

**DIVISION CIRCULAR #53B  
N/A**

**DEPARTMENT OF HUMAN SERVICES**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE: APRIL 14, 2003**

**DATE ISSUED: MARCH 31, 2003**

**I. TITLE: HIPAA PRIVACY PRACTICES POLICIES  
Client Rights 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. CLIENT RIGHTS POLICIES/PROCEDURES:**

- A. Notice of Privacy Practices and Acknowledgement Form - (Document DC53B-2)**
- B. Right to Access PHI**
- C. Right to Accounting of Disclosures**
- D. Right to Inspection**
- E. Right to Request Restrictions (Form: DC53B-4)**
- F. Right to Request Amendments (Form: DC53B-5)**
- G. Right to Request Confidential Communication**
- H. Waiver of Rights**
- I. Personal Representatives**
- J. Minors**
- K. Complaint Policy (DC53B, Appendix A, Form: DC53B-A6)**
- L. Existing Regulations/Policy**
- M. Relevant Documents**

## **A. Notice of Privacy Practices and Acknowledgement Form - (Document: DC53B-2)**

All persons served by the Division, and their legal guardians, shall receive a copy of the Notice of Privacy Practices and Rights.

1. The Notice shall be provided to all individuals by April 14, 2003.
2. The Notice and the Authorization Form for Family and Involved Persons shall be provided to all individuals as part of the Intake application package.
3. Each Division component will make every effort to secure a signed Acknowledgement of receipt of the Notice of Privacy Practices from each individual/legal guardian. A copy of the acknowledgement will be maintained in the client record. All efforts to obtain a signed Acknowledgement shall be documented in the client record.
4. A copy of the current Notice shall be posted in a public area of each developmental center and office of the Division.
5. A copy of the privacy Notice shall be posted on the Division website following the issue date of this circular.
6. The Notice may be revised periodically.

## **B. Right to Access PHI**

1. An individual has a right of access to inspect and obtain a copy of PHI about the individual in a designated record set for as long as the PHI is maintained except for:
  - a. Psychotherapy notes;
  - b. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding, or
  - c. As protected in accordance with existing Division policies and regulations.
2. Timely Access:
  - a. The Division component must provide access to the requested PHI in format requested by the individual;
    - i. A summary of the information may be provided if the individual/legal guardian agrees in advance to the summary;
    - ii. Access must be provided within 30 days,
    - iii. Fees for requested information may be imposed in accordance with fee scheduled provided in Division Circular #30.
    - iv. If the request for access is for protected health information that is not maintained or accessible to the covered entity on-site, the covered entity must take an action required no later than 60 days from the receipt of such a request.
  - b. If the Division component is unable to take an action required within 60 days, the Division component may extend the time for such actions by no more than 30 days, provided that:
    - i. The Division component provides the individual with a written statement of the reasons for the delay and the date by which the Division component will complete its action on the request; and

- ii. The Division component may have only one such extension of time for action on a request for access.
3. Unreviewable grounds for denial - A Division component may deny an individual access without providing the individual an opportunity for review, in the following circumstances:
- a. The protected health information is excepted from the right of access by paragraph (B)(1) of this section.
  - b. A Division component that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate, (i.e., MSU, JJC).
  - c. An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
4. Reviewable grounds for Denial - The Division component may deny an individual access, provided the individual is given a right to have such denials reviewed in the following circumstances:
- a. A licensed health care professional has determined, in the exercise of professional judgement, that the access required is reasonably likely to endanger the life of the individual or another person;
  - b. The PHI makes reference to another individual served or a witness to an act and a licensed health care professional has determined, in the exercise of professional judgement, that he access requested is reasonably likely to cause substantial harm to the individual or another person;
  - c. The request for access is made by the legal guardian and a licensed health care professional has determined, in the exercise of professional judgement, that the exercise of professional judgement, that he provision of access to the legal guardian is reasonably likely to cause substantial harm to the individual or another person.
5. If access is denied, the Division component must provide a timely, written denial to the individual/legal guardian. The denial must be in plain language and contain:
- a. The basis for the denial;
  - b. Statement of individual's review rights and how the individual may exercise his/her rights; and
  - c. A copy of the Complaint policy and Complaint Form.
6. If the Division component does not maintain the requested PHI, then the denial must inform the individual where to direct the request for access, if known.
7. If the individual appeals the denial then the appeal must be reviewed by a licensed health care professional who was not directly involved in the original request to review the decision to deny access. The review of denial must be provided in accordance with the provisions of the HIPAA Privacy Rule.

