

DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: APRIL 14, 2003

DATE ISSUED: MARCH 31, 2003

- I. **TITLE:** HIPAA PRIVACY PRACTICES POLICIES
Uses and Disclosures Policies and Procedures
- II. **PURPOSE:** To establish a uniform system to implement the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as it relates to Privacy Practices and 45 CFR Parts 160 and 164.
- III. **SCOPE:**
- ◆ This circular applies to all components of the Division.
 - ◆ This circular also applies to agencies under contract with the Division and who have access to client records. Policies of agencies are to conform with this Division Circular, the HIPAA Privacy Rule and existing State laws and Division Circulars.
 - ◆ Requirements of this circular are subject to change in accordance with the Department of Human Services (DHS) policies under HIPAA.
- IV. **USES AND DISCLOSURES POLICIES/PROCEDURES:**
- A. General Policy - Uses and Disclosures
 - B. Minimum Necessary
 - C. Uses and Disclosures without Authorization
 - D. Authorization Policy - (Appendix A, form DC53A-A1)
 - E. Authorization for Disclosure of Health Information to Family and Involved Persons (DC53A-A2)
 - E. Accounting of Disclosures Policy - (Appendix B, forms DC53A-B2 and DC53A-B2)
 - F. De-Identification of PHI
 - G. Identity Verification Policy
 - H. Existing Regulations/Policies
 - I. Relevant Documents

A. General Policy - Uses and Disclosures

1. The Division component may only disclose protected health information:
 - a. To the individual,
 - b. As specifically permitted or required by the HIPAA Privacy Rule, and
 - c. Pursuant to written authorization by the individual or his/her legal guardian.
2. Permission to use or disclose protected health information may be granted to the Division component through an authorization, or after providing an individual the opportunity to agree or object to a course of action.
3. For purposes of this policy, the Division must identify the persons or classes of employees within the components who need access to the information to carry out their job functions (refer to Division Circular 53, HIPAA Administrative Policies, V.C. Workforce - Access to PHI, for the identification of the employees who have access to PHI).

B. Minimum Necessary

1. Division staff and its business partners need to make reasonable efforts to use or disclose, or to request from another covered entity, only the minimum amount of protected health information required to achieve the purpose of the particular use or disclosure.
2. To satisfy this requirement, the Division component and its business partners must:
 - a. Identify categories of staff who have access to protected health information (refer to Division Circular 53, HIPAA Administrative Policies, Workforce Access to PHI);
 - b. In the event of routine and recurring requests, ensure that the disclosed PHI is limited to the amount reasonably necessary to achieve the purpose of the request;
 - c. In the event of non-routine requests, the request will be reviewed on a case-by-case basis and then reviewed by the Privacy Officer to ensure compliance with the HIPAA Privacy Rule.
3. The “minimum necessary” standard does **not** apply to:
 - a. disclosures to or requests for information by a health care provider for treatment;
 - b. disclosures made to the person who is the subject of the PHI, unless in the exercise of professional judgment, the access requested could likely endanger the life or physical safety of the individual or another person;
 - c. uses or disclosures in accordance with an individual’s authorization;
 - d. uses or disclosures that are required for compliance with this procedure;
 - e. disclosures to the DHHS when disclosure is required under the rule for enforcement purposes; or
 - f. Uses or disclosures required by other federal or state laws.

C. Uses and Disclosures without Authorization

1. The Division may use or disclose health information without the written authorization of the individual/legal guardian for use in a facility directory or for notification purposes to family members or friends provided that the individual/legal guardian is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the disclosure or use.
2. Subject to the conditions below, the Division component may disclose PHI to a family member, guardian, other relative, or close personal friend, that is directly relevant to that person's involvement with the individual's care or payment for that care; and to notify such persons of the individual's location, general condition, or death:
 - a. If the individual/legal guardian is present and Division staff obtain the individual/legal guardian's agreement;
 - b. If the Division provides the individual/legal guardian with an opportunity to object to the disclosure; and
 - c. If Division staff may reasonably infer from the circumstances, based on the exercise of professional judgement that the individual/legal guardian does not object to the disclosure.
3. The Division component may exercise professional judgement and disclose protected health information if the individual is not present or because of the individual's incapacity to make decisions or if it is an emergency circumstance.
4. The Division component may use the following information to maintain a directory of individuals in the facility:
 - a. The individual's name;
 - b. The individual's location;
 - c. The individual's condition, described in general terms; and
 - d. The individual's religious affiliation.
5. The Division component may disclose the previous four elements to clergy and may release all of the information except for religious affiliation to anyone else that inquires about the individual by name.

D. Authorizations for Release of Records - (Appendix A, Form: DC53A-A1)

1. A written authorization by the individual or his or her legal guardian is required for disclosure of information from the client record unless specifically exempted in this circular. The most common exception is when the client record is used for treatment, payment or health care operations; authorization is not required by the individual or their legal guardian in these instances. (Refer to Appendix A for Authorization Policy and Form)
2. A Division component may not release records to a law enforcement official without an authorization or court order.

