



Health Care Finance & Administration Policy Manual

Policy Number: PRIV 16-007	
Policy Subject: Use and Disclosure of Personal Information	
Approved by: <i>[Signature]</i> ASD	Date: 6/3/16

PURPOSE OF POLICY

This policy addresses how the Division of Health Care Finance and Administration (HCFA) uses and discloses applicant and enrollee personal information, including but not limited to personally identifiable information (PII) and protected health information (PHI). HCFA must follow specific guidelines for both required and permitted disclosures pursuant to the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws and regulations.

POLICY

HCFA shall use and disclose enrollee PII or PHI whenever it is required by the Privacy Act, HIPAA and other federal and state laws and regulations. However, HCFA must seek authorization to use and disclose enrollee PII or PHI unless it is required or expressly permitted to use and disclose such information without prior consent. HCFA will provide enrollees with all the privacy rights granted by the Privacy Act, HIPAA and other federal and state laws and regulations.

DISCUSSION & LEGAL BASIS

Privacy laws outline how HCFA may use and disclose enrollee information, including when enrollee notice and approval is necessary. Generally, HCFA must seek authorization from an enrollee to use and disclose enrollee information when use or disclosure is not related to treatment, payment, and general healthcare operations activities.

Permitted Uses and Disclosures. Under HIPAA, HCFA may use or disclose PHI without an enrollee's prior consent for treatment, payment, and healthcare operations. Treatment activities include but are not limited to the provision of medical services, care coordination and case-management. Payment activities include but are not limited to eligibility determinations, billing, claims processing, and collections and medical necessity review. Health care operations

activities include but are not limited to quality improvement activities, medical review, credentialing and licensing, training operations, administrative functions, and fraud and abuse detection.

Required disclosures. Under HIPAA, HCFA must disclose PHI under several circumstances which include: to the enrollee when requested under applicable regulations and, to the Secretary of the Department of Health and Human Services to investigate or determine HCFA's compliance with HIPAA.

Uses and disclosures for which enrollee authorization is required. Except as described above, enrollee authorization is required for any use or disclosure of PHI and for any use or disclosure of PHI for marketing purposes.

If HCFA seeks an authorization form from an enrollee for a use or disclosure of enrollee PII or PHI, then HCFA must provide the enrollee with a copy of the signed authorization if requested.

Uses and disclosures requiring an opportunity for the enrollee to agree or to object (45 CFR §164.510). HCFA may orally inform an individual of or obtain the individual's oral agreement or objection to a use or disclosure permitted under HIPAA. There are two (2) circumstances where an opportunity for the enrollee to agree or to object to the use and disclosure of PHI:

- Use and disclosure for facility directories; and,
- Uses and disclosures for involvement in the individual's care and notification.

Uses and disclosures for which enrollee authorization or opportunity to agree or object is not required (45 CFR §164.512 and 5 U.S.C. §§ 552a). Authorization to use or disclose PII or PHI is not required under the following circumstances:

- Uses and disclosures required by law;
- Uses and disclosures for public health activities (or to facilitate public health investigations);
- Disclosures about victims of abuse, neglect or domestic violence;
- Uses and disclosures for health oversight activities (e.g. investigation by the DHHS and the Office of Civil Rights);
- Disclosures for judicial and administrative proceedings;
- Disclosures for law enforcement purposes;
- Uses and disclosures about decedents in certain circumstances;
- Uses and disclosures for cadaveric organs, eye or tissue donation purposes;
- Uses and disclosures for research purposes when authorization is waived by the institutional review board (IRB) or Privacy Board;
- Uses and disclosures to avert a serious threat to health or safety;
- Uses and disclosures for specialized government functions, especially to assure proper execution of a military mission, etc.; and,

- Disclosures for worker's compensation.

PROCEDURE

1. Appropriate HCFA staff shall determine whether authorization is required in order to respond to a request to use or disclose enrollee PII or PHI. Any questions regarding such a determination shall be forwarded to the HCFA Privacy Office.

- a) If a request for PII or PHI involves a permitted use and disclosure (e.g. for treatment, payment, or healthcare operations), then the information should be released.
- b) If a request for PII or PHI involves a required use and disclosure of PII or PHI, then the information should be released.
- c) If a request for PII or PHI involves a use and disclosure that requires enrollee authorization, then the proper written documentation and approval must be obtained before releasing the information.
- d) Whenever authorization is not required, HCFA staff should follow departmental procedures and log or account for the release of specified information to outside entities as applicable.

2. HCFA shall seek authorization from an enrollee to use and disclose enrollee PII or PHI and utilize the appropriate forms provided on HCFA's website (See "Permission to Release Information" form).

3. Authorization forms.

- a) Authorizations will be made utilizing the appropriate form approved by the HCFA Privacy Office and the Office of General Counsel, or equivalent.
- b) If HCFA requires a signed authorization form from an individual for a use or disclosure of PII or PHI, then HCFA must provide that individual with a copy of the signed authorization form, as requested.

4. The appropriate forms can be obtained from the HCFA website. When appropriate, HCFA may authenticate and verify the identity of an enrollee who calls requesting his or her own PII or PHI.

5. Each division within HCFA shall develop procedures related to the job functions of the employees that comply with the guidelines of HIPAA regarding uses and disclosures of enrollee PII or PHI.

6. Any questions regarding required and/or permitted uses and disclosures of enrollee PII or PHI should be directed to the HCFA Privacy Office.

DEFINITIONS

Enrollee: An individual currently enrolled in any category of TennCare Medicaid and TennCare Standard, including an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program pursuant to Sections 1115 or 1915 of the Social Security Act; and, for purposes of HCFA privacy policies, an individual who was previously an enrollee during a period for which there is a privacy request or compliance inquiry.

HIPAA: Health Insurance Portability and Accountability Act of 1996, for which administrative simplification, privacy and security regulations are codified at 45 CFR §§ 160-164.

The Privacy Act of 1974: A United States federal law, enacted December 31, 1974, and codified at 5 U.S.C. 552a which establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information.

Protected Health Information (PHI): Information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual and that:

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the physical or mental health or condition of an individual.

Personally Identifiable Information (PII): Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

OFFICE OF PRIMARY RESPONSIBILITY

HCFA Privacy and Public Records Office, Office of General Counsel

RELATED FORMS

Permission to Release Information <http://www.tn.gov/tenncare/forms/releaserecord.pdf>

REFERENCES

45 CFR § 164.501, 45 CFR § 164.502, 45 CFR § 164.506, 45 CFR § 164.508, 45 CFR § 164.512
The Privacy Act of 1974
5 U.S.C. §§ 552a (c)(3), (d)(5), (e) (4); (j), (k), (t)
OMB Circular A-130