


Client and Participant Privacy Rights

	Louisiana Department of Health (LDH)	
	Policy Number	18.1
	Effective Date	April 14, 2003
	Inquiries to	Office of the Secretary Bureau of Legal Services P.O. Box 3836 Baton Rouge, Louisiana 70821-3836 (225) 342-1112 FAX (225) 342-2232

If there is a discrepancy between an LDH Policy and a Program Office or facility policy, the LDH policy shall govern/override/supersede the conflicting section within the Program Office or facility policy.

I. PURPOSE

The intent of this policy is to establish the privacy rights that The Louisiana Department of Health (LDH) clients and participants or their personal representatives have regarding the use and disclosure of their information that is held by LDH, and to describe the process for filing a complaint should clients or participants or their personal representatives believe those rights have been violated.

LDH staff and workforce members should refer to LDH 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 LDH 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 LDH executive management.

II. APPLICABILITY

LDH's HIPAA Privacy Policies are applicable to LDH's workforce and its business associates.

III. EFFECTIVE DATE

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

IV. DEFINITIONS

The definitions are included in the body of these policies.

V. RESPONSIBILITIES

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

VI. EXCEPTIONS

The exceptions are listed in the policies.

VII. POLICY: CLIENT AND PARTICIPANT PRIVACY RIGHTS

- A. This policy grants rights only to clients, participants or their personal representatives as defined in LDH Policy #17, General Privacy Policy.
- B. LDH clients and participants or their personal representatives have the following rights which DHH may not deny:
 - 1. Access to their own information, consistent with certain limitations;
 - 2. An accounting of disclosures LDH has made of their PHI for up to six years prior to the date of requesting such accounting. Information will not be available prior to the effective date of this policy (April 14, 2003) and certain limitations do apply as outlined in this policy, Section VII. J; and
 - 3. Submit complaints if they believe or suspect that information about them has been improperly used or disclosed, or if they have concerns about the privacy policies of LDH.
- C. Clients and participants or their personal representatives may ask LDH to take specific actions regarding the use and disclosure of their information and LDH may either approve or deny the requests. Specifically, clients and participants or their personal representatives have the right to request:
 - 1. That LDH restrict uses and disclosures of their PHI;
 - 2. That LDH send or receive information to or from LDH by alternative means, such as mail, e-mail, fax or telephone, or at alternative locations; and
 - 3. That LDH amend their information held by LDH.
- D. Notice of Privacy Practices
 - 1. LDH will use the "LDH Notice of Privacy Practices" (LDH HIPAA Privacy Form #101P), to inform clients and participants or personal representatives authorized

by law about how LDH may use and/or disclose their information. The Notice of Privacy Practices also describes the actions clients/participants or their personal representatives may take, or request LDH to take, with regard to the use and/or disclosure of their information.

The policies related to the "Notice of Privacy Practices" (LDH HIPAA Privacy form #101P) and the distribution of the Notices are addressed in LDH Policy #17, "General Privacy Policy."

2. Nothing in this policy, or the policy related to the LDH "Notice of Privacy Practices," shall prevent LDH from changing its policies or the notice at any time, provided that the changes in the policies or notice comply with State and Federal laws. LDH is required to follow the terms of the notice currently in effect. However, LDH may change its privacy practices and make that change effective for all PHI maintained by the Department.
- E. Decision-making Authority within LDH
1. Prior to any decision based on a request from a client or participant or his/her personal representative for LDH to amend health information in a medical record, the program's medical director or a licensed health care professional designated by the program administrator shall review the request and any related documentation. The licensed health care professional may be a LDH workforce member involved in the client or participant's case.
 2. Prior to any decision to amend any other information, a LDH workforce member, designated by the program administrator, shall review the request and any related documentation.
 3. LDH may deny a client or participant or his/her personal representative access to health information on the grounds that access may result in risk or harm to the client/participant or to another person. However, prior to any decision to deny such access, the program's medical director or a licensed health care professional, designated by the program administrator, shall review the request and any related documentation. The licensed health care professional may be a LDH workforce member involved in the client or participant's case.
 4. Decisions related to any other requests made to LDH under this policy shall be handled in a manner consistent with Federal and State rules and regulations and/or LDH policies and procedures applicable to the program, service or activity.
 5. All such requests are subject to review by the LDH Privacy Officer.

F. Rights of Clients and Participants or Their Personal Representatives

1. Right to request additional restrictions on uses or disclosures of their information
 - a) Clients and participants or their personal representatives have the right to request additional restrictions on the use and/or disclosure of their information.
 - b) LDH applies confidentiality laws applicable to specific programs or activities to protect the privacy of client/participant information. Even if those laws would permit LDH to make a use or disclosure of information, a LDH client/participant has the right to request a restriction on a use or disclosure of that information.
 - c) All requests will be submitted by completing a "Restriction of Use and Disclosures Request Form" (LDH HIPAA Privacy form #501P).
 - d) LDH is not obligated to agree to a restriction and may deny the request or may agree to a restriction more limited than requested.
Exception: Certain programs can only use or disclose information that is authorized by the client or participant or his/her personal representative. For those program clients or participants, LDH will honor their requests for restriction by making sure that the authorizations clearly identify the authorized recipients of the information.
 - e) All such requests are subject to review by the LDH Privacy Officer.

G. Right to Request Information from LDH by Alternative Means or at Alternative Locations

1. LDH should accommodate reasonable requests by clients or participants or their personal representatives to receive communications by alternative means, such as by mail, e-mail, fax or telephone; and
2. LDH should accommodate reasonable requests by clients or participants or their personal representatives to receive communications at an alternative location.
3. In some cases, sensitive health information or health services must be handled with strict confidentiality under State laws. LDH will comply with the more restrictive requirements.
4. All such requests are subject to review by LDH Privacy Officer.