3. The form is to be provided to the individuals or agencies requesting disclosure of health information. The requestor is responsible to provide the completed form to the Division component.
4. An authorization shall be required before the release of psychotherapy notes. These are the therapist's personal notes and do not include notes that are included in the client record.
5. The authorization for use and disclosure of psychotherapy notes can only be combined with another authorization for use and disclosure of psychotherapy notes; it cannot be combined with an authorization for other PHI.

F. Authorization for Disclosure of Health Information to Family and Involved Persons (DC53A-A2)

1. The individual or their legal guardian is required to complete the Authorization for Disclosure of Health Information to Family and Involved Persons form. The individual or legal guardian is required to identify the name, address, phone number and relationship of involved persons who are authorized to receive health information on the individual served by DDD. Assistance may be provided to individuals who are unable to complete the form independently.
2. This authorization is valid for one year, or until the date specified on the form.
3. Persons who are identified as the legal guardian must provide a copy of the Appointment of Guardianship.
4. A copy of this form must be provided with the DDD Intake package.
5. The information provided on this form may be updated or modified as needed.

G. Accounting of Disclosures - (Appendix B, Form DC53A-B1)

1. The Division is responsible to maintain a log of disclosures for each individual record for whom records have been released, except for disclosures of the following:
 - a. to carry out treatment, payment or health care operations;
 - b. when individuals request to receive their own protected health information;
 - c. the facility's directory;
 - d. to persons involved in the individual's care where the individual was provided an opportunity to agree or object;
 - e. a disclosure permitted under the HIPAA Privacy Rule;
 - f. pursuant to an authorization;
 - g. National security or intelligence purposes.
2. The Division is required to maintain an accounting of disclosures that it makes of a individual's protected health information and make that information available to individuals or their legal guardians upon request. (Refer to Appendix B for Accounting Procedure and Forms)

3. The Division is required to maintain an accounting log for each individual.
4. The Division is required to maintain the accounting log for a period of at least six (6) years or in accordance with the General Records Retention Schedule.

F. De-Identification of PHI

A Division component may release information only if the Division component has no reasonable basis to believe that information could be used to identify a individual.

In order to be exempt from the Privacy Rule, the information must not include any of the following identifiers for individuals, or of relatives, household members, or employers:

- a. names;
- b. geographic subdivisions smaller than a state (some specific exceptions) including street address, city, county, municipality, zip code;
- c. all elements of dates, except the year, for all individuals under age 89,
- d. and all elements of dates for those over age 89;
- e. telephone or fax numbers,
- f. electronic mail;
- g. social security number;
- h. medical record number;
- i. health plan beneficiary (UCI) number; account numbers;
- j. certificate or license numbers;
- k. vehicle identifiers;
- l. device identifiers;
- m. biometrics identifiers (finger, retinal, voice prints);
- n. full face photographic images and the like; or
- o. any other unique characteristic or code.

G. Identity Verification

1. Prior to any disclosure permitted by this circular, a Division component must verify the identity of a person requesting PHI and the authority of any such person to have access to PHI under this circular, if the identity or authority of the person is not already known to the Division.
2. The Division must obtain any documentation, statements or representations, whether oral or written, from the person requesting the PHI when such documentation, statement, or representation is a condition of disclosure under this circular.

a. Personal Verification

If request is made in person, identification can be verified by the presentation of an agency identification badge, or other proof of official credentials.

b. Oral Communication Verification

When verifying identification through telephone communication, you must verify the identity of the caller by having the caller provide the following client information:

- i. Full name, and
 - ii. Date of Birth, and
3. The verification requirements of the HIPAA Privacy Rule are met if Division staff rely on their professional judgement in making a disclosure in accordance with the rule and makes a good faith effort in verifying the identification of the caller.
 4. If the identity of the caller is uncertain, the Division component may "call back" the caller to obtain further verification or contact the individual or legal guardian to obtain verification.
 5. Such disclosures must be documented in the individual record and Accounting of Disclosures log, if applicable.

H. Existing Regulations/Policies applicable to this policy:

- ◆ Division Circular 53, HIPAA Administrative Policies and Procedures
- ◆ Division Circular 53B - HIPAA Client Rights Policies and Procedures
- ◆ Division Circular #30 - Access to Client Records and Record Confidentiality (NJAC 10:41.2) (NJSA 30:4-24.3)
- ◆ Division Circular 11 - Records Retention and Destruction
- ◆ State of New Jersey General Records Retention Schedule

I. Relevant Documents to this Division Circular:

DC53A-Appendix A: Authorization Policy

DC53A-Appendix B: Accounting of Disclosures Procedure

Form: DC53A-A1 - Authorization for Disclosure of Health Information to Family and Involved Persons Form

Form: DC53A-A2 - Authorization for Release of Records Form

Form: DC53A-B1 - Accounting for Disclosures Form

Signed on 3/28/03 by JWS, original on file

James W. Smith, Jr.

Director

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