

**DIVISION CIRCULAR #53
N/A**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: APRIL 14, 2003

DATE ISSUED: March 31, 2003

**I. TITLE: HIPAA PRIVACY PRACTICES POLICIES
Administrative Policies and Procedures**

II. PURPOSE: To establish a uniform system to implement the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as it relates to Privacy Practices and 45 CFR Parts 160 and 164.

III. SCOPE:

- ◆ This circular applies to all components of the Division.
- ◆ This circular also applies to agencies under contract with the Division and who have access to client records. Policies of agencies are to conform with this Division Circular, the HIPAA Privacy Rule and existing State laws and Division Circulars.
- ◆ Requirements of this circular are subject to change in accordance with the Department of Human Services (DHS) policies under HIPAA.

IV. DEFINITIONS:

"Affiliation Agreement" means an agreement to protect the client record from disclosure between the Division and a party who has access to the client record where no written contract exists.

"Authorization" means a detailed document that gives covered entities permission to use or disclose protected health information to a third party. It is not required for payment, treatment or other health care operations.

"Business Associate/Partner" means any entity with which the Division contracts for services including, but not limited to, provider agencies, consultants, and community care residence operators.

"Client Record" means the organized compilation of documents that relate to the provision of services to an individual.

"Designated Record Set" means:

(1) a group of records maintained by or for the Division that is:

- a. the medical records and billing records about individuals maintained by or for the Division;

- b. the enrollment, payment, claims adjudication, and case or medical management record systems maintained for individuals of the Division; and
- c. used, in whole or in part, by or for the Division to make decisions about services for individuals.

(2) For purposes of this circular, the term record means any item, collection, or grouping of information that includes protected health or billing information and is maintained, collected, used, or disseminated by or for Division.

"Disclosure" means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

"Division Component" means any of the following components of the Division: Regional Assistant Director's office, developmental centers, regional offices, guardianship office or central office unit.

"Health Care Operations" means members of the medical staff, the risk or quality improvement manager, members of the quality improvement team or other designated Division staff may use information in the client record to assess the care and outcomes. This information may then be used in an effort to continually improve the quality and effectiveness of the health care and service we provide.

"Health information" means any information (whether oral or recorded in any form or medium) that is created or received by the Division that relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual.

"HIPAA Privacy Rule" means the Health Insurance Portability and Accountability Act of 1996 as it relates to Privacy Practices and 45 CFR Parts 160 and 164.

"Individual served" means the person who is receiving services from the Division of Developmental Disabilities, also known as client.

"Minimum Necessary" means the Division component is required to take reasonable steps to limit the use or disclose of, and requests for, protected health information to the minimum amount of information necessary to accomplish the intended purpose.

"Payment" means the activities undertaken by: 1) a 'division component' to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or, 2) or to obtain or provide reimbursement for the provision of health care.

"Psychotherapy notes" means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

"Protected Health Information" (PHI) means individually identifiable health information created or received by the Division which is transmitted or maintained by

electronic media or transmitted or maintained in any other form or medium. PHI includes oral, written or electronic information.

"Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

"Use" means the sharing, employment, application, utilization, examination, or analysis of individual health information.

"Volunteers" means an unpaid person who supports and supplements programs and services. A person may volunteer individually, intern, or as a member of an organized group. (See Division Circular #24)

"Workforce Member" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

V. ADMINISTRATIVE POLICIES/PROCEDURES:

- A. General Policy for Compliance**
- B. Privacy Officer - Job Description (DC53 - Appendix A)**
- C. Workforce - Access to PHI**
- D. Training - (Confidentiality Statement)**
- E. Intimidation/Retaliation**
- F. Sanctions**
- G. Documentation**
- H. Office Safeguards - (DC53-Appendix B)**
- I. Business Partner's Agreement - (DC53 - Appendix C)**
- J. Mitigation**
- K. Existing Laws/Statutes**
- L. Relevant Documents**

A. General Policy for Compliance

1. The Division may not use or disclose "protected health information" (PHI) as identified under HIPAA except as authorized by the individual who is the subject of the information or as explicitly required or permitted in this circular.
2. All protections contained in this circular shall apply to the entire client record, as defined at N.J.A.C. 10:41-2 et seq. (Division Circular 30), because of the prevalence of PHI throughout the record.
3. Information concerning the status of individuals who are HIV positive shall not be included in the client record and shall be available in accordance with Division Circular 45.

