



Policies and Procedures

Subject: Uses and disclosures for which an authorization or opportunity to agree or object is not required

Policy Number: HIPAA 4.6

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Entity Responsible: Division of General Counsel

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1. Purpose:

The purpose of this policy is to set guidelines that the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) or applicable Regional Mental Health Institute (RMHI) must follow in uses and disclosures of protected health information (PHI) for which an authorization or opportunity to agree or object is not required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and other relevant state and federal 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. Should there be any conflict between the requirements of federal or state law (e.g., Title 33 of the T.C.A, 42 CFR Part 2, or HIPAA), the law which provides the greatest protection (i.e., is the most restrictive) will govern. If a 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/or 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 or RMHIs may use or disclose PHI without the written authorization of the individual, as described in TDMHSAS HIPAA Policy 4.4, or the opportunity for the individual to agree or object as described in TDMHSAS HIPAA Policy 4.5, and in the situations covered by this policy, subject to the applicable requirements of this policy. When the TDMHSAS or RMHIs are required by this policy to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this policy, the TDMHSAS or RMHIs information and the individual's agreement may be given orally.
- 2.5: Uses and disclosures required by law.
- 2.5.1: The TDMHSAS or RMHIs may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- 2.5.2: The TDMHSAS or RMHIs must meet the requirements described in paragraph 2.7, 2.9, or 2.10 of this policy for uses or disclosures required by law.
- 2.6: Uses and disclosures for public health activities.
- 2.6.1: The TDMHSAS or the RMHIs may use or disclose PHI for public health activities and purposes described in this paragraph to:
- (i): A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
 - (ii): A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
 - (iii): A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or

activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

- (A): To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
 - (B): To track FDA-regulated products;
 - (C): To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or
 - (D): To conduct post marketing surveillance;
- (iv): A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if TDMHSAS is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
- (v): A school, about an individual who is a student or prospective student of the school, if:
- (A): The PHI that is disclosed is limited to proof of immunization;
 - (B): The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
 - (C): The TDMHSAS or RMHIs obtains and documents the agreement to the disclosure from either:
 - (1): A parent, guardian, or other person acting in loco parentis of the individual, if the individual is an unemancipated minor; or
 - (2): The individual, if the individual is an adult or emancipated minor.

2.7: Disclosures about victims of abuse, neglect or domestic violence.

2.7.1: Except for reports of child abuse or neglect permitted by paragraph 2.6.1(ii) of this policy, the TDMHSAS or RMHIs may disclose PHI about an individual whom TDMHSAS or RMHIs reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

- (i): To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
- (ii): If the individual agrees to the disclosure; or
- (iii): To the extent the disclosure is expressly authorized by statute or regulation and:
 - (A): The TDMHSAS or RMHI, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - (B): If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

2.7.2: If TDMHSAS or RMHI makes a disclosure permitted by paragraph 2.7.1 of this policy, TDMHSAS or RMHI must promptly inform the individual that such a report has been or will be made, except if:

- (i): TDMHSAS or RMHI, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
- (ii): The TDMHSAS or RMHI would be informing a personal representative, and TDMHSAS or RMHI reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by TDMHSAS or RMHI, in the exercise of professional judgment.

- 2.7.3: HIPAA provides that state law controls with the respect to the uses and disclosures of PHI relative to investigations of such matters; therefore, the TDMHSAS or RMHI must follow applicable state laws regarding disclosures of PHI in cases of abuse, neglect, or mistreatment.
 - 2.7.4: In instances concerning allegations of abuse, neglect, mistreatment, any TDMHSAS or RMHI employee who receives a request for the use or disclosure of PHI from a law enforcement official, the Department of Children's Services (DCS), the Department of Human Services (DHS), the Tennessee Bureau of Investigation (TBI), sheriff or other public official authorized to receive such information must refer the request to the TDMHSAS Privacy Officer or the RMHI Privacy Officer as soon as practicable. After receiving this information, the TDMHSAS Privacy Officer must notify the TDMHSAS's General Counsel, and the RMHI Privacy Officer must notify the RMHI attorney as soon as practicable.
 - 2.7.5: Pursuant to T.C.A. §33-3-111, in the case of a known accusation of physical or sexual abuse of a child, the child's PHI shall not be accessible to the accused unless: (1) a court orders the disclosure; or (2) the child's qualified mental health professional, after consulting with the child, the child's guardian ad litem, and others on the child's behalf, has determined the disclosure appropriate, and the accused is the child's parent, legal guardian, legal custodian, or legal caretaker of the child. If the court permits access to the child's records, the court has jurisdiction to issue orders limiting access to and use of the information by the person seeking access, including the granting of injunctive relief. In this instance, state law provides greater privacy protections than HIPAA, and thus preempts HIPAA.
 - 2.7.6: The identity of a person reporting abuse, neglect, or mistreatment is confidential and may not be disclosed without the consent of the person reporting it or by a court order, except to investigators or the district attorney to carry out the laws of reporting abuse, neglect, or mistreatment.
- 2.8: Uses and disclosures for health oversight activities.
- 2.8.1: TDMHSAS or the RMHI may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
 - (i): The health care system;

- (ii): Government benefit programs for which health information is relevant to beneficiary eligibility;
- (iii): Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- (iv): Entities subject to civil rights laws for which health information is necessary for determining compliance.

