

32.2 Client Privacy Rights	
Application: To All Department of Children's Services Employees and DCS HIPAA Business Associates	
Authority: Health Insurance Portability and Accountability Act (HIPAA) of 1996; TCA 37-5-105, 37-5-106	Standards: COA: PA-RPM 6
Commissioner:	Date:
Original Effective Date: 09/01/07 Current Effective Date: 11/07/17	Supersedes: 12/15/09 Last Review Date: 11/07/17
Glossary: None	

Policy Statement:

All clients served by the Department of Children's Services have privacy rights under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 regarding the access, use and disclosure of their protected health information (PHI) maintained by DCS and its business associates and may file a complaint when they believe those rights have been violated.

Purpose:

To outline procedures for compliance with the HIPAA Privacy Rule regarding the access, use and disclosure of client protected health information (PHI) maintained by DCS and the process to file a complaint when they believe those rights have been violated.

Procedures:

A. Administrative Procedures – DCS Notice of Privacy Practices

Each **client or client's representative** (herein referred to as "client") will be required to read and sign form **CS-0699, DCS Notice of Privacy Practices and Client Acknowledgement**, that will inform them about how DCS may use and/or disclose their protected health information (PHI) as required in DCS Policy [32.1, General Health Insurance Portability and Accountability Act Privacy Requirements](#); Section F.

B. Rights of clients to access their PHI

Upon receiving a HIPAA complaint/request by the client, the Family Service Worker/Juvenile Service Worker (JSW)/Juvenile Probation Worker (JPO) will contact the **Regional/Facility Privacy Officer** to assist the client with either filing a complaint regarding their PHI with the DCS Customer Relations Unit or assisting with a PHI request. The following actions for a PHI request will be the responsibilities of the Regional/Facility Privacy Officer in collaboration with the Departmental Privacy Officer:

1. Upon a request by the client for access to their PHI, the client or personal representative will be required to sign DCS form **CS-0753, HIPAA Request for Access to PHI**.
2. Clients must request access to their own PHI from DCS by using the personal identifiers, specifically:
 - a) Client's name,
 - b) Date of birth, and
 - c) Social security number
3. If DCS maintains information about the client in a record that includes information about other people, the client is only authorized to see information about him or herself, except as provided below:
 - a) If a person identified in the file is a minor child of the client, and the client is authorized under Tennessee Law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's health care, the client may also access PHI about the minor.
 - b) If the person requesting information is recognized under Tennessee law as a guardian or legal custodian of the client and is authorized by Tennessee Law to have access to the client's information or to act on behalf of the client for making decisions about the client's health care, DCS will release PHI to the requestor.
4. A client's request to access to their own PHI may be denied on the grounds that access may result in risk or harm to the client or to another person. However, prior to any decision to deny such access, the DCS Director of Psychology or a Licensed Health Care Professional designated by the DCS Privacy Officer, may be consulted to review the request and any related documentation. The Licensed Health Care Professional may be a DCS staff person involved in the client's case.

C. Rights of clients to request restrictions of uses and disclosures of PHI

1. Clients may request that DCS restrict use and/or disclosure of their PHI for:
 - a) Carrying out treatment, payment, or health care operations;
 - b) Disclosure of health information to a relative or other person who is involved in the client's care;

2. DCS applies confidentiality laws, policies and procedures to protect the privacy of client information. Even if those laws, policies and procedures would permit DCS to make a use or disclosure of information, a DCS client has the right to request a restriction on use or disclosure of that information.
3. Upon a request by the client for restrictions of uses and disclosures, the client will sign DCS form **CS-0757, HIPAA Request for Restriction of Use and Disclosures**.
4. DCS is not required to agree to a restriction requested by the client if:
 - a) The restriction would adversely affect the quality of the client's care or services;
 - b) The restriction would limit or prevent DCS from making or obtaining payment for services.
5. Emergency treatment must be provided even with an agreed upon restriction. (See **"Exception"** under item 7 below.)

