



Policies and Procedures

Subject: Uses and Disclosures of Protected Health Information (PHI):
General Rules

Policy Number: HIPAA 4.1

Effective Date: 5/15/04

Entity Responsible: Division of General Counsel

Revision Date: 1/18/2023

1. Purpose:

To provide instructions and guidance to Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) and the Regional Mental Health Institutes (RMHI) regarding the uses and disclosure of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and other relevant 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: The TDMHSAS is permitted to use or disclose PHI as follows:
 - 2.4.1: To the individual;
 - 2.4.2: For treatment, payment, or health care operations, as permitted by and in compliance with HIPAA;
 - 2.4.3: Incident to a use or disclosure otherwise permitted or required by this section, provided that the TDMHSAS or RMHI has complied with the applicable requirements of HIPAA with respect to such otherwise permitted or required use or disclosure;
 - 2.4.4: Except for uses and disclosures prohibited under HIPAA, pursuant to and in compliance with a valid authorization;
 - 2.4.5: Pursuant to an agreement under, or as otherwise permitted by, HIPAA, and
 - 2.4.6: As permitted by and in compliance with this policy.
- 2.5: The TDMHSAS or RMHI is required to disclose PHI:
 - 2.5.1: To an individual, when requested under, and required by HIPAA; and
 - 2.5.2: When required by the Secretary of the U.S. Department of Health and Human Services under subpart C of part 160 of this subchapter to investigate or determine the TDMHSAS's compliance with HIPAA Security and Privacy Rules.
- 2.6: A business associate of TDMHSAS or RHMI may use or disclose PHI only as permitted or required by its business associate contract or other arrangement pursuant to HIPAA or as required by law. The business associate may not use or disclose PHI in a manner that would violate the requirements of this subpart, if done by the TDMHSAS, except for the purposes specified under 45 C.F.R. § 164.504(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by its contract or other arrangement.
- 2.7: A business associate is required to disclose PHI:
 - 2.7.1: When required by the Secretary of the U.S. Department of Health and Human Services under HIPAA to investigate or determine the business associate's compliance with this subchapter.
 - 2.7.2: To the TDMHSAS or RMHI, when specified in the business associate agreement, to the individual or individual's designee, as necessary to satisfy TDMHSAS or RMHI obligation under HIPAA with respect to an individual's request for an electronic copy of PHI.

2.8: Except in instances where an authorization is required under HIPAA, the TDMHSAS or RMHI or business associate may not sell PHI.

2.9: When using or disclosing PHI or when requesting PHI from another covered entity or business associate, the TDMHSAS or RMHI or business associate must make reasonable efforts to limit disclosures of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

2.9.1: This requirement does not apply to:

- (a): Disclosures to or requests by a health care provider for treatment, including for care coordination and case management activities with respect to an individual;
- (b): Uses or disclosures made to the individual, as permitted under HIPAA;
- (c): Uses or disclosures made pursuant to an authorization under HIPAA;
- (d): Disclosures made to the Secretary of the U.S. Department of Health and Human Services in accordance with subpart C of part 160 of this subchapter; and
- (e): Uses or disclosures that are required by law, as described where an authorization or opportunity to agree or object is not required.
- (f): Disclosures to or requests by a health plan for care coordination and case management activities with respect to an individual.

2.10: The TDMHSAS or RMHI may use PHI to create information that is not individually identifiable health information or disclose PHI only to a business associate for such purpose, whether or not the de-identified information is to be used by the TDMHSAS or RMHI.