2.8.2: For the purpose of the disclosures permitted by paragraph 2.8.1 of this policy, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- (i): The receipt of health care;
- (ii): A claim for public benefits related to health; or
- (iii): Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

2.8.3: Notwithstanding paragraph 2.8.2 of this policy, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph 2.8.2 of this policy.

2.8.4: If TDMHSAS or RMHI is also a health oversight agency, the TDMHSAS or RMHI may use PHI for health oversight activities as permitted by paragraph 2.8 of this policy.

2.9: Disclosures for judicial and administrative proceedings.

2.9.1: The TDMHSAS or RMHI may disclose PHI in the course of any judicial or administrative proceeding:

- (i): In response to an order of a court or administrative tribunal, provided that the TDMHSAS or RMHI discloses only the PHI expressly authorized by such order; or
- (ii): In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

- (A): The TDMHSAS or RMHI receives satisfactory assurance, as described in paragraph 2.9.1(iii) of this policy, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or
 - (B): The TDMHSAS or RMHI receives satisfactory assurance, as described in paragraph 2.9.1(iv) of this policy, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph 2.9.1(v) of this policy.
- (iii): For the purposes of paragraph 2.9.1(ii)(A) of this policy, the TDMHSAS or the RMHI receives satisfactory assurances from a party seeking PHI if the TDMHSAS or the RMHI receives from such party a written statement and accompanying documentation demonstrating that:
- (A): The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
 - (B): The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 - (C): The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 - (1): No objections were filed; or
 - (2): All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- (iv): For the purposes of paragraph 2.9.1(ii)(B) of this policy, the TDMHSAS or the RMHI receives satisfactory assurances from a party seeking PHI, if the TDMHSAS or RMHI receives from such

party a written statement and accompanying documentation demonstrating that:

- (A): The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - (B): The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.
- (v): For purposes of paragraph 2.9.1 of this policy, a qualified protective order means, with respect to PHI requested under paragraph 2.9.1(ii) of this policy, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
- (A): Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and
 - (B): Requires the return to the TDMHSAS or RMHI or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.
- (vi): Notwithstanding paragraph 2.9.1(ii) of this policy, the TDMHSAS or RMHI may disclose PHI in response to lawful process described in paragraph 2.9.1(ii) of this policy without receiving satisfactory assurance under paragraph 2.9.1(ii)(A) or (B) of this policy, if the TDMHSAS or the RMHI makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph 2.9.1(iii) of this policy or to seek a qualified protective order sufficient to meet the requirements of paragraph 2.9.1(iv) of this policy.

2.9.2: The provisions of this paragraph do not supersede other provisions of this policy that otherwise permit or restrict uses or disclosures of PHI.

2.10: Disclosures for law enforcement purposes. The TDMHSAS or the RMHI may disclose PHI for a law enforcement purpose to a law enforcement official if the conditions in paragraphs 2.10.1 through 2.10.6 of this policy are met, as applicable.

2.10.1: Pursuant to process and as otherwise required by law. The TDMHSAS or the RMHI may disclose PHI:

- (i): As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph 2.6.1(ii) or 2.7.1(i) of this section; or
- (ii): In compliance with and as limited by the relevant requirements of:
 - (A): A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - (B): A grand jury subpoena; or
 - (C): An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - (1): The information sought is relevant and material to a legitimate law enforcement inquiry;
 - (2): The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - (3): De-identified information could not reasonably be used.

2.10.2: Except for disclosures required by law as permitted by paragraph 2.10.1 of this policy, the TDMHSAS or the RMHI may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

- (i): The TDMHSAS or RMHI may disclose only the following information:
 - (A): Name and address;
 - (B): Date and place of birth;
 - (C): Social security number;
 - (D): ABO blood type and rh factor;
 - (E): Type of injury;
 - (F): Date and time of treatment;

- (G): Date and time of death, if applicable; and
- (H): A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.
- (ii): Except as permitted by paragraph 2.10.1(i) of this policy, the TDMHSAS or the RMHI may not disclose for the purposes of identification or location under paragraph 2.10.2 of this policy any PHI related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

2.10.3: Except for disclosures required by law as permitted by paragraph 2.10.1 of this policy, the TDMHSAS or the RMHI may disclose PHI in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph 2.10.3(ii)(B) or (C) of this policy, if:

- (i): The individual agrees to the disclosure; or
- (ii): The TDMHSAS or RMHI is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
 - (A): The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
 - (B): The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - (C): The disclosure is in the best interests of the individual as determined by the TDMHSAS or the RMHI, in the exercise of professional judgment.