Exception: For Alcohol and Drug or Vocational Rehabilitation participants, Federal regulations (42 CFR Part 2 and 34 CFR) prohibit DCS from denying client requests for restrictions on uses and disclosures of their PHI regarding treatment or rehabilitation.
6. Client requests for restrictions, including reasons for granting or denying the request, must be documented in TFACTS case recordings for that client using the *"Correspondence contact"* type.
 - ♦ **Prior to any use or disclosure of client information, it must be confirmed that such use or disclosure was not restricted as documented in the client's current child welfare information system case recordings.**
7. If DCS agrees to a client's request for restriction, DCS will not use or disclose information that violates the restriction.

Exception: If the client needs emergency treatment and the restricted PHI is needed to provide emergency treatment, DCS may use or disclose such PHI to the extent needed to provide the emergency treatment. However, once the emergency situation subsides, DCS must ask the provider not to re-disclose the PHI.
8. DCS may terminate its agreement to a restriction if:
 - a) The client agrees to or requests termination of the restriction in writing;
 - b) The client orally agrees to, or requests termination of the restriction. DCS will document the oral agreement or request in the client's TFACTS case recordings using the *"Correspondence contact"* type; or
 - c) DCS informs the client in writing that DCS is terminating its agreement to the restriction. Information created or received while the restriction was in effect will remain subject to the restriction.
 - d) Documentation must be recorded and maintained in the client's TFACTS case recordings using the *"Correspondence contact"* type.

D. Rights of clients to receive PHI from DCS by alternate means or alternate locations

1. DCS must accommodate reasonable requests specified by clients to receive communications by alternate means or alternate locations.
2. Clients will make the above request in writing on DCS form **CS-0753, HIPAA Request for Access to PHI**.
3. In some cases, sensitive health information or health services must be handled with strict confidentiality under state law. ***For example:*** Information about substance abuse treatment, mental health treatment, and certain sexually transmitted diseases, may be subject to specific handling. DCS will comply with the more restrictive requirements.
4. Prior to any medical information being sent to the client, it must be confirmed if the client has requested an alternate means or alternate location, and if that request was granted, as documented in the medical section of the client's FSW/JSW/JPO case file.
5. DCS may terminate its agreement to an alternate location or alternate means of communication if DCS determines the alternate preferences is not effective or appropriate. The client will be notified in writing and the explanation will be documented in TFACTS Case Recordings using the "Correspondence contact" type.

E. Rights of clients to request amendments to their PHI

1. Clients have the right to request that DCS amend their PHI in DCS files.
2. Upon a request by the client to amend their PHI, the client will sign DCS form **CS-0755, HIPAA Request for Amendment of DCS Health Record**.
3. DCS is not obligated to agree to an amendment and may deny the requests or limit its agreement to amend.
4. DCS will honor requests for alternate methods of making this request if reasonable accommodations are needed.
5. Prior to any decision to amend a health or medical record, the DCS Director of Psychology, a Licensed Health Care Professional or other DCS staff person designated by the DCS Privacy Officer will review the request and any related documentation.
6. If DCS grants the request, in whole or in part, DCS must:
 - a) Make the appropriate amendment to the PHI or records, and document the amendment in the client's TFACTS recordings using the "Correspondence contact" type;

