

32.3 Use and Disclosure of Protected Health Information	
Application: To All Department of Children's Services Employees	
Authority: Health Insurance Portability and Accountability Act (HIPAA) of 1996; TCA 37-5-105, 37-5-106; 42 U.S.C.A. § 290dd-2 and 42 C.F.R. Part 2	Standards: COA: PA-RPM 6
Commissioner:	Date:
Original Effective Date: 09/01/07 Current Effective Date: 11/21/17	Supersedes: 12/15/09 Last Review Date: 11/21/17
Glossary: None	

Policy Statement:

DCS shall only use or disclose client Protected Health Information (PHI) with a completed and signed authorization for release of (PHI) unless otherwise authorized by Federal or State law.

Purpose:

To outline HIPAA compliant procedures for the use and disclosure of PHI.

Procedures:

A. Minimum necessary requirements for disclosures

1. When DCS policy permits use or disclosures of a client's PHI to another entity, or when DCS requests a client's PHI from another entity, DCS must make reasonable efforts to limit the amount of PHI to the minimum necessary information needed to accomplish the intended purpose of the use, disclosure, or request.
2. If DCS policy permits making a particular disclosure to another entity, DCS may rely on a requested disclosure as being the minimum necessary for the stated purpose when:
 - a) Making disclosures to public officials permitted under 45 CFR 154.512, if the public official represents the information requested is the minimum necessary for the stated purpose(s); or
 - b) The information is requested by another covered entity; or

- c) The information is requested by a professional who is a business associate or employee of a covered entity for the purpose of providing professional services to the covered entity, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or
- d) A person requesting the PHI for research purposes has provided documentation or representations that comply with the applicable requirements of DCS policy

[32.5, Uses and Disclosures for Research.](#)

3. When requesting information about a client's PHI from another entity, DCS employees must limit requests to those that are reasonably necessary to accomplish the purpose for which the request is made. DCS will not request a client's entire medical record unless DCS can specifically justify why the entire medical record is needed.
4. The minimum necessary information requirement does not apply to the following:
 - a) Disclosures to or requests by a health care provider;
 - b) Disclosures made to the client or their representative about his or her own PHI;
 - c) Use or disclosures authorized by the client or their personal or legal representative;
 - d) Disclosures made to the United State Department of Health and Human Services (DHHS), Office of Civil Rights (OCR), in accordance with subpart C of part 160 of the HIPAA Privacy Rule;
 - e) Use or disclosures that are required by law; and
 - f) Use or disclosures that are required for compliance with the HIPAA Transaction Rule. The minimum necessary standard does not apply to the required or situational data elements specified in the implementation guides under the Transaction Rule.

B. Authorization

1. DCS will not obtain, use or disclose any PHI regarding a client without a valid, completed and signed authorization form ***CS-0559, Authorization for Release of Information and HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release***, unless authorized by DCS policies, Federal or State Law.
2. The client must **voluntarily** agree to sign the authorization form.
3. DCS may not require the client to sign an authorization as a condition of providing treatment, services, payment for health care services, enrollment in a health plan or eligibility for health plan benefits, except:
 - a) As outlined in DCS policy, [32.5 Uses and Disclosures for Research;](#)

- b) When the client's PHI is needed to determine the client's eligibility for enrollment and the authorization is not for a use or disclosure of psychotherapy notes prior to enrolling the client in a Tennessee health plan such as TennCare;
- c) When a health oversight agency uses or discloses in connection with oversight of the originator of the psychotherapy notes;
- d) To the extent authorized under state law to defend DCS in a legal action or other proceedings brought by the client;
- e) When providing health care that is solely for the purpose of creating PHI for disclosure to a third party.

For example, in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by DCS, the evaluator may, as a condition of conducting the evaluation, require the parent to sign an authorization to release the evaluation report (but not the underlying psychotherapy notes) to DCS.

- f) For disclosures to an employer for use in employment-related determinations;
 - g) For any purpose in which Federal or State law or DCS Policy requires a signed authorization;
 - h) For a referral or service provision for alcohol and drug or substance abuse treatment, mental health treatment and services, and vocational rehabilitation services.
 - i) A required authorization and a *voluntary* authorization must be separate documents, signed separately.
4. The client completes each authorization form jointly with the DCS staff person who provides guidance as to why and how the information is to be used or disclosed.
 5. Uses and disclosures must be consistent with what the client has authorized and must be limited to the minimum amount of information necessary to provide services and benefits to the client and to support the role of DCS as a healthcare provider or health plan.
 6. Each authorization form is filed in the medical section of the client's Family Service Worker (FSW)/Juvenile Service Worker (JSW)/Juvenile Probation Worker (JPO) case file and documented in the current child welfare information system case recordings using the "*Correspondence contact*" type. The information must be retained for a minimum of six (6) years from the date of the authorization.