2.10.4: The TDMHSAS or the RMHI may disclose PHI about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the TDMHSAS or the RMHI has a suspicion that such death may have resulted from criminal conduct.

2.10.5: The TDMHSAS or the RMHI may disclose to a law enforcement official PHI that the TDMHSAS or the RMHI believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the TDMHSAS or the RMHI.

2.10.6: Reporting crime in emergencies.

- (i): The TDMHSAS or the RMHI providing emergency health care in response to a medical emergency, other than such emergency on the premises of the TDMHSAS or the RMHI, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
 - (A): The commission and nature of a crime;
 - (B): The location of such crime or of the victim(s) of such crime; and
 - (C): The identity, description, and location of the perpetrator of such crime.
- (ii): If the THDMHSAS or the RMHI believes that the medical emergency described in paragraph 2.10.6 of this policy is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph 2.10.6.(i) of this policy does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph 2.7 of this policy.

2.11: Uses and disclosures about decedents.

2.11.1: The TDMHSAS or the RMHI may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.

2.11.2: The TDMHSAS or the RMHI may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary, for funeral directors to carry out their duties, the TDMHSAS or the RMHI may disclose the PHI prior to, and in reasonable anticipation of, the individual's death.

2.12: The TDMHSAS or the RMHI may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

2.13: Uses and disclosures for research purposes.

2.13.1: The TDMHSAS may use or disclose PHI for research, regardless of the source of funding of the research, provided that:

- (A): The TDMHSAS obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by §164.508 for use or disclosure of PHI has been approved by either:
 - (i): An Institutional Review Board (IRB); or
 - (ii): A privacy board that:
 - (a): Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;
 - (b): Includes at least one member who is not affiliated with the TDMHSAS, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and
 - (c): Does not have any member participating in a review of any project in which the member has a conflict of interest.
 - (iii): The TDMHSAS obtains from the researcher representations that:
 - (a): Use or disclosure is sought solely to review PHI as necessary to prepare a research protocol or for similar purposes preparatory to research;
 - (b): No PHI is to be removed from TDMHSAS by the researcher in the course of the review; and
 - (c): The PHI for which use or access is sought is necessary for the research purposes.
 - (vi): The TDMHSAS obtains from the researcher:
 - (a): Representation that the use or disclosure sought is solely for research on the PHI of decedents;
 - (b): Documentation, at the request of the TDMHSAS, of the death of such individuals; and

- (c): Representation that the PHI for which use or disclosure is sought is necessary for the research purposes.

2.13.2: Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph 2.13.1(A) of this policy, the documentation must include all of the following:

- (i): A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;
- (ii): A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:
 - (A): The use or disclosure of PHI involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:
 - (1): An adequate plan to protect the identifiers from improper use and disclosure;
 - (2): An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and
 - (3): Adequate written assurances that the PHI will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of PHI would be permitted by this subpart;
 - (B): The research could not practicably be conducted without the waiver or alteration; and
 - (C): The research could not practicably be conducted without access to and use of the PHI.
- (iii): A brief description of the PHI for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph 2.13.2(ii)(3) of this policy;
- (iv): A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

- (A): An IRB must follow the requirements of the Common Rule, including the normal review procedures under federal law;
- (B): A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph 2.13.1(ii)(A) of this policy, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph 2.13.2.(iv)(C) of this section;
- (C): A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the PHI for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and
- (v): The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

2.14: Uses and disclosures to avert a serious threat to health or safety.

2.14.1: The TDMHSAS or the RMHI may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the TDMHSAS or the RMHI, in good faith, believes the use or disclosure:

- (i)(A): Is necessary to prevent a serious and reasonably foreseeable harm, or lessen a serious and reasonably foreseeable threat, to the health or safety of a person or the public; and
- (i)(B): Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- (ii): Is necessary for law enforcement authorities to identify or apprehend an individual:
 - (A): Because of a statement by an individual admitting participation in a violent crime that the TDMHSAS or the RMHI reasonably believes may have caused serious physical harm to the victim; or

(B): Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined under HIPAA.

(iii): “Reasonably foreseeable” means that an ordinary person could conclude that a threat to health or safety exists and that harm to health or safety is reasonably likely to occur if a use or disclosure is not made, based on facts and circumstances known at the time of the disclosure.

(iv): When the TDMHSAS or the RMHI (or a member of the workforce of the TDMHSAS or the RMHI) that has specialized training, expertise, or experience in assessing an individual's risk to health or safety—such as a licensed mental or behavioral health professional—determines that it is appropriate to use or disclose PHI under paragraph 2.14.1.i.A of this policy, such determination will be entitled to heightened deference if the determination is related to facts and circumstances about which the TDMHSAS or the RMHI (or a member of its workforce) has such training, expertise, or experience.