- b) Provide timely notice to the client that the amendment has been accepted, pursuant to the time limitations in this policy, above;
 - c) Seek the client's agreement to notify other relevant persons or entities, with whom DCS has shared or needs to share the amended information, of the amendment; and
 - d) Make reasonable efforts to inform, and to provide the amendment within a reasonable time to:
 - ◆ Persons named by the client as having received PHI and who need the amendment; and
 - ◆ Persons, including business associates of DCS, that DCS knows have the PHI that is the subject of the amendment and that may have relied, or could possibly rely, on the information to the client's detriment.
7. DCS may deny the client's request for amendment if:
- a) DCS finds the information to be accurate and complete;
 - b) The information was not created by DCS, unless the client provides a reasonable basis to believe that the originator of such information is no longer available to act on the requested amendment;
 - c) The information is not part of DCS designated record set; or
 - d) It would not be available for inspection or access by the client, pursuant to **Section G**.
8. If DCS denies the requested amendment, in whole or in part, DCS must provide the client with a timely written denial. The denial must:
- a) Be sent or provided within the time limits specified in **Section G**;
 - b) State the basis for the denial, in plain language;
 - c) Explain if the client does not submit a written statement of disagreement, the client may ask that if DCS makes any future disclosures of the relevant information, DCS will also include a copy of the client's original request for amendment and a copy of the DCS written denial; and
 - d) Explain the client's right to submit a written statement disagreeing with the denial and how to file such a statement. If the client does so:
 - ◆ DCS will enter the written statement into the client's TFACTS case recordings using the "Correspondence contact" type;
 - ◆ DCS may also enter a written rebuttal of the client's written statement into the client's TFACTS case recordings using the "Correspondence contact" type. DCS will send or provide a copy of any such written rebuttal to the client;
 - ◆ A copy of the written rebuttal must be maintained in the medical section of the client's FSW/JSW/JPO's hard copy case file;
 - ◆ DCS will include a copy of that statement, and of the written rebuttal with any future disclosures of the relevant information; and

9. Provide information on how the client may file a complaint with DCS, or with the U.S. Department of Health and Human Services (DHHS), Office of Civil Rights, as outlined in **Section G**.

F. Rights of clients to an accounting of disclosures of protected health information

1. Clients have the right to receive an accounting of disclosures of protected health information (PHI) that DCS has made for any period of time, not to exceed six (6) years, preceding the date of requesting the accounting.
2. The accounting will only include health information **NOT** previously authorized by the client for use or disclosure, and will **NOT include information collected, used or disclosed for treatment, payment or health care operations for that client.**
3. Upon a request by the client for an accounting of disclosures, the client must sign form ***CS-0754, HIPAA Request for Accounting of Disclosures***.
4. This right does not apply to disclosures made **prior** to April 14, 2003.
5. Disclosures of PHI **required** to be listed in an accounting (assuming that the disclosure is permitted by other confidentiality laws applicable to the individual's information and the purpose for which it was collected or maintained) include:
 - a) **Audit Review**: PHI provided from an individual's record in relation to a financial, quality of care or other operations related audit or review of a provider or contractor that is not part of DCS health care operations.
 - b) **Health and Safety**: PHI about an individual to avert a serious threat to health or safety of a person, such as reporting communicable diseases to a local health department as required by law.
 - c) **Licensee/Provider**: PHI from an individual's records in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
 - d) **Legal Proceeding**: PHI about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding – include a copy of the court order with the accounting.
 - e) **Law Enforcement Official/Court Order**: PHI about an individual provided to a law enforcement official pursuant to a court order – include a copy of the court order with the accounting.
 - f) **Law Enforcement Official/Deceased**: PHI provided to law enforcement officials or medical examiner about a person who has died for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law.
 - g) **Law Enforcement Official/Warrant**: PHI provided to law enforcement official in relation to a fleeing felon or for whom a warrant for their arrest has been

