

DEPARTMENT OF MENTAL HEALTH

POLICIES AND PROCEDURES

Subject:
**VERIFYING THE IDENTITY AND
AUTHORITY OF THE PERSON REQUESTING
DISCLOSURE OF PROTECTED HEALTH
INFORMATION (PHI)**

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Entity Responsible:
Office of
Legal Counsel

1. **Purpose:**

This policy provides instruction and guidance on verifying the identity and authority of a person requesting the use or disclosure of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, the Tennessee Code Annotated, and other relevant Federal and State laws.

2. **Definitions:**

- 2.1 **Conservator/Co-Conservator:** A person or persons appointed by the court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a disabled person.
- 2.2 **Guardian/Co-Guardian (of a Minor Child):** A person or persons appointed by the court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a minor.
- 2.3 **Guardian *ad litem*:** A person meeting the qualifications set forth in Tenn. Code Ann. §34-1-107(c) [generally a lawyer licensed to practice in Tennessee] appointed by the court to represent the respondent (a minor or a person alleged to be a disabled person for whom a guardian/co-guardian or conservator/co-conservator is being sought); and to perform the duties set forth in Tenn. Code Ann. §34-1-107(d).
- 2.4 **(Legal) Custodian of a Minor Child:** A person, other than a parent or legal guardian, who stands *in loco parentis* to the child or a person to whom temporary legal custody of the child has been given by order of a court.
- 2.5 **Legal Representative:** A legal representative can be one of the following:
 - 2.5.1 The conservator of a service recipient or former service recipient;
 - 2.5.2 An attorney in fact for a service recipient or former service recipient under a power of attorney who has the right to make disclosures under the power;

- 2.5.3 A parent of a minor child service recipient or former service recipient;
 - 2.5.4 A guardian of a minor child service recipient or former service recipient;
 - 2.5.5 A legal custodian of a minor child service recipient or former service recipient;
 - 2.5.6 A guardian *ad litem* of a service recipient or former service recipient for the purposes of the litigation in which the guardian *ad litem* serves;
 - 2.5.7 The treatment review committee for a service recipient who has been involuntarily committed;
 - 2.5.8 The executor or administrator (sometimes referred to as “personal representative”) of the estate of a deceased service recipient;
 - 2.5.9 A temporary caregiver of a service recipient under Tenn. Code Ann. §34-6-302; or
 - 2.5.10 The guardian of a service recipient or former service recipient as defined in the Uniform Veteran’s Guardianship Law at Tenn. Code Ann. §34-5-102.
 - 2.5.11 Please note that a care giver (also care provider), as defined in Tenn. Code Ann. §§ 37-5-501(1) and 71-3-501(1), is **not** included as a “legal representative”. By definition, a care giver (also care provider) is a person or persons, an entity or entities, responsible for providing for the supervision, protection, and basic needs of a child, mostly with respect to child care agencies and children’s services programs. A care giver is **not** authorized to act as a legal representative of a DMH service recipient.
- 2.6 Minor Child: A child is defined at Tenn. Code Ann. (TCA) §33-1-101 as a person under eighteen (18) years of age BUT SEE TCA §33-8-202 that states if a child with serious emotional disturbance or mental illness is sixteen (16) years of age or older, the child has the same rights as an adult with respect to, among other things, confidential information; AND SEE TCA §33-3-104 that lists a service recipient sixteen (16) years of age and over as one of the persons authorized to consent to disclosure of confidential information.
- 2.7 Protected Health Information (PHI): Individually identifiable health information [IIHI] which is information that is a subset of health information, including demographic information collected from an individual, and created or received by a health care provider, health plan, employer, 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 that identifies the individual or there is a reasonable basis to believe the information can be used

to identify the individual; and that is transmitted or maintained in electronic media, or any other form or medium. Specifically excluded from this definition is IHI contained in education records covered by the Family Educational Rights and Privacy Act (20 USC §1232g) and IHI contained in employment records held by a covered entity in its role as employer.

- 2.8 Service Recipient: A person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has a mental illness, serious emotional disturbance, or a developmental disability.

3. Policy:

3.1 Verify Identity and Authority of Person Requesting Disclosure of PHI; Obtain Documentation; File Documentation; and Seek Assistance When Necessary.

3.1.1 Before disclosing any PHI, employees of the Department of Mental Health (DMH) and each Regional Mental Health Institute (RMHI) must verify the identity of any person requesting the disclosure of PHI, and the authority of that person to have access to the PHI, if the identity or authority of the person is not known to the employee;

3.1.2 Obtain the necessary documentation from the person requesting disclosure of PHI; and

3.1.3 File originals if available, or copies if originals are not available, of all requests, authorizations, and supporting documentation in the medical record of the person whose PHI has been requested or disclosed. Records must be preserved as described in Subsection 4.6.3.

3.1.4 Seek assistance when necessary. The methods listed below to verify identity and authority are not all-inclusive. If problems are encountered, please consult with the RMHI Privacy Officer, or the RMHI attorney, or the Central Office Compliance Privacy Officer as needed to make a decision **before** disclosing PHI.

