

General Privacy Policy

	Louisiana Department of Health (LDH)	
	Policy Number	17.1
	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 outline The Louisiana Department of Health (LDH) 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). LDH's HIPAA Privacy Rule Regulations are covered in the following Chapters/Policies:

Chapter 1: General Privacy - LDH Policy #17

Chapter 2: Client Privacy Rights - LDH Policy #18

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

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

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

Chapter 6: Minimum Necessary Information - LDH Policy #22

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

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

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

NOTE: Prior to any use or disclosure of Protected Health Information, LDH staff and workforce members should refer to LDH Policy #72 (Public Information). 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: GENERAL PRIVACY POLICY

LDH 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 LDH’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. LDH will safeguard all confidential information about individuals (IIHI, PHI, and OCII), inform individuals about LDH 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 LDH is most likely to obtain, collect or maintain individual information:
 - a) Clients,
 - b) Participants,
 - c) Personal Representatives,
 - d) Licensees, and
 - e) Providers
3. LDH shall provide training to its workforce on LDH privacy policies and shall require every member of the workforce to sign a LDH "Privacy Program Statement of

Understanding" outlining his/her role and responsibilities relating to protecting the confidentiality and privacy of LDH clients and participants.

E. Safeguarding Information about Clients

“Client” is an individual who requests or receives services from LDH.

1. LDH, its workforce, and Business Associates will respect and protect the privacy of records and information about clients who request or receive services from LDH as provided in LDH’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 LDH (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 LDH;
 - d) Individuals in the custody of LDH either on a voluntary or committed basis; and
 - e) Individuals receiving services directly from LDH (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 LDH clients is confidential and must be safeguarded in accordance with LDH HIPAA Privacy policies and procedures, Federal or State laws and regulations or other LDH policies and procedures.
3. LDH shall not use or disclose information unless:
 - a) The client has authorized the use or disclosure in accordance with LDH Policy #19 - "Uses and Disclosures of Client or Participant Information";
 - b) The use or disclosure is specifically permitted under LDH Policy #18, “Client and Participant Privacy Rights”; 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"; and LDH 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. LDH program offices shall adopt written procedures to reasonably safeguard client information.

F. Safeguarding Information about Participants

“Participants” are individuals participating in LDH 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. LDH, its workforce, and Business Associates will respect and protect the privacy of records and information about participants who request or receive services from LDH as provided in LDH’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 LDH participants is confidential and must be safeguarded in accordance with LDH HIPAA Privacy Policies and procedures, Federal or State laws and regulations or other LDH policies and procedures.
- 3. LDH shall not use or disclose information unless:
 - a) The participant has authorized the use or disclosure in accordance with LDH Policy #19, "Use and Disclosures of Client or Participant Information";
 - b) The use or disclosure is specifically permitted under LDH Policy #18, “Client and Participant Privacy Rights”; LDH Policy #19, “Uses and Disclosures of Client or Participant Information”; LDH Policy #20, “De-identification of Client and Participant Information and Use of Limited Data” and LDH 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. LDH 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. LDH 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 LDH 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 LDH with respect to the health care service.

H. Exception For Abuse, Neglect, or Endangerment Situations

- 1. LDH may elect not to treat a person as the Personal Representative of a client if:
 - a) LDH 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) LDH 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. LDH 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. LDH 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 LDH 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," LDH 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 LDH to perform or conduct a service, activity or function.
 2. "Provider" is a person or entity who may seek reimbursement from LDH as a provider of goods, services or supplies to LDH clients.
 3. When LDH creates or obtains information about or from licensees or providers, LDH 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. LDH will safeguard information obtained from licensees and providers which contains IIHI or OCII consistent with LDH HIPAA Privacy Policies and other applicable Federal and State laws, rules and regulations.
 - a) When LDH obtains information about individuals that relates to determining payment responsibility when a provider submits a claim to LDH or other request for payment, LDH will safeguard such information consistent with LDH HIPAA Privacy Policies and

other applicable Federal and State laws and regulations and LDH policies and procedures.

b) LDH is authorized to review the performance of licensees and providers in the conduct of its health oversight activities. LDH will safeguard confidential information about individuals obtained during health oversight activities consistent with LDH HIPAA Privacy policies and other applicable Federal and State laws and regulations and LDH Policies and procedures.

6. IIHI and OCII obtained from or about licensees and providers in the performance of LDH's official duties shall be treated in the same manner as all other IIHI and OCII used or disclosed by LDH.
7. LDH program offices shall adopt procedures to reasonably safeguard information from or about licensees and providers in the performance of LDH's official duties.

M. Conflict with Other Requirements Regarding Privacy and Safeguarding

1. LDH 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 LDH policy regarding the privacy or safeguarding of information, LDH shall act in accordance with that stricter standard.
2. LDH workforce shall act in accordance with established LDH policy and procedures regarding the safeguarding and confidentiality of an individual's information, whether health-related or not, in all LDH 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 LDH workforce member will seek guidance from supervisors according to established LDH policy and procedures. The LDH workforce members should consult with his/her Privacy Officer or the LDH Privacy Officer as appropriate.

N. LDH Notice of Privacy Practices

1. LDH will make available a copy of the form, "Notice of Privacy Practices" (LDH HIPAA Privacy 101P) to any client applying for or receiving services from LDH.

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 LDH is a provider, LDH will seek to obtain a signed "Notice of Privacy Practices, Acknowledgement of Receipt" (LDH HIPAA Privacy 1 02P) from each client on first date of service on or after April 14, 2003.

O. Client/Participant Privacy Rights

LDH 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," LDH Policy #18.

P. Use and Disclosures of Client or Participant Information

LDH shall not use or disclose any information about a client or participant of LDH 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," LDH Policy #19; "De-identification of Client and Participant Information and Use of Limited Data," LDH Policy #20; and "Uses and Disclosures for External Research Requests, and Internal Research Needs & Waiver of Privacy Rights for Research Purposes," LDH Policy #21.

Q. Minimum Necessary Information

1. LDH will use or disclose only the minimum amount of information necessary about clients/participants, and only to the extent provided in LDH 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, LDH 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 LDH 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

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

S. Use and Disclosures for Research Purposes and Waivers

LDH may use or disclose an individual's health information for research purposes as outlined in LDH 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 LDH is acting as a Public Health Authority.

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

LDH'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, LDH can use and share information as appropriate for the work of LDH, without further restriction, if LDH or another entity has taken steps to de-identify the information as outlined in LDH policy #20, "De-identification of Client Information and Use of Limited Data Sets."

U. Business Associate Relationships

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

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

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

W. LDH Privacy Office

1. LDH shall establish a Privacy Office which shall be headed by the LDH 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 LDH compliance with confidentiality and privacy requirements imposed on LDH 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 LDH 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 LDH confidentiality and privacy policies and practices;
 - f) Modify or change LDH 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 LDH'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 LDH workforce. When such delegation occurs, that member of the LDH 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 LDH's HIPAA Privacy Policies

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

Policy:

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

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 Policy #22 - "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 #102P - "Notice of Privacy Practices, Acknowledgement of Receipt"

Reference(s):

Contact(s):

State of Louisiana
Louisiana Department of Health
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

VIII. REVISION HISTORY

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