4. The Division will periodically issue HIPAA Bulletins to address issues specific to the Division.

B. Privacy Officer - Job Description (DC53 - Appendix A)

Each Division component shall identify a HIPAA Privacy Officer.

1. Each developmental center, regional office and the central office shall have one staff member identified to respond to requests under this circular.

Primary Duties of Privacy Officer

- a. Ensure that individual information in any form is kept confidential.
- b. Ensure that the Notice of Privacy Practices is provided to new admissions and posted in public areas. The privacy officer shall keep a copy of all notices and revisions.
- c. Ensure all current employees receive a confidentiality statement and receive training on the policy by April 14, 2003.
- d. Ensure all new employees receive a confidentiality statement and receive training on the policy within 30 days of hire.
- e. Review requests made in accordance with this circular.
- f. Investigate complaints of violations of the policy.

C. Workforce - Access to PHI

1. Access to the client record shall be on a "need to know" basis. "Need to know" shall be determined by a review of the function of the party making the request, the sensitivity of the information requested, and a decision as to whether the information requested is essential for the party to complete his or her official function. Only the minimum amount of necessary information shall be released for all non-routine disclosures, the minimum necessary information shall be determined on a case-by-case basis (refer to Division Circular 53A).
2. Staff that provides direct services shall have access to those individual records of the person served. These include but are not limited to:
 - a. Health care professionals (doctors, nurses, pharmacists, etc);
 - b. Psychologists;
 - c. Case managers;
 - d. Social workers;
 - e. Speech Therapists;
 - f. Physical Therapists;
 - g. Occupational Therapists;
 - h. Psychiatrists;
 - i. Counselors;
 - j. Direct Care Staff;
 - k. Guardianship Workers;
 - l. All members of the Interdisciplinary Team not otherwise listed who are responsible for the provision of services;
 - m. Clerical Support Staff to the professionals listed above;

- n. Consultants;
 - o. Professional staff of agencies to which a referral has been made for services.
3. Staff shall not have access to the individual record of persons to whom they do not provide services without proper authorization.
 4. Staff who provide emergency services to individuals or who provide coverage during staff absences shall have access to the client record of persons served on this basis.
 5. Division Intake staff, to determine eligibility for services, shall have access to all client records of the Division.
 6. Supervisors shall have access only to the client records of persons served by their subordinate staff.
 7. Managers or administrative staff of a component shall have access to all client records for those individuals for whom they have responsibility.
 8. Staff involved in licensing, investigative and quality assurance activities for the Division shall have access to the client records of individuals in the course of their normal responsibilities.
 9. Staff who have special assignments, such as Division liaisons and employee relations officers, shall have access to the client record of individuals in the course of their normal responsibilities.
 10. Contract administrators shall have access to the client records of individuals served by their contract as well as information contained in requests for proposals for new contracts.
 11. Business/fiscal office staff shall have access to the records of the individuals that are necessary to complete their work related to the individuals for whom they provide services.
 12. Volunteers shall have access to client records on a "need to know" basis as approved by the head of the Division component. (Refer to Division Circular 24)
 - a. All volunteers shall be required to sign a written statement that they will agree to protect patient information in accordance with federal and state law and Department and Division regulations. Sanctions addressed in statement are inapplicable to volunteers. However, volunteers who violate this policy will no longer serve as a volunteer with the Division. (Confidentiality Statement: DC53-1)
 - b. Volunteers include but are not limited to Board of Trustees, steering committees, Human Rights Committee, Unusual Incident Report committees, as well as individuals who work directly with a person served.
 - c. Volunteers must receive the HIPAA Awareness In-Service training provided to Division employees.

- d. To the extent practicable, individual-identifying information should be redacted when provided in meetings attended by non-Division individuals.
13. Support staff, including personnel and maintenance staff, shall not have access to client records.
14. Food services and transportation staff shall have access to the minimum necessary individual information to provide appropriate support services to individuals being served.
15. The division component requesting access to electronic file owned by another division component will complete a "Request for Electronic File Access" form and submit it for approval in accordance with Division Circular 25.
16. The largest single database of the Division is the client database. Access not stipulated in this circular shall conform with the requirements of NJAC 10:41-2 (Division Circular 30).

D. Training

1. A component shall provide training to all employees on the policies and procedures regarding the protection of PHI.
2. Upon completion of training, each employee must receive a Confidentiality Statement.
3. The component must document that training has been provided to each employee.
 - a. A component shall provide training to each current employee no later than 90 days from the effective date of this circular;
 - b. Thereafter, each new employee shall be trained within 30 days of hire;
 - c. To each employee whose functions are affected by a material change in the policies or procedures within 30 days of that change.
4. The component must provide a copy of the HIPAA Fact Sheet to all employees during the training.