4. Procedure/Responsibility:

- 4.1 When request is received. When a DMH/RMHI employee receives a request for disclosure of PHI, the employee shall forward the request to the Privacy Officer/designee. If a verbal request is received, the employee must inform the individual that State law requires the request to be in writing. The written request must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance). If the disclosure of PHI requires consent from the service recipient, or former service recipient, whose records are being requested, the employee shall either provide the person requesting the disclosure of PHI with a copy of the DMH's Authorization to Release Information form (MH-5025) or direct the person to the

DMH's website where the form can be obtained. **IF** the requestor presents a written Authorization to Release Information form other than DMH's form, the form **must** be checked for validity and compliance with federal and state law in consultation with the RMHI Privacy Officer, or the RMHI facility attorney, or the Central Office Privacy Compliance Officer prior to accepting the form and disclosing the requested PHI.

4.2 Verifying identity. The Privacy Officer/designee must verify the identity of the person requesting disclosure of PHI if the identity of the person is not known to the Privacy Officer/designee.

4.3 Acceptable methods of verifying identity. Acceptable methods of verifying identity for particular requestors include:

4.3.1 If requestor is a service recipient or former service recipient. If a service recipient, or former service recipient, makes an in-person request for disclosure of his or her PHI, the service recipient, or former service recipient, must show a driver's license or other valid picture identification, and provide his or her date of birth and social security number as acceptable verification of identity. If a service recipient, or former service recipient, makes a request for disclosure of his or her PHI by postal mail, fax, or e-mail, the document received must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance). The service recipient, or former service recipient, may be contacted by telephone or letter and be asked to provide copies of his or her driver's license or other valid picture identification, and to provide documentation showing his or her date of birth and social security number as acceptable verification of identity.

4.3.2 If requestor is a parent, legal guardian, legal custodian, or legal representative of the service recipient or former service recipient. If a parent, legal guardian, legal custodian, or legal representative as defined in this Policy, makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must show his or her driver's license or other valid picture identification, and appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and, when required (i.e., if legal guardian, legal custodian, or legal representative), appropriate documents to show his or her authority to act on behalf of the service recipient, or former service recipient, as acceptable verification of identity. If a parent, legal guardian, legal custodian, or legal representative makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the document received must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance). The parent, legal guardian, legal custodian, or legal representative may be contacted by telephone or letter and be asked to provide copies of his or

her driver's license or other valid picture identification, and appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and, when required (i.e., if legal guardian, legal custodian, or legal representative), appropriate documents to show his or her authority to act on behalf of the service recipient, or former service recipient, as acceptable verification of identity.

- 4.3.3 If requestor is a public official. If a public official makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must show his or her agency identification card, badge, or other proof of government employment as acceptable verification of identity. If a public official makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance) and be on the appropriate government letterhead as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMH's Authorization to Release Information form (MH-5025) or be directed to the DMH's website where the form can be obtained.
- 4.3.4 If requestor is person acting on behalf of a public official. If a person acting on behalf of a public official makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must provide a written statement on government letterhead that the person is acting under the government's authority, or other documentation that establishes that the person is acting on behalf of the public official, as acceptable verification of identity. If a person acting on behalf of a public official makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance) and be accompanied by a written statement on government letterhead that the person is acting under the government's authority, or other documentation that establishes that the person is acting on behalf of the public official, as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMH's Authorization to Release Information form (MH-5025) or be directed to the DMH's website where the form can be obtained.
- 4.3.5 If requestor is any person other than those specified in Subsections 4.3.1, 4.3.2, 4.3.3, and 4.3.4. If a person other than those specified in Subsections 4.3.1, 4.3.2, 4.3.3, and 4.3.4 makes an in-person request for

disclosure of a service recipient's, or former service recipient's, PHI, the individual must show a driver's license or other valid picture identification and, when required (i.e., requestor is someone other than parent), appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and, when required (i.e., relationship is something other than parent), appropriate documents to show his or her authority to act on behalf of the service recipient, or former service recipient, as acceptable verification of identity. If a person other than those specified in Subsections 4.3.1, 4.3.2, 4.3.3, and 4.3.4 makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet the same requirements of a valid authorization (see the DMH's Authorization to Release Information form (MH-5025) for guidance). The individual may be contacted by telephone or letter and be asked to provide copies of his or her driver's license or other valid picture identification, and, when required (i.e., requestor is someone other than parent), appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and, when required (i.e., relationship is something other than parent), appropriate documents to show his or her authority to act on behalf of the service recipient, or former service recipient, as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMH's Authorization to Release Information form (MH-5025) or be directed to the DMH's website where the form can be obtained.

