



Policies and Procedures

Subject: Uses and disclosures requiring an opportunity for the individual to agree or to object.

Policy Number: HIPAA 4.5

Effective Date: 6/21/04

Entity Responsible: Division of General Counsel

Revision Date: 1/18/2023

1. Purpose:

The purpose of this policy is to set guidelines that the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) or applicable Regional Mental Health Institute (RMHI) must follow in uses and disclosures of protected health information (PHI) for which an authorization is required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and relevant state and federal laws.

2. Policy:

- 2.1: It is the policy of the TDMHSAS Central Office and RMHIs not to use or disclose PHI except as permitted or required by HIPAA regulations, and other relevant federal and state laws.
- 2.2: Prior to using or disclosing PHI, all members of the TDMHSAS workforce shall ensure that the use or disclosure is consistent with both federal and state law. If the member of the workforce is unsure whether the use or disclosure is consistent with both federal and state law, the member of the workforce shall consult with the TDMHSAS Division of General Counsel and the applicable Privacy Officer.
- 2.3: When disclosing PHI or requesting PHI, TDMHSAS and the RMHI must comply with the minimum necessary standard in all uses, disclosures, or requests of PHI. *See TDMHSAS HIPAA Policy 4.7.*

- 2.4: The TDMHSAS or RMHIs may use or disclose PHI, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of HIPAA as detailed under this policy. The TDMHSAS or RMHI may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by HIPAA.
- 2.5: Use and disclosure for facility directories: The TDMHSAS or RMHI may use the following PHI to maintain a directory of individuals in its facility:
- 2.5.1: The individual's name;
 - 2.5.2: The individual's location in the TDMHSAS or RMHI facility;
 - 2.5.3: The individual's condition described in general terms that does not communicate specific medical information about the individual; and
 - 2.5.4: The individual's religious affiliation; and
 - 2.5.5: Use or disclose for directory purposes such information:
 - (a): To members of the clergy; or
 - (b): Except for religious affiliation, to another person who asks for the individual by name.
- 2.6: The TDMHSAS or RMHIs must inform an individual of the PHI that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy or information regarding religious affiliations) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph 2.5 of this policy.
- 2.7: Emergency circumstances: If the opportunity to object to uses or disclosures required by paragraph 2.5 of this policy cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, the TDMHSAS or RMHIs may use or disclose some or all of the PHI permitted by paragraph 2.5 of this policy for the facility's directory, if such disclosure is:
- 2.7.1: Consistent with a prior expressed preference of the individual, if any, that is known to the TDMHSAS or RMHIs; and
 - 2.7.2: In the individual's best interest based on a good faith belief of the TDMHSAS or RMHI.
 - 2.7.3: The TDMHSAS or RMHI must inform the individual and provide an opportunity to object to uses or disclosures for directory

purposes as required by paragraph 2.2 of this policy when it becomes practicable to do so.

2.8: Permitted uses and disclosures:

2.8.1: The TDMHSAS or RMHI may, in accordance with paragraph 2.9, 2.10, or 2.11 of this policy, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the PHI directly relevant to such person's involvement with the individual's health care or payment related to the individual's health care.

2.8.2: The TDMHSAS or RMHI may use or disclose PHI to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of PHI for such notification purposes must be in accordance with paragraph 2.9, 2.10, 2.11 or 2.12 of this policy.

2.9: If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph 2.8 of this policy and has the capacity to make health care decisions, the TDMHSAS or RMHI may use or disclose the PHI if it:

2.9.1: Obtains the individual's agreement;

2.9.2: Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

2.9.3: Reasonably infers from the circumstances, based on a good faith belief, that the individual does not object to the disclosure.

2.10: If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the TDMHSAS or RMHI may, based on a good faith belief that the disclosure is in the best interests of the individual, disclose only the PHI that is directly relevant to the person's involvement with the individual's care or payment related to the individual's health care or that is needed for notification purposes. The TDMHSAS or RMHI may make reasonable inferences of the individual's best interests in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

2.11: The TDMHSAS or RMHI may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph 2.8 of this policy. The requirements in paragraphs 2.9, 2.10, or 2.12 of this policy

apply to such uses and disclosures to the extent that the TDMHSAS or RMHI, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

- 2.12: If the individual is deceased, the TDMHSAS or RMHI may disclose to a family member, or other persons identified in paragraph 2.8 of this policy who were involved in the individual's care or payment for health care prior to the individual's death, PHI of the individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the TDMHSAS or RMHI.

3. Procedure/ Responsibility:

- 3.1: The TDMHSAS Privacy Officer and the RMHI Privacy Officers are responsible for ensuring that the HIPAA requirements under this policy are followed department wide.
- 3.2: The RMHI Privacy Officers shall consult with the TDMHSAS Privacy Officer with any questions about the HIPAA requirements under this policy and determining when a use, disclosure or request applicable to this policy is necessary.
- 3.4: For each disclosure request the TDMHSAS or the RMHIs receive, an employee, in consultation with the TDMHSAS Privacy Officer or RMHI Privacy Officer, shall verify the identity of the requestor consistent with TDMHSAS HIPAA Policy 4.7, look at the facts and circumstances surrounding the disclosure request and determine whether the individual whose PHI is to be disclosed shall have an opportunity to object to the disclosure as set forth in this policy. Employees whose jobs require the use and disclosure of PHI under this policy must review each request and exclude any of the following direct identifiers to limit the use or disclosure to what is reasonably necessary. The following list is not exhaustive, and removal of these direct identifiers should be done in consultation with the TDMHSAS Privacy Officer or RMHI Privacy Officer, as applicable.
 - 3.4.1: Full name. If name is necessary for use or purpose of the disclosure, use the last name and first name initial. The use of first name and last name initial is acceptable in common areas of the RMHI (e.g., where names of service recipients are posted on room doors etc.);
 - 3.4.2: Postal address, telephone number, fax number, or e-mail address;
 - 3.4.3: Social security number, account numbers, health plan beneficiary number, medical record numbers;
 - 3.4.4: Certificate or license numbers;
 - 3.4.5: Vehicle identifiers or serial numbers, including license plate numbers;

- 3.4.6: Names, addresses, telephone numbers, fax number, or email addresses of relatives, friends;
 - 3.4.7: Full face photographic images and any comparable images;
 - 3.4.8: Biometric identifiers, including DNA, fingerprints or voice prints; and
 - 3.4.9: Web Universal Resource Locators (URLs) or Internet Protocol (IP) address numbers.
- 3.5: For any type of use, disclosure, request that the TDMHSAS or the RMHI receives or makes on a routine and recurring basis, the TDMHSAS Privacy Officer or the RMHI Privacy Officer shall work with the employees responding to or making such requests to implement policies or procedures (which may be standard protocols) that comply with this policy and that limit the PHI to the amount reasonably necessary to achieve the purpose of the use, disclosure, or request.


4. Other Considerations:

- 4.1: Authority:
45 CFR §164.510.

Approved:



Commissioner



Date