



Policies and Procedures

Subject: Definitions for TDMHSAS HIPAA Policies and Procedures
Policy Number: HIPAA 3.1
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Entity Responsible: Division of General Counsel
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1. **Definitions for TDMHSAS HIPAA Policies and Procedures.** Additional definitions possibly relevant to these policies and procedures can be found at 45 CFR §§ 160.103, 164.103, 164.304, 164.402, 164.501, Title 42, U.S.C., Section 290dd-2(g) and T.C.A. §33-1-101. Please check these statutes to determine the most up-to-date definitions.

- 1.1: Access: The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.
- 1.2: Adult: A person eighteen (18) years of age or older.
- 1.3: Backup: Retrievable exact copy of PHI.
- 1.4: Breach: The acquisition, access, use, or disclosure of protected health information in a manner not permitted under HIPAA which compromises the security or privacy of the protected health information.
- 1.5: Business Associate: A person who on behalf of a covered entity (such as TDMHSAS or the RMHIs) creates, receives, maintains, or transmits protected health information for a function or activity regulated by HIPAA, including claims processing or administration, data/information analysis, processing, or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management, and repricing, or provides consulting, data/information aggregation, management, administrative, accreditation, or financial services to or for such covered entity where the provision of the service involves the disclosure of protected health information from such covered entity, or from another business associate of such covered entity. A member of the TDMHSAS or the RMHI workforce, whether an employee or a

volunteer, and who is under the direct supervision or control of the TDMHSAS or RMHI is not a business associate.

- 1.6: Business Associate Agreement: A contract or other written arrangement designed to provide satisfactory assurances from the business associate that it will appropriately safeguard a covered entity's protected health information in accordance with HIPAA privacy and security standards.
- 1.7: Conservator/ Co-Conservator: A person or persons or an entity appointed by the court to exercise the decision-making rights and duties of the person with a disability in one or more areas in which the person lacks capacity as determined and required by the orders of the court.
- 1.8: Correctional Institution: Any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.
- 1.9: Covered entity: A public or private agency or individual subject to HIPAA's privacy rules. Covered entities include health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction. The TDMHSAS is a covered entity, as are the RMHIs.
- 1.10: Data or Information Systems Custodian: The person(s) designated for each individual system shall: (1) Set up user access for new users and remove access when a user's employment is terminated or when users access is no longer appropriate. For an application, this person(s) would add users to the application system. (2) Be responsible for requesting any additional necessary access rights from STS. (3) Approve an individual's access to a database or system prior to that individual being given access to the ePHI data/information. (4) Serves as the primary operational contact for PHI information systems and is responsible for assuring that all HIPAA (and other applicable) regulations are accommodated.
- 1.11: Disaster Recovery: The process that enables an entity to restore availability of the systems required to make that information system's data/information and services available, in the event of an unanticipated cyber event, natural disaster, power outage, or other system failure which otherwise renders it unavailable in order to return to normal operations.

- 1.12: Electronic Media: Any device that can be used to electronically store data/information, including hard drives, any removable/transportable digital memory media, including but not limited to, diskettes, CDROM, DVD, magnetic tapes, optical disks, portable hard disks, flash drives, zip drives, digital memory cards, or networks used to move information already in electronic storage media such as internet, intranet, cloud-based storage, etc.
- 1.13: Electronic health record: An electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and their staff. Such clinicians shall include, but are not limited to, health care providers that have direct treatment relationships with individuals, such as physicians, nurses, pharmacists, and other allied health professionals. For purposes of this paragraph, "health-related information on an individual" covers the same scope of information as the term individually identifiable health information.
- 1.14: Emergency Mode Operation: The process that enables an entity to continue critical business functions in the event of ePHI data/information loss or system failure.
- 1.15: Facility: The physical premises and the interior and exterior of a building(s).
- 1.16: Financial remuneration: The direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.
- 1.17: 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.
- 1.18: 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).
- 1.19: Health Care Clearinghouse: A public or private entity that processes or facilitates the processing of health information received from another entity.
- 1.20: Health Care Provider: A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
- 1.21: Health Care Operations: Health care operations means any of the following activities of TDMHSAS to the extent that the activities are related to TDMHSAS functions:

- 1.21.1: Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
 - 1.21.2: Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
 - 1.21.3: Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
 - 1.21.4: Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
 - 1.21.5: Business management and general administrative activities of the entity, including, but not limited to: (i) Management activities relating to implementation of and compliance with the requirements of HIPAA; (ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer. (iii) Resolution of internal grievances; and (iv) Consistent with the applicable requirements of HIPAA, creating de-identified health information or a limited data set.
- 1.22: Health Information: Any information, including genetic information, whether oral or recorded in any form or medium, 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 past, present, future physical or mental health 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.
- 1.23: Health Insurance Portability and Accountability Act of 1996 (HIPAA) or HIPAA

Privacy Rule: Established national standards to protect individuals' medical records and other individually identifiable health information (collectively defined as "protected health information") and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.