C. Use, disclosures and accounting

1. DCS may use and disclose PHI **without an accounting** in the following circumstances:
 - a) When authorized by the client;
 - b) Made prior to April 14, 2003;
 - c) Made to carry out treatment, payment, and healthcare operations;

- d) Made to persons involved in the client's health care;
 - e) Made as part of a limited data set in accordance with DCS policy, [32.6, De-identification of Client Information and Use of Limited Data Sets](#);
 - f) For national security or intelligence purposes;
 - g) Made to correctional institutions or law enforcement officials having lawful custody of an inmate or other individual;
 - h) Those incidental to any permitted or required uses and disclosures;
 - i) 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, location, general condition, or death;
 - j) 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;
 - 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 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;
 - l) For disaster relief purposes.
2. Disclosures under the following circumstances may be made by DCS but **require** an accounting of the disclosure be maintained by DCS:
- a) **Audit Review**: PHI provided from a client'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 a client provided 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 a client'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 client;
 - d) **Legal Proceeding**: PHI about a client 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 a client 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 client 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 a client (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 a client that is disclosed pursuant to a Public Record request without the individual's authorization.

D. Routine and recurring disclosure of a client's PHI

Routine and recurring refers to the disclosure of records outside DCS, without the authorization of the client or the client's representative, for a purpose that is compatible with the purpose for which the PHI was collected:

1. DCS will not disclose a client's entire medical record unless the request specifically justifies why the entire medical record is needed.
2. Routine and recurring uses include disclosures required by law. For example, a mandatory child abuse report by a DCS employee would be a routine use.
3. If DCS deems it desirable or necessary, DCS may disclose PHI as a routine and recurring use to the Tennessee Attorney General's Office for the purpose of obtaining its advice and legal services.
4. When Federal or State agencies, such as the United States Department of Health and Human Services (DHHS), Office of Civil Rights (OCR), DHHS Office of Inspector General, the State of Tennessee TennCare Fraud Unit, or the Tennessee Comptroller's Office, have the legal authority to require DCS to produce records necessary to carry out audit or oversight of DCS programs or activities, DCS makes such records available as a routine and recurring use.
5. When DCS Office of General Counsel determines that records are subject to disclosure under Tennessee Public Records Law, DCS may make the disclosure as a routine and recurring use.

E. Non-routine disclosure of a client's PHI

Non-routine disclosure refers to the disclosure of records outside DCS that is not for a purpose for which it was collected.

1. DCS will not disclose a client's entire medical record unless the request specifically justifies why the entire medical record is needed
2. Requests for non-routine disclosures must be reviewed on an individual bases in accordance with the criteria set forth in the procedure section.
3. For non-routine disclosures, DCS program areas:
 - a) Implement procedures to limit the information disclosed to only the minimum amount of information necessary to accomplish the purpose for which the disclosure is sought; and
 - b) Review requests for non-routine disclosures on an individual basis in accordance with such procedures.

F. Authorization to restrict

DCS may not use or disclose PHI about a client unless authorized by this policy or required by Federal or State law if the client has been granted a restriction under DCS policy [32.2 Client Privacy Rights](#).

G. Re-disclosure

Unless prohibited by Federal and State laws, PHI held by DCS and authorized by the client for disclosure may be subject to re-disclosure and no longer protected by DCS policy. Whether or not the information remains protected depends on whether the recipient is subject to Federal or State privacy laws, court protective orders or other lawful process.

Note: Alcohol and drug / substance abuse treatment records may not be redisclosed without specific authorization from the client. This is pursuant to the federal confidentiality law for this information, which is more stringent than HIPAA.

H. Verification of the identity of person requesting the PHI

PHI may **not** be disclosed without verifying the identity of the person requesting the information if the person is not known to the DCS staff member fulfilling the request.

1. If the requestor is a Provider, they need to supply their provider identification number and/or telephone number for call back.
2. For all other requestors, reasonable evidence should be supplied in the following form:
 - a) Identification badge;
 - b) Driver's License;
 - c) Written statement of identity on agency letterhead or similar proof.

Forms:

[*CS-0559, Authorization for Release of Information of HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release*](#)

Collateral Documents:

None