- 4.4 Verifying authority. In addition to verifying the identity of the person requesting disclosure of PHI, the Privacy Officer/designee must verify that the person has the authority to have access to the PHI.
- 4.5 Acceptable methods of verifying authority. Acceptable methods of verifying authority for particular requestors include:
 - 4.5.1 If requestor is service recipient or former service recipient. If the person requesting disclosure of PHI is the service recipient or former service recipient, after identity has been confirmed, authority does not have to be verified since a service recipient and former service recipient each has a statutory right to access, review, and copy his/her own PHI under certain circumstances. (See DMH's Policy HIPPA 04-7: *Right to Access and Amend Protected Health Information (PHI) and Preservation of Records*)
 - 4.5.2 If requestor is a parent, legal guardian, legal custodian, or legal representative of the service recipient or former service recipient. If the person requesting disclosure of PHI is the service recipient's, or former service recipient's, parent, legal guardian, legal custodian, or legal representative as defined in this Policy, the authority to receive PHI may

be verified by: (1) requiring the parent to show a driver's license or other picture identification, and asking for the date of birth or social security number of the service recipient, or former service recipient; and (2) requiring the legal guardian, legal custodian, or legal representative to show appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and stating his or her authority to act on the service recipient's, or former service recipient's, behalf.

4.5.3 If requestor is a public official, a person acting on behalf of a public official, or a law enforcement official. If the person requesting disclosure of PHI is a public official, a person acting on behalf of a public official, or a law enforcement official, the authority to access PHI may be verified by viewing a court order or other sufficient legal process under which the request is made.

4.5.4 Subpoena alone insufficient. Under Tennessee law, a subpoena alone is not sufficient authority to release PHI. The RMHI Privacy Officer, or the RMHI attorney, or the Central Office Privacy Compliance Officer must be consulted **before** PHI is disclosed when disclosure of PHI involves public officials, those acting on behalf of public officials, or law enforcement officials. The exceptions to these general rules are addressed in DMH's Policy HIPAA 04-6: *Uses and Disclosures of Protected Health Information (PHI) for Law Enforcement Purposes.*

4.5.5 If requestor is any person other than those specified in Subsections 4.5.1, 4.5.2, and 4.5.3. If the person requesting disclosure of PHI is any person other than those specified in Subsections 4.5.1, 4.5.2, and 4.5.3, the authority of the individual to access PHI must be verified in consultation with the RMHI Privacy Officer, or the RMHI attorney, or the Central Office Privacy Compliance Officer by reviewing documentation provided by the person as verification of authority to access PHI. Examples of acceptable documentation include, but are not limited to, court orders or other sufficient legal documents.

4.6 Documentation and Preservation of Records.

4.6.1 All disclosures of PHI must be recorded on a disclosure log kept in the medical record of the person whose PHI was disclosed. (See DMH's Policy HIPAA 04-8: *Accounting of Disclosures of Protected Health Information (PHI)*)

4.6.2 Any and all documentation created, collected, etc. in carrying out the provisions of this Policy (originals if available, copies if originals are not available) must be filed in the medical record of the person whose PHI was requested or disclosed.

4.6.3 Preservation of Records.

4.6.3.1 All records must be preserved for a minimum of ten (10) years after the service recipient was discharged from the facility or ended treatment, whichever is later, UNLESS (see Subsection 4.6.3.3)

4.6.3.2 Records of service recipients or former service recipients who ended their treatment or were discharged before reaching the age of eighteen (18) years should be preserved for ten (10) years after the eighteenth (18th) birthday, UNLESS (see Subsection 4.6.3.3)

4.6.3.3 **IF** any record is under a litigation hold, or subject to someone else's Records Disposition Authority (RDA) (i.e., Department of Correction, Department of Childrens' Services, Department of Health), the record will need to be kept in accordance with the requirements of the litigation hold or the other RDA. Consult with the RMHI attorney or Central Office's Office of Legal Counsel to determine whether any record is under a litigation hold or subject to someone else's RDA **before** destroying any record.

5. Other Considerations:

DMH Policies HIPAA 04-6: *Uses and Disclosures of Protected Health Information (PHI) for Law Enforcement Purposes*; HIPAA 04-7: *Right to Access and Amend Protected Health Information (PHI) and Preservation of Records*; HIPAA 04-8: *Accounting of Disclosures of Protected Health Information (PHI)*; and DMH Records Disposition Authority (RDA) 2305.

Authority:

Health Information Portability and Accountability Act of 1996 (HIPAA); HIPAA Privacy and Security Regulations at 45 CFR §§160.103 and 164.514(h)(1); Confidentiality of Alcohol and Drug Abuse Patient Records as regulated in 42 CFR Part 2; Tenn. Code Ann. §§ 33-1-303 and 33-3-104; Tenn. Code Ann. §33-8-202; Tenn. Code Ann. §§ 34-1-101(4), 34-1-101(10), 34-1-101(11), 34-5-102 and 34-6-301 through 34-6-310; Tenn. Code Ann. §§ 37-1-102(7) and 37-5-501(1); Tenn. Code Ann. §71-3-501(1).

Approved:



Commissioner

1/29/11

Date