2.10.1: Health information that meets the standard and implementation specifications for de-identification is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of HIPAA, provided that:

- (1): Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of PHI; and

- (2): If de-identified information is re-identified, the TDMHSAS or RMHI may use or disclose such re-identified information only as permitted or required by this subpart.
- 2.11: The TDMHSAS or RMHI may disclose PHI to a business associate and may allow a business associate to create, receive, maintain, or transmit PHI on its behalf, if the TDMHSAS or RMHI obtains satisfactory assurance that the business associate will appropriately safeguard the information. The TDMHSAS or RMHI is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.
- 2.12: A business associate may disclose PHI to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI on its behalf, if the business associate obtains satisfactory assurances, in accordance with HIPAA, that the subcontractor will appropriately safeguard the information.
- 2.13: The satisfactory assurances required by paragraph 2.12 of this policy must be documented through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of HIPAA.
- 2.14: The TDMHSAS or RMHI must comply with the requirements of this policy with respect to the PHI of a deceased individual for a period of 50 years following the death of the individual. *Please note* state law may require a longer compliance period than HIPAA. As such, TDMHSAS and/or RMHI workforce members should consult the TDMHSAS Privacy Officer or their RMHI Privacy Officer regarding matters involving PHI of deceased individuals.
- 2.15: The TDMHSAS or RMHI must, except as provided in this document, treat a personal representative as the individual.
- 2.15.1: If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, the TDMHSAS or RMHI must treat such person as a personal representative under this section, with respect to PHI relevant to such personal representation.
- 2.15.2: If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, the TDMHSAS or RMHI must treat such person as a personal representative under this section, with respect to PHI relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to PHI pertaining to a health care service, if:
- (a): The minor consents to such health care service; no other consent to such health care service is required by law,

regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

- (b): The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or
- (c): A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.
- (d): If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, the TDMHSAS or RMHI must treat such person as a personal representative under this section, with respect to PHI relevant to such personal representation.

2.15.3: Notwithstanding the provisions of paragraph 2.15.2 of this policy:

- (1): If, and to the extent, permitted or required by an applicable provision of state or other law, including applicable case law, the TDMHSAS or RMHI may disclose, or provide access in accordance with HIPAA, PHI about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*;
- (2): If, and to the extent, prohibited by an applicable provision of state or other law, including applicable case law, the TDMHSAS or RMHI may not disclose, or provide access in accordance with HIPAA, PHI about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*; and
- (3): Where the parent, guardian, or other person acting *in loco parentis*, is not the personal representative under paragraphs 2.15.2(a)-(d) of this policy and where there is no applicable access provision under state or other law, including case law, the TDMHSAS or RMHI may provide access under HIPAA to a parent, guardian, or other person acting *in loco parentis*, if such action is consistent with state or other applicable law, provided that such decision must be made by a licensed health care professional, based on a good faith belief that providing access is in the best interests of the individual.

2.16: If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, the TDMHSAS or RMHI must treat such person as a personal representative under this section, with respect to PHI relevant to such personal representation.

2.17: Notwithstanding a state or other law or any requirement of this paragraph to the contrary, the TDMHSAS or RMHI may elect not to treat a person as the personal representative of an individual if:

2.17.1: The TDMHSAS or RMHI has a reasonable belief that:

- (1): The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or treating such person as the personal representative could endanger the individual; and
- (2): The TDMHSAS or RMHI, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

2.18: The TDMHSAS or RMHI must comply with the applicable requirements of HIPAA's rights of an individual to request privacy protection of PHI in communicating PHI.

2.19: The TDMHSAS or RMHI, where applicable, may not use or disclose PHI in a manner inconsistent with the notice requirement under HIPAA's notice of privacy practices of PHI.