E. Retaliation/Intimidation

A component may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:

1. Any individual exercising any rights under or participating in any process established by this policy, including the filing of a complaint.
2. Any individual who may report suspected violations of the HIPAA Privacy Practices.

F. Sanctions

If a Division employee willfully violates the terms of this circular, he or she may be subject to disciplinary action in accordance with Administrative Order 4:08.

G. Documentation

1. This circular applies to PHI maintained in accordance with the State of New Jersey General Records Retention Schedule. Generally, client records are retained in the Division for ten years after death or discharge. Client related litigation records and medical discharge summaries are to be retained in accordance with the General Records Retention Schedule.
2. It is required that each Division component document all actions required by the privacy rule, either in written or electronic form. This documentation must be retained for six (6) years, or in accordance with the General Records Retention Schedule, from the date of its creation or the date when it was last in effect, whichever is later.
3. The following documentation is required:
 - a. All policies and procedures created for the purpose of complying with the Privacy Rule, including updates, revisions or changes made to policies and procedures.
 - b. Requests for restrictions and related documentation.
 - c. Business Partner Agreements and Affiliation Agreements.
 - d. Authorization forms.
 - e. Samples of all written notices, memoranda, and letters that are issued regarding the privacy rule.
 - f. Communications and disclosures such as court orders, subpoenas, administrative orders, etc., which provide the basis for a disclosure.
 - g. Accounting of all disclosures of PHI.
 - h. Requests for amendments and all related documentation.
 - i. Complaints and all related documentation.

H. Office Safeguards Policy - (Appendix B)

1. The component must have in place administrative, technical and physical safeguards to protect the privacy of PHI.
 - a. The component must reasonably safeguard the client record from intentional or unintentional use or disclosure that is in violation of the policy.

- b. A component must reasonably safeguard PHI to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.
2. Refer to Appendix B, Office Safeguard Policy and Procedures.

I. Business Partners/Affiliation Agreements - (Appendix C)

1. Each Division component shall ensure there is a signed Business Partner Agreement with all business partners.
 - a. The business partner shall sign the Department of Human Services' Business Partner Agreement (BPA).
 - b. Any request to the Division to sign a BPA from an outside entity shall be forwarded to the Division APO for review. The entity shall be advised, in writing, that the Division will provide a BPA if there is a contract and the Division provides PHI to the entity.
 - c. When a business partner no longer serves an individual, the business partner shall provide all records to the Division on the day the individual leaves the services of the business partner. (Refer to Division Circular 11)
 - d. A business partner agreement shall be signed for each contract number issued by the Division.
 - e. When an entity has access to the client record but no written contract exists, the Division may require that a BPA be signed or some other document that states that the protections of this policy will apply.
 - f. A business partner agreement is not required for treatment providers.

J. Mitigation

The Division must mitigate, to the extent practicable, any harmful effect that is known to the Division of a use or disclosure of PHI in violation of its policies and procedure or the requirements of this circular or by its business associates. This applies to PHI released by the Division, its Business Partners and Affiliates.

K. Existing Regulations/Policies applicable to this policy:

- ◆ Division Circular 53A - HIPAA Uses and Disclosures Policies & Procedures
- ◆ Division Circular 53B - HIPAA Individual Rights Policies & Procedures
- ◆ Division Circular #30 - Access to Client Records and Record Confidentiality (NJAC 10:41.2) (NJSA 30:4.23.4)
- ◆ Division Circular 11 - Records Retention and Destruction
- ◆ Division Circular 24 - Volunteers
- ◆ Division Circular 25 - Access to Electronic Files
- ◆ Division Circular 45 - HIV/AIDS
- ◆ Administrative Order 4:08
- ◆ State of New Jersey General Records Retention Schedule

L. Relevant Documents to this Division Circular:

- ❖ DC53 - Appendix A: Privacy Officer Job Description
- ❖ DC53 - Appendix B: Office Safeguard Policy
- ❖ DC53 - Appendix C: Business Partners/Affiliation Agreement
- ❖ Form: Confidentiality Statement
- ❖ Fact Sheet: HIPAA Fact Sheet

Signed on 3/28/03 by JWS, original on file
James W. Smith, Jr.
Director

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