



## **Policies and Procedures**

Subject: Preservation of Records and Right to Access Protection Health Information in Designated Record Set

Policy Number: HIPAA 4.11

Effective Date: 7/1/04

Entity Responsible: Division of General Counsel

Revision Date: 1/18/2023

### **1. Purpose:**

This policy provides instruction and guidance on the preservation of current, former, and deceased service recipients' records and the right of persons to access and amend protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Title 42, U.S.C., Section 290dd-2(g) and the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records, and other federal and state laws.

### **2. Policy:**

- 2.1: It is the policy of the TDMHSAS and the 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 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: Preservation of Records

- 2.4.1: All service recipient records must be preserved for a minimum of ten (10) years after the termination of service (when the service recipient was discharged from the facility or ended treatment, whichever is later).
- 2.4.2: Records of service recipients or former service recipients who were minors when they were discharged or when they ended their treatment should be preserved for ten (10) years after the service recipient's eighteenth (18) birthday.
- 2.5: Upon a written request, a service recipient or former service recipient sixteen (16) years of age or older, parent(s) or guardian(s) of a service recipient who is under the age of sixteen (16), a legal representative of a service recipient or former service recipient, shall be permitted with the opportunity to inspect, review, and obtain a copy of PHI maintained in the service recipient's medical record or Designated Record Set so long as the PHI is maintained by the TDMHSAS or a RMHI, and is not contained in psychotherapy notes or information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
- 2.6: TDMHSAS or the RMHI may deny the request to provide an individual access under the following circumstances and such denial is not reviewable:
  - 2.6.1: The PHI is contained in psychotherapy notes;
  - 2.6.2: The PHI is contained in information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action;
  - 2.6.3: The PHI is requested by an inmate of a correctional institution and the disclosure would jeopardize the health, safety, security, custody, or rehabilitation of the inmate, other inmates, or the safety of any officer, employee, or other person at the correctional institute or responsible for transporting the inmate;
  - 2.6.4: The PHI is created or obtained by a covered healthcare provider in the course of research that includes treatment. In such cases, access to PHI may be temporarily suspended for as long as the research is in progress, provided the service recipient gave informed consent to the denial of access when agreeing to participate, and with the understanding that access would be reinstated at end of research;
  - 2.6.5: The PHI Requested is contained in records subject to the Privacy Act, 5 USC § 522a and denial of access meets the requirements of the Privacy Act. This section of the Privacy Act contains definitions of records maintained

on individuals as well as conditions of disclosure and access. The HIPAA regulations regarding an individual's access to his or her private information is based on the Privacy Act guidelines;

- 2.6.6: The PHI requested was provided by someone other than healthcare provider under a promise of confidentiality and the access would reasonably likely reveal the source of that information.
- 2.7: TDMHSAS or the RMHI may deny the request to provide a service recipient access under the following circumstances and such decision is reviewable:
  - 2.7.1: A licensed health care professional has determined in the exercise of professional judgement:
    - (1): That the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
    - (2): The PHI makes reference to another person (who is not a healthcare provider) and the access requested is reasonably likely to cause substantial risk of serious harm to such other person;
    - (3): The request is made by a service recipient's personal representative and providing access to the PHI by the personal representative is reasonably likely to cause substantial risk of serious harm to the individual or another person.
- 2.8: If the TDMHSAS or the RMHI deny the request to provide a service recipient access under paragraph 2.7 of this policy, this decision is reviewable by a licensed healthcare professional who is designated by the TDMHSAS or the RMHI to act as a reviewing official and who did not participate in the original decision to deny the request.
- 2.9: If the TDMHSAS or the RMHI do not have the PHI requested, the TDMHSAS or RMHI shall, if the TDMHSAS or the RMHI knows, provide information to the service recipient as to where the requested information is maintained.
- 2.10: Right to Request an Amendment
  - 2.10.1: A service recipient, former service recipient, or service recipient's legal representative may request, in writing, to have the medical record amended by revision, deletion, or addition. An explanation for the change(s) must be included with the request.
  - 2.10.2: The TDMHSAS or the RMHI may or may not accept the requested amendment. If the TDMHSAS or the RMHI refuses the amendment, the

requester may file a written statement disagreeing with the refusal. This statement will be documented and placed in the service recipient's medical file.

- 2.11: All actions (access requests or denials; requests to review the denial; review denials;) must be documented and placed in the service recipient's medical record.

