



## **Policies and Procedures**

Subject: Uses and disclosures for which an authorization is required  
Policy Number: HIPAA 4.4  
Effective Date: 6/21/04  
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 (RMHIs) regarding the uses and disclosure of protected health information (PHI) for which an authorization is required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and other relevant federal and state laws.

### **2. Purpose:**

- 2.1: It is the policy of the TDMHSAS and 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: Except as otherwise permitted or required by HIPAA or relevant privacy law, the TDMHSAS or applicable RMHI may not use or disclose PHI without verifying the identity of the requestor consistent with TDMHSAS HIPAA Policy 4.7 and an

authorization that is valid under HIPAA as set forth under this policy. When TDMHSAS or the RMHIs obtain or receive a valid authorization for its use or disclosure of PHI, such use or disclosure must be consistent with such authorization.

2.5: Notwithstanding any provision of HIPAA, TDMHSAS or the RMHIs must obtain an authorization for any use or disclosure of psychotherapy notes, except:

2.5.1: To carry out the following treatment, payment, or health care operations:

- (a): Use by the originator of the psychotherapy notes for treatment;
- (b): Use or disclosure by TDMHSAS or RMHIs for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
- (c): Use or disclosure by TDMHSAS or RMHIs to defend itself in a legal action or other proceeding brought by the individual; and

2.5.2: A use or disclosure that is required by HIPAA as set forth under TDMHSAS HIPAA Policy 4.1 or TDMHSAS HIPAA Policy 4.11 with respect to oversight of the originator of the psychotherapy notes.

2.6: General requirements of a valid authorization:

2.6.1: A valid authorization is a document that meets the requirements of this policy.

2.6.2: A valid authorization may contain elements or information in addition to the elements require by this policy, provided that such additional elements or information are not inconsistent with the elements required by this section.

2.7: Defective authorizations: an authorization is not valid, if the document submitted has any of the following defects:

2.7.1: The expiration date has passed, or the expiration event is known by the TDMHSAS or RMHI to have occurred;

- 2.7.2: The authorization has not been filled out completely, with respect to an element described in paragraph 2.8 of this policy, if applicable;
  - 2.7.3: The authorization is known by the TDMHSAS or RMHI to have been revoked;
  - 2.7.4: The authorization violates paragraphs 2.8 or 2.9 of this policy, if applicable;
  - 2.7.5: Any material information in the authorization is known by the TDMHSAS or RMHI to be false.
- 2.8: Compound authorizations: An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization, except as follows:
- 2.8.1: An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same or another research study. This exception includes combining an authorization for the use or disclosure of PHI for a research study with another authorization for the same research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in research. Where a covered health care provider has conditioned the provision of research related treatment on the provision of one of the authorizations, as permitted under paragraph 2.9 of this policy, any compound authorization created under this paragraph must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt into the research activities described in the unconditioned authorization.
  - 2.8.2: An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.
  - 2.8.3: An authorization under HIPAA, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under HIPAA, except when a TDMHSAS or RMHI has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under paragraph 2.9 of this policy on

the provision of one of the authorizations. The prohibition in this paragraph on combining authorizations where one authorization conditions the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits under paragraph 2.9 of this policy does not apply to a compound authorization created in accordance with paragraph 2.8.1 of this policy.

2.9: Prohibition on conditioning of authorizations: The TDMHSAS or RMHIs may not condition the provision to an individual treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

2.9.1: TDMHSAS or RMHIs may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research under HIPAA;

2.9.2: TDMHSAS or RMHIs may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of the PHI to such third party.

2.10: Revocation of authorizations: An individual may revoke an authorization provided under HIPAA at any time, provided that the revocation is in writing, except to the extent that:

2.10.1: The TDMHSAS or RMHI has taken action in reliance thereon; or

2.10.2: If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

2.11: Documentation: The TDMHSAS or RMHI must document and retain any signed authorization under HIPAA for six years from the date of its creation or the date when it last was in effect, whichever is later.