- issued and the law enforcement official has made proper request for the information, to the extent otherwise permitted by law.
- h) **Media:** PHI provided to the media (TV, newspaper, etc.) that is not within the scope of an authorization by the individual.
 - i) **Public Health Official:** PHI about an individual (other than staff employed for public health functions) to a public health official, such as the reporting of disease, injury, or the conduct of a public health study or investigation.
 - j) **Public Record:** PHI about an individual that is disclosed pursuant to a Public Record request without the individual's authorization.
6. Disclosures of PHI **not required** to be tracked and accounted for are those that are:
- a) Authorized by the client;
 - b) Made prior to April 14, 2003;
 - c) Made to carry out treatment, payment, and health care operations;
 - d) Made to the client;
 - e) Made to persons involved in the client's health care;
 - f) Made as part of a limited data set in accordance with DCS Policy, [32.6, De-identification of Client PHI and Use of Limited Data Sets.](#)
 - g) For national security or intelligence purposes;
 - h) Made to correctional institutions or law enforcement officials having lawful custody of an inmate or other individual;
 - i) Those incidental to any permitted or required uses and disclosures;
 - j) To persons involved in the individual's care or notification purposes such as notifying a family member, personal representative or another individual responsible for the individual's care of the individual's location, general condition or death;
 - k) To a family member, other relative, close personal friend or other person identified by the individual of information relevant to their involvement with the individual's care when the individual is present;
 - l) To a family member, other relative, close personal friend or other person identified by the individual of information relevant to their involvement with the individual's care when the individual is not present or when the opportunity to agree or object is not possible because of the individual's incapacity or in an emergency circumstance, if DCS, exercising professional judgment, determines that it is in the individual's best interest to disclose the PHI relevant to the person(s) involvement in the individual's health care;
 - m) For disaster relief purposes.
7. Disclosures will be listed on DCS form **CS-0756, HIPAA Disclosures of PHI**, if **required** to be tracked by the Privacy Rule, and the accounting must include, for each disclosure:

- a) The date of the disclosure;
 - b) The name, and address if known, of the person or entity who received the disclosed information;
 - c) A brief description of the information disclosed; and
 - d) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of such statement, a copy of the client's written request for a disclosure, if any.
8. If, during the time period covered by the accounting, DCS has made multiple disclosures to the same person or entity for the same purpose, or as a result of a single written authorization by the client; DCS may provide:
- a) Only the first disclosure made during the time period if DCS adds the frequency or number of disclosures made to the same person or entity and the last date of the disclosure made during the requested time period. (DCS need not list the same identical information for each subsequent disclosure to the same person or entity).
 - b) DCS must document, and retain in the medical section of the client's case file, the information required to be included in an accounting of disclosures, as listed under **Section F, 5** and send a copy of the written accounting provided to the client. All correspondence should be documented in the client's TFACTS case recordings using the "Correspondence contact" type.
9. DCS will temporarily suspend a client's right to receive an accounting of disclosures that DCS has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if:
- a) The agency or official provides a written statement to DCS that such an accounting could reasonably impede their activities.
 - b) However, if such agency or official makes an oral request, DCS will:
 - ◆ Document the oral request, including the identity of the agency or official making the request;
 - ◆ Temporarily suspend the client's right to an accounting of disclosures pursuant to the request; and
 - ◆ Limit the temporary suspension to no longer than thirty (30) days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

G. Procedures for all client requests under HIPAA

All requests from clients for **Access to PHI, Restrictions Of Uses and Disclosures Concerning PHI, Receipt of PHI by Alternate Means or Alternate Locations**,

Amendments to PHI, and **Accounting of Disclosures of PHI** shall be handled as outlined below:

1. Documentation of approval or denial:

- a) All decisions by DCS that involve approvals or denials of client requests shall be documented and sent to the client in writing.
- b) All granted requests must be appropriately documented in the client's TFACTS case recordings using the "Correspondence contact" type, timely notice must be given to the client, and DCS will seek the client's agreement to notify other relevant persons or entities with whom DCS shares or needs to share the PHI concerning the care of the client.
- c) In the case of amendments made to PHI, DCS will make a reasonable effort to inform, and provide the amendment in a reasonable time to persons named by the client as having PHI and need the amendment along with persons, including business associates of DCS that need the amendment to continue appropriate services for the client.

2. Review of client file:

Prior to any decisions to honor client requests, the client file will be reviewed for restrictions, instructions for alternate means or locations, and verifications that the request is from a person authorized to make the request.