**3. Procedure/ Responsibility:**

- 3.1: When a TDMHSAS or RMHI employee receives a written request to inspect, review, copy, or amend the medical record, the employee must forward the request to the TDMHSAS Privacy Officer and/or the RMHI Privacy Officer. If a verbal request is received, the employee must inform the individual that state law requires the request to be in writing. The employee must also inform the TDMHSAS Privacy Officer and/or the RMHI Privacy Officer, in writing, of the verbal request received.
- 3.2: If the requester requires assistance in completing the written request, the TDMHSAS or RMHI employee shall provide assistance to the requestor. The employee must deliver the request to the appropriate person pursuant to paragraph 3.1 of this policy.
- 3.3.: The TDMHSAS Privacy Officer or the RMHI Privacy Officer must review the request and determine if the TDMHSAS or the RMHI has the PHI requested, and if so, if there is an obligation under HIPAA, other federal law, or state law to fulfill the request. The RMHI Privacy Officer may consult with RMHI attorney or the TDMHSAS Privacy Officer as needed to make a decision. If the TDMHSAS or the RMHI does not have the PHI requested, but knows where the PHI is maintained, the TDMHSAS Privacy Officer or the RMHI Privacy Officer shall provide the service recipient this information.
- 3.4: If the TDMHSAS Privacy Officer or the RMHI Privacy Officer determines that the TDMHSAS and/or the RMHI has the PHI and access must be provided, then the responsible Privacy Officer must provide access to the PHI to the requester no later than 30 days from receipt of the request. The PHI must be provided at a convenient time and location and in the form that is requested. If access to the PHI cannot be provided in the form requested, the requester and the responsible Privacy Officer may agree on an alternative form to provide access. No cost shall be charged to review or inspect. Charges for copies shall be in accordance with either the fee schedule of the Tennessee Office of Open Records Counsel or the TDMHSAS and/or the RMHI policy.

- 3.5: If the TDMHSAS Privacy Officer or the RMHI Privacy Officer denies access to the PHI, then the responsible Privacy Officer must notify the requester of the denial, in writing, no later than 30 days from the receipt of the request.
- 3.5.1: The notification of denial must be written in plain language and state (1) the basis for denial and if applicable, a statement that the requester may have the right to have licensed health professional chosen by the TDMHSAS/ RMHI review the decision to deny access to PHI; (2) the procedure for which a requester may file a complaint with TDMHSAS or RMHI including the title, address, and telephone number of the person with whom the complaint can be filed; and (3) the procedure by which the requester may file a complaint with the Secretary of the U.S. Department of Health and Human Services.
- 3.5.2: If the requester chooses to have the denial of access to PHI reviewed, the TDMHSAS Privacy Officer or the RMHI Privacy Officer must appoint a licensed health professional not involved in the original decision to deny access, to review the request, within a reasonable period of time not to exceed 30 business days. The requester and the TDMHSAS and RMHI are bound by the determination made by the reviewing licensed health professional and must provide written notice to the service recipient of the licensed health professional's decision.
- 3.6: If the request to amend PHI is accepted, the record must be amended within ten (10) business days of receiving the request. The requester must be informed no later than ten (10) business days from the date of the amendment. The request for amendment and a copy of the TDMHSAS/ RMHI response must be placed in the medical record pursuant to paragraph 2.6 of this policy.
- 3.7: If the request to amend PHI is denied, the TDMHSAS or the RMHI must provide a written explanation to the requester no later than ten (10) business days of the receipt of the request.
- 3.7.1: The written explanation must state (1) the basis for the denial; (2) a statement about the requester's right to file a written statement of disagreement with the denial, and the process for filing such statement; (3) the procedure, if any, for further internal review of the decision.
- 3.8: If any disputed information is disclosed, the disclosure must clearly note that the information is disputed, and provide a copy of the statement of disagreement, and a statement of the reasons for not making the requested amendment.

- 3.9: If any of the disputed information is amended, it should be clearly noted in the medical record including (1) the date and time the change(s) were made; and (2) the name of the person making the change. This information should be noted in the chart and become a part of the medical record. The service recipient may not personally alter the record.
- 3.10: The TDMHSAS Privacy Officer and the RMHI Privacy Officer shall ensure that all actions (including but not limited to: access requests or denials; requests to review the denial; and review denials) must be documented and placed in the service recipient's medical record. This must be kept for six (6) years from the date of the request to access or review, any subsequent denial to review or amend, and any other actions consistent with this policy.

**4. Other Considerations**

4.1: Authority

45 C.F.R. §§164.524, 164.526; 42 CFR §493(a)(2); 5 USC 522a; T.C.A. §§ 33-3-101, 104, 112, 113, 206, 208; and 68-11-304.

Approved:



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Commissioner

1-18-2023

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Date