8. The Division component must document all actions covered in the requests for access and denial of access.

### **C. Right to Accounting of Disclosures**

1. The individual/legal guardian has the right to request an “accounting of disclosures” other than for treatment, payment or health care operations.
2. The response will exclude disclosures we may have made to the individual/legal guardian, to persons involved in their care, for a facility directory, or for notification purposes.
3. The individual/legal guardian has a right to receive specific information regarding disclosures that occur after April 14, 2003.
4. The first list requested within a 12-month period will be free. For additional lists, the Division component may charge for the costs of providing the list. Costs will be in accordance with the fee schedule as provided in Division Circular 30.
5. The Division component will notify the requestor of the cost involved to allow the requestor to withdraw or modify the request before any costs are incurred.
6. Refer to DC53A, Uses and Disclosures Policies, Appendix B, Accounting of Disclosures Policy.

### **D. Right to Inspection**

1. The individual or his or her legal guardian has the right to request an opportunity to review the record or to have copies of the record. Records of a person receiving services shall be open to inspection by other persons upon receipt of written authorization by the person receiving services, if a competent adult, or the legal guardian of an incompetent adult or minor. (N.J.A.C. 10:41-2.10(d), Division Circular 30).
  - a. All requests shall be made in writing.
  - b. The Division shall respond to that request within 30 business days. In that response, the party making the request shall be advised:
    - i. If the requested records can be released;
    - ii. When the records will be available or sent;
    - iii. The costs of producing those records.
2. The individual making the request may modify or withdraw the request based upon the costs of producing the record.

### **E. Right to Request Restrictions (Form: DC53B-4)**

The individual or guardian has the right to request a restriction or limitation on the medical information the Division uses or discloses for treatment, payment or health care

operations. The individual or his or her legal guardian also have the right to request a limit on the medical information disclosed to someone who is involved in his or her care, the payment for his or her care or a family member or friend.

1. Requests for a restriction shall be provided on the "Request to Restrict Use and Disclosure of Protected Health Information Form" (DC53B-4) and submitted to the Privacy Officer. The form must be complete.
2. The request must indicate:
  - a. The information to be limited;
  - b. Whether the Division's use, disclosure or both are limited;
  - c. To whom the limits apply.
3. The Division may disagree. The Division may deny a request it determines is needed for treatment, payment or operation effectiveness. Denial for other reasons shall be stipulated in writing. The Division shall respond to such requests within 30 calendar days.
4. If the Division agrees, the Division will comply with the request unless the information is needed to provide emergency treatment.

#### **F. Right to Request Amendments (Form: DC53B-5)**

An individual has the right to request an amendment to the medical information in the designated record set.

1. The request shall be made in writing to the Privacy Officer. The request shall be submitted on the "Request for Amendment to Medical Record Form" (DC53B-5).
  - a. The Division component must notify the individual if their request for an amendment is accepted or denied, no later than 60 days after receipt of the request.
  - b. If the Division component is unable to act on the amendment within the 60 days, the Division component may extend the time for such action by no more than 30 days, provided that:
    - i. The Division component provides the individual with a written statement of the reasons for the delay and the date by which the Division component will complete its action on the request; and
    - ii. The Division component may have only one such extension of time for action on a request for an amendment.
2. The Division may deny the request if:
  - a. it is not in writing;
  - b. there is no reason given for the request;
  - c. the record was not created by the Division, unless the person or entity that created the information is no longer available to make the amendment;