3. Reasons for denial: Under federal law, clients have certain rights to their own PHI except for:

- a) Psychotherapy notes;
- b) Information compiled for use in civil, criminal, or administrative proceedings;
- c) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);
- d) Documents protected by attorney-client privilege;
- e) Information where a release is prohibited by State or Federal Laws;
- f) PHI was obtained from someone other than a health care provider under a promise of confidentiality, and access would reveal the source of the information.
- g) Good faith belief that granting the request could cause harm because:
 - ♦ PHI request might endanger the life or physical safety of the client or another person; or
 - ♦ PHI request might cause substantial harm to the client or another person.

4. Review of denials:

- a) If DCS denies the PHI request, the client has the right to have the decision reviewed by a licensed health care professional or other designated DCS staff not directly involved in making the original denial decision.

- b) Upon receipt of the client's written request for review of the denial decision, DCS must:
- ◆ Promptly refer a request for review to the designated reviewer. The reviewer must determine, within the time limits as outlined in **Section G, 5**, whether or not to approve or deny the client's request, in accordance with this policy.
 - ◆ Notify the client in writing of the reviewer's determination; and
 - ◆ Take action to carry out the reviewer's determination.

5. Time limits for action on all requests:

DCS shall act on the client's request no later than sixty (60) days after receiving the request. DCS may extend the time period (once) another thirty (30) days beyond the original sixty (60) days by informing the client of the date the request may be answered.

6. Termination of requests:

- a) DCS may terminate its agreement of a client request if:
- ◆ The client agrees to or requests termination of the agreement in writing;
 - ◆ The client orally agrees to, or requests termination of the agreement. DCS will document and date the oral agreement in the client's TFACTS case recordings using the "Correspondence contact" type;
 - ◆ DCS informs the client in writing that DCS is terminating its agreement (in the case of restricted agreements, information created or received while the restriction was in effect shall remain subject to the restriction).
- b) DCS may terminate its agreement to an alternate location or alternate means of communication if:
- ◆ DCS determines the alternate preferences are not effective or appropriate. DCS will notify the client and document the action in the client's TFACTS case recordings using the "Correspondence contact" type.
- c) DCS will temporarily suspend a client's right to receive an accounting of disclosures that DCS has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if:
- ◆ The agency or official provides a written statement to DCS that such an accounting could reasonably impede their activities.
 - ◆ The agency or official provides an oral request. DCS will document the oral request including the identity of the person making the request, temporarily suspend the right pursuant to the request, and limit the suspension to no longer than thirty (30) days unless the agency or official submits a written request specifying a longer time period.
 - ◆ All decisions must be documented in the client's TFACTS case recordings using the "Correspondence contact" type.

7. Applicable fees:

DCS **may** charge the client a reasonable cost-based fee for each accounting requested, provided that DCS informs the client of the fee before proceeding with any request and allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

8. Rights to file a complaint about DCS actions and decisions under HIPAA:

- a)** Clients have a right to submit a complaint if they believe that DCS has improperly used or disclosed their PHI, or if they have concerns about the privacy policies of DCS or concerns about DCS compliance with such policies.
- b)** Information and procedures on filing complaints is outlined in the ***Notice of Privacy Practices and Client acknowledgement, CS-0699.***

H. Case file documentation

All HIPAA related information and requests will be filed in the **medical section** of the client's case file.

Forms:

[*CS-0699, DCS Notice of Privacy Practices*](#)

[*CS-0753, HIPAA Request for Access to PHI*](#)

[*CS-0754, HIPAA Request for Accounting of Disclosures*](#)

[*CS-0755, HIPAA Request for Amendment of DCS Health Record*](#)

[*CS-0756, HIPAA Disclosures of PHI*](#)

[*CS 0757, HIPAA Request for Restriction of Uses and Disclosures*](#)

Collateral Documents:

None