H. Right to Access Their Information

1. Clients and participants or their personal representatives have the right to access, inspect, and obtain a copy of information on their own cases in LDH files or records, consistent with applicable Federal and State laws and regulations.
2. All requests for access must be made by completing a LDH HIPAA Privacy form #201P, "Access to Records Request Form."
3. Clients and participants or their personal representatives may request access to their own information kept by LDH by using a personal identifier (such as the client's name or LDH case number).

- a) If LDH maintains information about the client or participant in a record that includes information about other people, the client or participant is authorized to see only information about him or herself, except as provided below:
- (1) If a person identified in the file is a minor child of the client or participant, and the client or participant is authorized under Louisiana law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client or participant may obtain information about the minor.
 - (2) If the person requesting information is recognized under Louisiana law as a guardian or legal custodian of the client or participant and is authorized by Louisiana law to have access to the client or participant's information or to act on behalf of the client or participant for making decisions about the client or participant's services or care, LDH will release information to the requestor.
 - (3) Entities or advocates who are authorized under Federal or State laws to advocate for clients or participants will be given access to information on the individual they represent to the extent allowed under the applicable Federal or State law to the extent necessary to perform the task or duty that the advocate has been charged under law to do on behalf of the client or participant.
 - (4) LDH may deny clients or participants or their personal representatives, with reasons in writing, access to their own health information if Federal or State law prohibits the disclosure. Under Federal law, clients or participants have the right to access, inspect, and obtain copies of health information on their own cases in LDH files or records except for:
 - a) Psychotherapy notes;
 - b) Information compiled for use in civil, criminal, or administrative proceedings;
 - c) Information that is subject to the Federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);
 - d) Information that, in good faith and using professional judgment, LDH believes could cause harm to the client, participant or to any other person;
 - e) Documents protected by attorney work-product privilege, and
 - f) Information where release is prohibited by State or Federal laws.

- (5) LDH may also deny, with reasons in writing, a request for access made by the client's or participant's personal representative for any of the grounds stated above, or if, in good faith and using professional judgment, LDH believes that disclosure of such information to the personal representative or to any other person to whom the client or participant has authorized disclosure could cause harm to the client, participant or to any other person, or that the requestor has caused or may cause harm to the client or participant or any other person.
- (6) Before LDH denies a client or participant or his/her personal representative or anyone else disclosure or access to PHI because there is a good faith belief that disclosure or access could cause harm to the client or participant or to another person, LDH's decision to deny must be made by a licensed health care professional with reasons in writing and LDH must make a review of this denial available to the client/participant and/or requestor. If the requestor wishes to have this denial reviewed, the review must be done by a licensed health care professional who was not involved in the original decision.
- (7) All such requests and denials are subject to review by the LDH Privacy Officer.
- (8) LDH and its program offices may establish reasonable conditions for access to information.

I. Right to Request Amendments to PHI

1. Clients or participants or their personal representatives have the right to request that LDH amend their information in LDH files and records.
2. All requests for amendments must be made by having the requestor complete a LDH HIPAA Privacy form #301P "Amendment of Health Record Request Form."
3. LDH is not obligated to agree to an amendment and may deny the requests or limit its agreement to amend.
4. All such requests are subject to review by LDH Privacy Officer or his designee.

J. Right to an Accounting of Disclosures of PHI

1. Clients and participants or their personal representatives have the right to receive an accounting of disclosures of PHI that LDH has made for any period of time, not to exceed six years, preceding the date of requesting the accounting.
2. The accounting will only include PHI NOT authorized by the client or participant or their personal representative for use or disclosure, and will not include information collected, used or disclosed for treatment, payment, health care operations or a limited data set, or other uses or disclosures for which accounting is not required.

Policy:

LDH Policy #17 - "General Privacy Policy"

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

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

LDH Policy #21 - "Uses and Disclosures for External Research Requests, Internal Research Needs and Waiver of Privacy Rights for Research Purposes" LDH HIPAA Privacy Policy #6 - "Minimum Necessary Information"

LDH Policy #23 - "LDH Business Associate Relationships"

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

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

Form(s):

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

LDH HIPAA Privacy form #201P - "Access to Records Request Form"

LDH HIPAA Privacy form #301P - "Amendment of Health Record Request Form"

LDH HIPAA Privacy form #302P - "30-Day Extension to Respond to Amendment Request" LDH

HIPAA Privacy form #303P - "Acceptance of Amendment Request"

LDH HIPAA Privacy form #304P - "Denial of Amendment Request"

LDH HIPAA Privacy form #305P - "Statement of Disagreement for Denial of Amendment

Request" LDH HIPAA Privacy form #306P - "Response to Statement of Disagreement for Denial

of Amendment" LDH HIPAA Privacy form #501P - "Restriction of Use and Disclosures Request

Form" LDH HIPAA Privacy form #701P - "Accounting of Disclosures Request Form"

Reference(s):

45 CFR Part 164.522-164.528

Contact(s):

State of Louisiana

The Department of Health

Office of the Secretary

Privacy Office

P.O. Box 629

Baton Rouge, LA 70821-0629 Phone : 1-877-559-9664

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VIII. REVISION HISTORY

Date	Revision
April 14, 2003	Policy created
August 8, 2017	Policy reviewed
June 5, 2019	Policy reviewed