

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

POLICIES AND PROCEDURES

Subject:
USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION FOR LAW ENFORCEMENT PURPOSES

Effective Date:
6/21/04

Policy Number:
HIPAA 04-6

Review Date:
5/26/06
Revision Date:
6/22/06

Entity responsible:
Office of
Legal Counsel

1. **Purpose:**

This policy provides instructions and guidelines for uses and disclosures of protected health information (PHI) for law enforcement purposes in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and under Tennessee Code Annotated.

2. **Policy:**

- 2.1 The Department of Mental Health and Developmental Disabilities (DMHDD) shall disclose PHI or make PHI available for law enforcement purposes or to elected officials, only as required by law.
- 2.2 The DMHDD must disclose PHI or make PHI available for use for law enforcement purposes under the following circumstances: (1) to a government authority or agency about an individual any employee reasonably believes is the victim of abuse, including sexual abuse, neglect, mistreatment, or believes is in imminent danger of harm (*See DMHDD HIPAA Policy 04-4, "Uses and Disclosures of PHI Regarding Victims of Abuse, Neglect or Mistreatment"*); (2) in the course of a judicial or administrative proceeding in response to an order of a court or an administrative body; or (3) a law enforcement official for certain law enforcement purposes.
- 2.3 Tennessee courts do not recognize out-of-state court orders unless the order has been domesticated in a Tennessee court by the party seeking to enforce the court order, pursuant to the Uniform Enforcement of Foreign Judgments Act, Tenn. Code Ann. §§ 26-6-101, *et seq.* Tennessee courts do recognize orders of all federal courts.
- 2.4 PHI must be disclosed without a court order, subject to certain limitations, to authorized federal officials for national security purposes, including intelligence,

armed forces, public health, or protective services for the President of the United States, if the DMHDD Central Office or Regional Mental Health Institute (RMHI) Privacy Officer or designee, reasonably believes PHI disclosure would prevent or lessen a serious and imminent threat of harm to a person or to the public.

3. Procedure/Responsibility:

- 3.1 The RMHI Privacy Officer or designee, must consult with the RMHI staff attorney concerning PHI disclosure or use requests received at the RMHI from law enforcement officials such as county sheriffs, the Tennessee Bureau of Investigation (TBI) or Federal Bureau of Investigation (FBI) agents; or from attorneys, to determine whether requested PHI may be disclosed or made available for use. If such requests occur at the DMHDD Central Office, the DMHDD Privacy Officer in the Office of Legal Counsel must be consulted.
- 3.2 In instances concerning allegations of abuse, including sexual abuse, neglect or mistreatment, any DMHDD Central Office or RMHI employee who receives a request for use or disclosure of PHI from the Department of Children's Services (DCS), the Department of Human Services (DHS), the TBI, the FBI, sheriff, law enforcement, or other official authorized to receive such information, must immediately, or as soon as practicable, refer the request to the DMHDD Central Office Privacy Officer or designee, or if the request occurs at an RMHI, to the RMHI Privacy Officer or designee and to the RMHI staff attorney.
- 3.3 The RMHI must disclose allegations of felonious sexual offenses or bodily harm that appear to have been committed on RMHI premises to a law enforcement agency having jurisdiction.
- 3.4 If the DMHDD Central Office or RMHI Privacy Officer or designee or RMHI staff attorney determines PHI should be released to a law enforcement or other official, PHI must be released within ten (10) working days from the date of request. If PHI release is not appropriate, the DMHDD Central Office or RMHI must notify the requesting party within ten (10) working days from the date of request. The notification will come from the office or facility receiving the request.
- 3.5 The DMHDD Central Office or RMHI Privacy Officer or designee must assure all disclosures made are documented in the log of disclosures. HIPAA requires that such logs be kept for a minimum of six (6) years. The documentation will be kept at the office or facility where disclosure was made.
- 3.6 When a service recipient is transferred to an RMHI from the Department of Correction (DOC), DCS, or is known to have come from a county detention facility, once the service recipient no longer meets criteria for care or treatment at

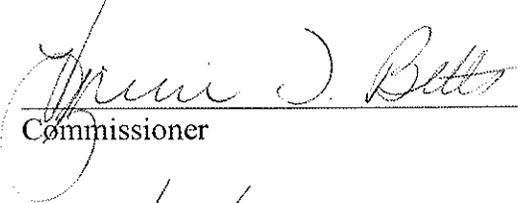
the RMHI, as determined by a licensed physician, the chief officer of the RMHI shall then order service recipient's return to DOC, DCS, or county detention facility, and make the service recipient's records available as needed, to the extent allowed by law.

4. Other Considerations:

Authority:

Health Information Portability and Accountability Act of 1996, Public Law 104-191; HIPAA Regulation 45 C.F.R. §§ 164.512(a)(1); 164.512(f); 42 C.F.R., Part 2; Tenn. Code Ann. §§ 26-6-101, *et seq.*, 33-1-303; 33-3-103 through 33-3-115; 37-1-102, 37-1-401, *et seq.*, 37-1-605; DMHDD HIPAA Policy 04-4.

Approved:



Commissioner

7/4/06

Date