- d. the record is not part of the medical information kept by the Division;
  - e. the record is not part of the information which may be inspected or copied by the individual; or
  - f. the record is accurate and complete.
3. Accepting the amendment. If the Division component accepts the requested amendment, in whole or in part, it must comply with the following requirements:
- a. The Division component must make the appropriate amendment to the protected health information or record that is the subject of the request by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
  - b. The Division component must inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the Division component notify the relevant persons with which the amendment needs to be shared.
  - c. The Division component must make reasonable efforts to inform and provide the amendment within a reasonable time to:
    - i. Persons identified by the individual as having received protected health information about the individual and needing the amendment; and
    - ii. Persons, including business associates, that the Division component knows have the protected health information that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.
4. Denying the amendment. If the Division component denies the requested amendment, in whole or in part, the Division component provide the individual with a written notice of denial within 60 days. The denial must use plain language and contain:
- a. The basis for the denial;
  - b. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
  - c. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the Division component provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment; and
  - d. A description of how the individual may submit a complaint. The description must include the name, or title, and telephone number of the DHS Privacy Officer.
5. Statement of disagreement. The Division component must permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The Division component may reasonably limit the length of a statement of disagreement. If a statement of disagreement has been submitted by the individual, the Division component must include the material appended, or an accurate summary of any such information, with any subsequent disclosure of the protected health information to which the disagreement relates.

6. Rebuttal statement. The Division component may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the Division component must provide a copy to the individual who submitted the statement of disagreement.
7. Actions on notices of amendment. A Division component that is informed by another Division component of an amendment to an individual's protected health information, must amend the protected health information in designated record sets.
8. Documentation on all actions in response to a request for an amendment must be maintained in the client record for a period of six (6) years or in accordance with the NJ General Records Retention Schedule. All amendments made shall be reflected in both paper and electronic records.

## **G. Right to Request Confidential Communication**

The individual or his or her legal guardian has the right to request that the Division communicate about medical matters in a certain way or at a certain location. All such requests shall be made in writing to the Privacy Officer.

## **H. Waiver of Rights**

A Division component may not require individuals/legal guardians to waive their rights as described in this policy as a condition of treatment, payment or health care operations.

## **I. Personal Representatives**

1. Personal Representative means a person who has legal authority, under State or applicable law, to act on behalf of an individual in making health care decisions.
2. All Division components must adhere to NJSA 30:4.24.3, in determining the personal representative for an individual. Individuals of the Division, who are age 18 and older, are considered their own guardians unless they have been adjudicated incompetent in a court of law. The legal guardian must submit proof of their legal status before protected health information can be shared with them.
3. If the individual is their own guardian, a written authorization is required to allow other individuals, including parents, access to protected health information. (Refer to Authorization for Family and Involved Persons)
4. All Division components must ensure that documentation of the guardianship status is current and maintained in the client record.

## **J. Minors**

Parents are presumed to be the personal representatives of minor children with full access and control of PHI of those children except:

1. If the minor can obtain a particular health service without parental consent under state or other applicable law, the minor can request confidential communication.

2. If the parent has agreed to the minor obtaining confidential treatment, the minor can control access to the PHI.
3. If the provider of the service is concerned about abuse or harm to the child, the provider can refuse to release PHI.

**K. Complaint Policy (DC53B, Appendix A, Form: DC53B-A6)**

1. Each individual/legal guardian has the right to file a complaint if they believe that their privacy has been violated.
2. The individual/legal guardian has a right to receive a copy of the Division's Complaint Policy and Complaint Form, upon request.
3. Complaints are to be directed to the Department of Human Services HIPAA Privacy Officer for handling.
4. Complaints may also be filed with the US Department of Health and Human Services.

**L. Existing Regulations/Policy**

- ◆ Division Circular 53, HIPAA Administrative Policies and Procedures
- ◆ Division Circular 53A - HIPAA Uses and Disclosures 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

**M. Relevant Documents**

- ◆ Notice of Privacy Practices and Acknowledgement Form (Form: DC53B-2)
- ◆ Request for Restrictions Form - DC53B-4
- ◆ Request for Amendment Form - DC53B-5
- ◆ Complaint Policy - DC53B, Appendix A
- ◆ DHS Complaint Form - DC53B-A6

Signed by JWS on 3/31/03, original on file  
James W. Smith, Jr.  
Director