



Policies and Procedures

Subject: HIPAA Sanctions
Policy Number: HIPAA 3.4
Effective Date: 12/18/03
Entity Responsible: Division of General Counsel
Revision Date: 1/18/2023

1. Purpose:

To provide instructions to the staff of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS or Department) and the Regional Mental Health Institutes (RMHIs) on how to discipline a member of the TDMHSAS and RMHI workforce for failure to comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and other state and federal laws or TDMHSAS HIPAA Policies and Procedures.

2. Policy:

All members of the TDMHSAS and RMHI workforce are subject to discipline for failure to comply with federal or state law, rules, or regulations as related to privacy and the TDMHSAS HIPAA Policies and Procedures.

3. Procedures/ Responsibilities:

- 3.1: The supervisor of any TDMHSAS or RMHI workforce member who is found to have violated HIPAA or TDMHSAS HIPAA Policies and Procedures is responsible for recommending the appropriate level of discipline in accordance with TDMHSAS' personnel rules, policies, procedures, and guidelines.
- 3.2: Each new member of the TDMHSAS and the RMHIs workforce must be aware of and trained on HIPAA, Title 42, U.S.C., Section 290dd-2(g), T.C.A. Title 33 and TDMHSAS HIPAA Policies and Procedures. Additionally, all members of the TDMHSAS and the RMHIs workforce must be aware of and trained on material changes to HIPAA, other relevant state and federal laws and TDMHSAS HIPAA Policies and Procedures. Employees who violate the above-mentioned laws,

policies, and procedures may be warned (written or verbal), suspended, transferred, demoted, or terminated, depending on the nature or severity of the violation.

- 3.3: All members of the TDMHSAS workforce must also be trained on Tennessee's confidentiality laws related to information identifying a service recipient or former service recipient receiving mental health services. Members who violate Tennessee's confidentiality laws related to identifying information of a service recipient may be warned (written or verbal), suspended, transferred, demoted, or terminated, depending on the nature or severity of the violation. All workforce members must be taught that any disclosure of this confidential information in violation of T.C.A. §§33-3-103 through 33-3-115 is a Class C misdemeanor.
- 3.4: The TDMHSAS may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual or other person for:
 - (a): Filing of a complaint under HIPAA;
 - (b): Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or
 - (c): Opposing any act or practice made unlawful under HIPAA, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of protected health information in violation of HIPAA.
- 3.5 The TDMHSAS is not considered to have violated the requirements of HIPAA if a member of its workforce or a business associate discloses protected health information, provided that:
 - (i): The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the TDMHSAS potentially endangers one or more patients, workers, or the public; and
 - (ii): The disclosure is to:
 - (A): A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the TDMHSAS or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or
 - (B): An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce

member or business associate with regard to the conduct described in paragraph (i) of this section.

(1): The TDMHSAS is not considered to have violated the requirements of HIPAA if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i): The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii): The protected health information disclosed is limited to the information listed in 45 CFR §164.512(f)(2)(i).

3.6: Incidents of any HIPAA policy or procedure violations and discipline taken against anyone in the TDMHSAS central-office workforce must be reported to the TDMHSAS Privacy Officer. Incidents of any policy or procedure violations and discipline taken against the RMHI workforce must be reported to the RMHI Privacy Officer, who will report this information to the TDMHSAS Privacy Officer

3.7: Violations of TDMHSAS HIPAA policies and procedures and resulting discipline actions must be documented and maintained by either the TDMHSAS Privacy Officer or the RMHI Privacy Officer in a written or electronic log system for at least six (6) years from the date of any violation by the workforce member.

4. Other Considerations:

4.1: Authority

45 C.F.R. §§164.502(j), 164.530(b)(1), (e)(1), (g), (j)(1), 160.306; 42 C.F.R. Part 2; and T.C.A. § 33-3-103 through 115.

Approved:



Commissioner

1-18-2023

Date