2.12: A valid authorization under HIPAA includes at least the following core elements:

2.12.1: A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

- 2.12.2: The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
  - 2.12.3: The name or other specific identification of the person(s), or class of persons, to whom the TDMHSAS or RMHI may make the requested use or disclosure.
  - 2.12.4: A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
  - 2.12.5: An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement “end of the research study,” “none,” or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository.
  - 2.12.6: Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.
- 2.13: In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:
- 2.13.1: The individual's right to revoke the authorization in writing, and either:
    - (a): The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
    - (b): To the extent that the information in paragraph 2.13.1(a) of this policy is included in the notice required by HIPAA, a reference to the TDMHSAS or RMHI's notice.
  - 2.13.2: The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:
    - (a): The TDMHSAS or RMHI may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual

signs the authorization when the prohibition on conditioning of authorizations in paragraph 2.9 of this policy applies; or

- (b): The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph 2.9 of this policy, the TDMHSAS or RMHIs can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

2.13.3: The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by HIPAA.

2.14: Plain language requirement: The authorization must be written in plain language.

2.15: Copy to individual: If the TDMHSAS or the RMHIs seek an authorization from an individual for a use or disclosure of PHI, the TDMHSAS or RMHIs must provide the individual with a copy of the signed authorization.

### **3. Procedure/ Responsibility:**

3.1: The TDMHSAS Privacy Officer and the RMHI Privacy Officers are responsible for ensuring that the HIPAA authorization requirements are followed department wide.

3.2: The RMHI Privacy Officers shall consult with the TDMHSAS Privacy Officer with any questions about the HIPAA authorization requirements and determining when a HIPAA authorization is necessary for the purpose of the use, disclosure, or request originating from the RMHI.

3.3: For each disclosure request the TDMHSAS or the RMHIs receive, an employee, in consultation with the TDMHSAS Privacy Officer or RMHI Privacy Officer, shall verify the identity of the requestor consistent with TDMHSAS HIPAA Policy 4.7, look at the facts and circumstances surrounding the disclosure request and determine whether a valid HIPAA authorization has been executed or is required to accomplish the purpose of the use or disclosure. Employees whose jobs require the use and disclosure of PHI must review each request and exclude any of the following direct identifiers to limit the use or disclosure to what is reasonably necessary. The following list is not exhaustive and removal of these direct identifiers should be done in consultation with the TDMHSAS Privacy Officer or RMHI Privacy Officer, as applicable.

3.3.1: Full name. If name is necessary for use or purpose of the disclosure, use the last name and first name initial. The use of first name and last name

initial is acceptable in common areas of the RMHI (e.g., where names of service recipients are posted on room doors etc.);

- 3.3.2: Postal address, telephone number, fax number, or e-mail address;
- 3.3.3: Social security number, account numbers, health plan beneficiary number, medical record numbers;
- 3.3.4: Certificate or license numbers;
- 3.3.5: Vehicle identifiers or serial numbers, including license plate numbers;
- 3.3.6: Names, addresses, telephone numbers, fax number, or email addresses of relatives, friends;
- 3.3.7: Full face photographic images and any comparable images;
- 3.3.8: Biometric identifiers, including DNA, fingerprints or voice prints; and
- 3.3.9: Web Universal Resource Locators (URLs) or Internet Protocol (IP) address numbers.

3.4: For any type of use, disclosure, request that the TDMHSAS or the RMHI receives or makes on a routine and recurring basis, the TDMHSAS Privacy Officer or the RMHI Privacy Officer shall work with the employees responding to or making such requests to implement policies or procedures (which may be standard protocols) that comply with this policy and that limit the disclosure of PHI to the amount reasonably necessary to achieve the purpose of the use, disclosure, or request.

#### 4. Other Considerations

4.1: Authority

45 CFR §§ 164.501, 508, 520, 530(j) and 532.

Approved:



Commissioner

1-18-2023

Date