

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Office of the Commissioner

HIPAA: Right to Request Restrictions

Policy #: DHHS-05-15

Issue Date: April 14, 2015

I. SUBJECT

HIPAA: Right to Request Restrictions

II. POLICY STATEMENT

The Maine Department of Health and Human Services (the Department) recognizes and supports the right of individuals to request restrictions on how the Department uses consumer PHI or electronic PHI (ePHI) as required by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Health Information Technology for Economic and Clinical Health (HITECH) Act. This policy applies to the Department's HIPAA-covered health care providers only.

III. RATIONALE

In compliance with the requirements of the HIPAA Privacy Rule and the HITECH Act, the healthcare provider/HIPAA covered entities of the Department will comply with the regulatory requirement to honor this narrow request for restrictions on disclosure of PHI where the patient/client has paid out of pocket in full for services.

IV. PROCEDURES

- A. Requests must be submitted in writing.
- B. Generally, the Department may grant the request if reasonable. The Department is legally permitted to deny the request, or grant part of and deny part of the request, with the following exception:
 1. *The Department is required to agree to a request not to disclose PHI to a health plan for payment or operations purposes, when that PHI pertains solely to a healthcare item or service for which the provider has been paid out of pocket in full.*
 2. A request not to disclose PHI under Section IV (B)(i) does not remain in effect indefinitely. If the patient/client to whom the restriction applies is an outpatient, or is discharged from an inpatient facility, the request must be renewed at each visit where the patient pays out of pocket in full.
 3. The Department need not agree to a restriction to limit PHI shared for treatment purposes.
- C. The final decision must be made by the office Privacy/Security Liaison in collaboration with the office director or the Director of Healthcare Privacy, as the Liaison deems necessary. If the Department agrees to a restriction, it will be documented in the consumer record and kept on file for at least six years from the date the record is last in effect.

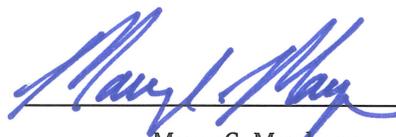
- D. Other than the required restriction noted above in Section IV (B)(i), if the Department agrees to a restriction, it is binding across the organization and for all future uses and disclosures of the patient's PHI until the agreement is terminated or modified under one of the following special circumstances:
1. PHI is needed to provide emergency treatment
 2. PHI is disclosed to the U.S. Department of Health and Human Services in its audit of the organization's compliance with HIPAA Privacy and Security Rules.
- E. The Department will respond to a request for restriction within a maximum of 30 days with the following in writing:
1. A statement that the request has been reviewed;
 2. A description of the restriction being agreed to or denied;
 3. If denied, the basis on which the denial is made.
- F. The patient has the right to respond to a denial and file a complaint.
- G. Generally, a restriction may be terminated when:
1. The patient agrees to or requests the termination in writing; or
 2. The patient agrees orally to the termination, and the oral agreement to terminate the restriction is documented; or
 3. The Department unilaterally terminates the agreement by informing the patient in writing, in which case the termination applies only to PHI created or received after notifying the patient of the termination. The Department may not unilaterally terminate the restriction described in Section IV (B) (1) of this policy.
- H. Questions: Any questions regarding uses or disclosures of PHI in any format should be directed to the Office Privacy/Security Liaison, the Director of Healthcare Privacy or the General Counsel.

V. DISTRIBUTION

All hospital, OMS and HIPAA-covered entity Staff (OFI staff involved in OMS/MaineCare benefits determinations or other MaineCare-related activities, Public Health Nursing, HETL, OADS Case Managers and others involved in direct client or patient care) via e-mail and posting on the DHHS Intranet via e-mail and posting on the Department Intranet.

April 14, 2015

Date



Mary C. Maynew
Commissioner