


Uses and Disclosures of Client or Participant Information

	Louisiana Department of Health (LDH)	
	Policy Number	19.1
	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

LDH is committed to fostering, cultivating and preserving a culture of equity, diversity and inclusion. Our human capital is the most valuable asset we have. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities and talent that our employees invest in their work represents a significant part of not only our culture, but our Department's reputation and achievement as well.

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

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.

The Louisiana Department of Health (LDH) 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 their 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: Uses and Disclosures of Client or Participant Information

A. Individual Authorization

LDH shall not use or disclose any PHI 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 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 LDH's workforce and all PHI created, received, stored, and/or otherwise in the possession of LDH.

C. Definitions

1. Client

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

2. LDH Workforce

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

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 LDH access to, use, and disclosure of student records and
- (2) Employment records held in LDH’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 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."

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. LDH clients or participants may access their own PHI, with certain limitations. (See LDH 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)] LDH 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, LDH does not need to obtain an individual's authorization to lawfully receive, use, disclose or exchange individually identifiable health information.
 - b) LDH 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 LDH in a legal action or other proceeding brought by the individual.
4. LDH may use or disclose PHI for purposes of payment, treatment and health care operations.
5. If LDH has reasonable cause to believe that a child is a victim of abuse or neglect, LDH 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 LDH has reasonable cause to believe that an adult is a victim of abuse or neglect, LDH 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 LDH) authorized by law to receive such reports and/or information.

7. LDH 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. LDH may use or disclose PHI without authorization to a Business Associate who is involved in a legal or administrative action on behalf of LDH, 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, LDH 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, LDH 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 LDH premises.
10. LDH 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 LDH personnel are performing the duty or function of a coroner or medical examiner, they may use an individual's information for such purposes.
11. LDH may use or disclose PHI to funeral directors, consistent with applicable laws, as needed to carry out their duties regarding the decedents. LDH may also disclose such information prior to, and in reasonable anticipation of, the death.
12. LDH 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. LDH may use or disclose PHI for research purposes and information contained in a limited data set, as specified in LDH Policy #19, "Uses and Disclosures for Research Purposes," and LDH 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, LDH may use or disclose PHI if:
 - a) LDH 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. LDH 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. LDH may use or disclose PHI for medical suitability determinations requested by the US Department of State.
 16. LDH 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, LDH may use or disclose PHI to the extent needed to provide emergency treatment.
 18. LDH may use or disclose PHI among and between government health plans for the purpose of eligibility determinations.
 19. LDH 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** they are informed in advance and given a chance to object.
 - a) In limited circumstances, LDH may use or disclose PHI without authorization if:
 - (1) LDH informs the client, participant or their personal representative authorized by law in advance and the person has been given an opportunity to object.
 - (2) Unless otherwise prohibited by law, LDH may orally inform the client, participant or their 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) LDH 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 LDH and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by LDH 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 LDH 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. LDH 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 LDH workforce member, then reasonable effort to verify has been met.
2. If the requestor is a provider, they will need to supply a name and telephone number or electronic address or their 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 LDH 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 LDH'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, LDH shall deny any request for PHI.

I. Review by Privacy Officer

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

Policies:

LDH Policy #17 – “General Privacy Policy”

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

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

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”

Forms:

LDH HIPAA Privacy form #502P – “Restriction of Use and Disclosure Request Form” LDH HIPAA Privacy form #201P – “Access to Records Request Form”

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

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

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

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

References:

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

Contact(s):

State of Louisiana
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VIII. REVISION HISTORY

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