2.20: The TDMHSAS or RMHI is not considered to have violated the requirements of HIPAA if a member of its workforce or a business associate discloses PHI, provided that:

2.20.1: The workforce member or business associate believes in good faith that the TDMHSAS or RMHI has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by TDMHSAS or RMHI potentially endangers one or more patients, workers, or the public; and

2.20.2: The disclosure is to:

- (a): A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the TDMHSAS or RMHI or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the TDMHSAS or RMHI; or

- (b): An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in paragraph 2.20.1 of this policy.
- 2.21: The TDMHSAS or RMHI is not considered to have violated the requirements of HIPAA if a member of its workforce who is the victim of a criminal act discloses PHI to a law enforcement official, provided that:
 - 2.21.1: The PHI disclosed is about the suspected perpetrator of the criminal act; and
 - 2.21.2: The PHI disclosed is limited to a response to a law enforcement official's request for PHI for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, as provided under HIPAA.
- 2.22: When using or disclosing PHI as provided in this policy and other HIPAA provisions, the TDMHSAS or RMHI is presumed to have complied with the good faith requirement, absent evidence that the TDMHSAS or RMHI acted in bad faith.

3. Procedure and Responsibility:

- 3.1: All requests for disclosure of PHI from the TDMHSAS or RMHI should be directed to the TDMHSAS Privacy Officer or the applicable RMHI Privacy Officer respectively.
- 3.2: Before disclosing PHI, the TDMHSAS Privacy Officer or the RMHI Privacy Officer must verify the identity and authority of the person requesting the disclosure in accordance with TDMHSAS HIPAA policy 4.7 and determine whether an authorization is required to release the information.
- 3.3: If an authorization for the use or disclosure of the PHI is required, the TDMHSAS or RMHI Privacy Officer must confirm that a valid, written authorization has been received by the TDMHSAS or RMHI from the service recipient, parent(s) of a minor child, or the service recipient's legal representative. Such authorization must meet the requirements of HIPAA. The uses or disclosure of the PHI must strictly conform to the authorization. If a valid authorization is necessary, but has not been received, the PHI must not be used or disclosed.
- 3.4: If the TDMHSAS Privacy Officer or the RMHI Privacy Officer determines that PHI should be released, the TDMHSAS or RMHI Privacy Officer must ensure that the requested PHI is released within thirty (30) business days from the date of request. If the PHI release is not appropriate, the TDMHSAS Privacy Officer or the

RMHI Privacy Officer must notify the requesting party within thirty (30) business days from the date of request.

- 3.5: The Chief Executive Officer at each RMHI must ensure that when PHI from their facility is disclosed or released for use, all required documentation is maintained in written or electronic form for not less than ten (10) years after the termination of the service recipient's treatment or for not less than ten (10) years after the service recipient turned eighteen (18), whichever is longer.
- 3.6: The TDMHSAS or the RMHI Privacy officer/ designee who disclose PHI must document all disclosures, absent a valid authorization, on a disclosure log kept in the service recipient's record. A copy of the written request for disclosure must also be placed in the service recipient's record. Disclosures of PHI may also be entered into an electronic log. This disclosure log should be kept for a minimum of six (6) years from the date the request for disclosure was received and this disclosure log shall be placed in the service recipient's file.
- 3.6.1: The disclosure log must include (1) date of the disclosure, (2) name of the individual of entity who received the PHI, and if known, their address, (3) a brief description of PHI disclosed, and (4) a brief statement of the purpose of the disclosure that reasonably describes the basis of the disclosure.
- 3.7: The TDMHSAS or RMHI Privacy Officer may provide the service recipient, former service recipient, or service recipient's legal representative with the TDMHSAS Authorization to Release Confidential Information form, which can be found at: <https://www.tn.gov/behavioral-health/mhsa-law/legal-forms.html>.
- 3.8: If the TDMHSAS or RMHI is seeking authorization from the service recipient to use or disclose PHI, a copy of the signed authorization must be provided to the service recipient.

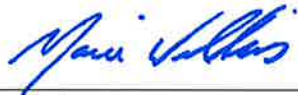
[SIGNATURE APPEARS ON FOLLOWING PAGE]

4. Other Considerations

- 4.1: Authority:

45 C.F.R. §§164.502, 164.506, 164.508, 164.512, 164.514; and T.C.A. §§ 33-3-103 through 33-3-112.

Approved:



Commissioner

1-18-2023
Date