if impracticable, an oral statement) under which the information is requested.
- d) If Federal or State laws or DHH policy requires that written verification of authority and identity are required prior to disclosure, then such written verification must be provided prior to the disclosure.
- e) If the disclosure is for research purposes, documentation from DHH's Institutional Review Board or the Limited Data Use Agreement can serve as reasonable verification.
- f) Program offices must establish verification procedures which are designed to ensure that the requestors are who they say they are and that they have the right to access the information they are seeking.

H. Denial of Requests for Information

Unless an individual has signed an authorization, or the information about the individual can be disclosed pursuant to this Policy, DHH shall deny any request for PHI.

I. Review by Privacy Officer

All such uses and disclosures shall be subject to review by the DHH Privacy Officer.

Policies:

DHH Policy #17 – “General Privacy Policy”

DHH Policy #18 – “Client and Participant Privacy Rights”

DHH Policy #20 – “De-identification of Client and Participant Information and Use of Limited Data Set”

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”

Forms:

DHH HIPAA Privacy form #502P – “Restriction of Use and Disclosure Request Form”

DHH HIPAA Privacy form #201P – “Access to Records Request Form”

DHH HIPAA Privacy form #701P – “Accounting of Disclosures Request Form”

DHH HIPAA Privacy form #401P – “Authorization to Release or Obtain Health Information for Eligibility in Program Enrollment”

DHH HIPAA Privacy form #402P – “Authorization to Release or Obtain Health Information” (Other than Eligibility in Program Enrollment)

DHH HIPAA Privacy form #403P – “Revocation of Authorization”

References:

Contact(s):

45 CFR 164.502(a)
45CFR 164.508-164.512
42CFR Part 2
34 CFR 361.38
La. R.S.40: 29

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