2.14.2: A use or disclosure pursuant to paragraph 2.14.1(ii)(A) of this policy may not be made if the information described in paragraph 2.14.1(ii)(A) of this policy is learned by the TDMHSAS or the RMHI:

(a): In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph 2.14.1(ii)(A) of this policy, or counseling or therapy; or

(b): Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph 2.14.2(a) of this policy.

2.14.3: A disclosure made pursuant to paragraph 2.14.1(ii)(A) of this policy shall contain only the statement described in paragraph 2.14.1(ii)(A) of this policy and the PHI described in paragraph 2.10.2(i) of this policy.

2.14.4: The TDMHSAS or RMHI that uses or discloses PHI pursuant to paragraph 2.14.1 of this policy is presumed to have acted in good faith with regard to a belief described in 2.14.1(i) or (ii) of this policy, if the belief is based upon the TDMHSAS or the RMHI's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

2.15: Uses and disclosures for specialized government functions.

2.15.1: Military and veterans activities.

(i): The TDMHSAS or the RMHI may use and disclose the PHI of individuals who are Uniformed Services personnel for activities deemed necessary by appropriate Uniformed Services command authorities to assure the proper execution of the Uniformed Services mission, if the appropriate Uniformed Services authority has published by notice in the **Federal Register** the following information:

(A): Appropriate Uniformed Services command authorities; and

(B): The purposes for which the PHI may be used or disclosed.

(ii): The TDMHSAS or the RMHI may use and disclose the PHI of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph 2.15.1(i) of this policy.

2.15.2: The TDMHSAS or the RMHI may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).

2.15.3: The TDMHSAS or the RMHI may disclose PHI to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

2.15.4: Correctional institutions and other law enforcement custodial situations.

(i): The TDMHSAS or the RMHI may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such PHI is necessary for:

(A): The provision of health care to such individuals;

(B): The health and safety of such individual or other inmates;

(C): The health and safety of the officers or employees of or others at the correctional institution;

(D): The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

- (E): Law enforcement on the premises of the correctional institution; or
- (F): The administration and maintenance of the safety, security, and good order of the correctional institution.

- (ii): For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

2.15.5: Covered entities that are government programs providing public benefits.

- (i): If the TDMHSAS or the RMHI is considered a health plan that is a government program providing public benefits then the TDMHSAS or the RMHI may disclose PHI relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.
- (ii): If the TDMHSAS or the RMHI is administering a government program providing public benefits, then it may disclose PHI relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of PHI is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

2.15.6: The TDMHSAS or the RMHI may use or disclose PHI for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided the TDMHSAS or the RMHI:

- (i): Discloses the information only to:
 - (A): The National Instant Criminal Background Check System; or
 - (B): An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and

- (ii): (A): Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and
 - (B): Does not disclose diagnostic or clinical information for such purposes.
- 2.16: The TDMHSAS or RMHI may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.
- 2.17: The TDMHSAS or the RMHI may disclose PHI to a Telecommunications Relay Service Communications Assistant, as defined at 47 CFR §64.601(a)(10), as necessary to conduct covered functions.

3. Procedure/ Responsibility:

- 3.1: The TDMHSAS Privacy Officer and the RMHI Privacy Officers are responsible for ensuring that the HIPAA requirements under this policy are followed department wide.
- 3.2: The RMHI Privacy Officers shall consult with the TDMHSAS Privacy Officer with any questions about the HIPAA requirements under this policy and determining when a use, disclosure or request applicable to this policy is necessary.
- 3.4: For each disclosure request the TDMHSAS or the RMHIs receive, an employee, in consultation with the TDMHSAS Privacy Officer or RMHI Privacy Officer, should look at the facts and circumstances surrounding the disclosure request and determine whether the individual whose PHI is to be disclosed shall have an opportunity to object to the disclosure as set forth in this policy. Employees whose jobs require the use and disclosure of PHI under this policy 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.
 - 3.4.1: 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.);
 - 3.4.2: Postal address, telephone number, fax number, or e-mail address;
 - 3.4.3: Social security number, account numbers, health plan beneficiary number, medical record numbers;
 - 3.4.4: Certificate or license numbers;

3.4.5: Vehicle identifiers or serial numbers, including license plate numbers;

3.4.6: Names, addresses, telephone numbers, fax number, or email addresses of relatives, friends;

3.4.7: Full face photographic images and any comparable images;

3.4.8: Biometric identifiers, including DNA, fingerprints or voice prints; and

3.4.9: Web Universal Resource Locators (URLs) or Internet Protocol (IP) address numbers.

3.5: 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 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 and 164.512.

Approved:



Commissioner

1-18-2023

Date