- 1.24: Health Oversight Agency: An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe; or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.
- 1.25: Health Plan: An individual or group plan that provides or pays the cost of medical care.
- 1.26: Individually Identifiable Health Information: Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, future payment for provision of health care to an individual; and that information identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.27: Law Enforcement Official: an officer or employee or an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to investigate or conduct an official inquiry into a potential violation of the law; or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.
- 1.28: (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.
- 1.29: Legal Representative: A legal representative can be one of the following:
- 1.29.1: The conservator of a service recipient or former service recipient;
 - 1.29.2: 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;

- 1.29.3: A parent of a minor child service recipient or former service recipient;
 - 1.29.4: A guardian of a minor child service recipient or former service recipient;
 - 1.29.5: A legal custodian of a minor child service recipient or former service recipient;
 - 1.29.6: 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;
 - 1.29.7: The treatment review committee for a service recipient who has been involuntarily committed;
 - 1.29.8: The executor, administrator or other person who has authority to act on behalf (sometimes referred to as “personal representative”) of the estate of a deceased service recipient;
 - 1.29.9: A temporary caregiver of a service recipient under Tenn. Code Ann. §34-6-302; or
 - 1.29.10: 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.
 - 1.29.11: 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 TDMHSAS service recipient.
- 1.30: Limited Data/Information Set: Protected health information that excludes the following direct identifiers of the individual or relatives, employers, or household members of the individual: names; postal address information other than town or city, state and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers, MAC addresses; biometric identifiers, including

finger and voice prints; and full face photographic images and any comparable images

- 1.31: Minor Child: A child is defined at Tenn. Code Ann. (T.C.A) §33-1-101 as a person under eighteen (18) years of age BUT SEE T.C.A §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 T.C.A §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.
- 1.32: Organized Health Care Arrangement (OHCA): A clinically integrated health care setting in which service recipients typically receive care from more than one health care provider. Also, an OHCA is a system in which more than one covered entity participates in a joint arrangement which involves utilization review, quality assessment, and improvement activities or payment activities.
- 1.33: Password: Confidential authentication information composed of a string of characters.
- 1.34: Personal health application: An electronic application used by an individual to access health information about that individual, which can be drawn from multiple sources, provided that such information is managed, shared, and controlled by or primarily for the individual, and not by or primarily for a covered entity or another party such as the application developer.
- 1.35: Personal Representative: means an executor, administrator, or other person who has authority to act on behalf of a deceased individual or of the individual's estate; a person who has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care; and a parent, guardian, or other person acting in loco parentis who has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care.
- 1.36: Physical safeguards: Physical measures, policies, and procedures to protect a covered entity's or business associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.37: Protected Health Information (PHI) or Electronic Protected Health Information (ePHI): Individually identifiable health information which is information transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. See definition for individually identifiable health information above.

- 1.38: PHI Data or Information System(s): Electronic information systems developed or procured by the Tennessee Department of Mental Health and Substance Abuse Services which must comply with all laws, rules, and security policies and procedures related to Protected Health Information (PHI). See definition of Data or Information Systems above.
- 1.39: Psychotherapy Notes: Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes **exclude** medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
- 1.40: Sale of Protected Health Information: A disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.
- 1.41: Security incident: The attempted or successful unauthorized access, use, disclosure, modification, interruption, or destruction of information or interference with system operations in an information system.
- 1.42: Tennessee Code Annotated, Title 33: means the Tennessee code and statutes which govern mental health, substance abuse, intellectual and developmental disabilities.
- 1.43: Title 42, U.S.C., Section 290dd-2(g): means the federal code and accompanying regulations at 42 C.F.R. Part 2 which govern the confidentiality of substance use disorder patient records.
- 1.44: Qualified Mental Health Professional (QMHP): For purpose of this policy, a person who is licensed in the state and is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner, or senior psychological examiner; licensed master's social worker with two (2) years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a master's degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children.

- 1.45: Qualified Protective Order: An order of a court, or a stipulation by the parties, that prohibits the parties from using or disclosing protected health information for any purpose other than the litigation or proceeding for which such information was requested; and requires its return to the TDMHSAS or the RMHI, as applicable, or the destruction of protected health information (including any copies), at the end of litigation or proceeding.
- 1.46: Removable Media: Any medium that can electronically store data/information but is not a resident component of a workstation. This includes, but is not limited to, items such as diskettes, CD-ROM, memory sticks, flash drives, and zip drives.
- 1.47: Required by Law: A mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.48: 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 or serious emotional disturbance.
- 1.49: Unsecured Protected Health Information: Protected health information that is usable, readable, and decipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of the Department of Health and Human Services in the guidance issued under §13402(h)(2) of Public Law 111-5.
- 1.50: User: a member of the workforce operating a computer; a person or entity with authorized access.
- 1.51: Workforce: Employees, volunteers, trainees, and other persons (i.e. contract employees from staffing agency or other entity) whose conduct, in the performance of work for a covered entity, is under direct control of such entity, whether or not they are paid by a covered entity. OR employees, contractors, volunteers, trainees, and other persons whose conduct, in performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by a covered entity.
- 1.52: Workstation: an electronic computing device and electronic media stored in its immediate environment, for example, a laptop or desktop computer, or any other device that performs similar functions.

2. Other Considerations:

2.1: Authority

45 C.F.R. §§160.103, 164.103, 164.304, 164.402, 164.501; Title 42, U.S.C., Section 290dd-2(g); and T.C.A. §33-1-101.

Approved:



Commissioner

1-18-2023

Date