



**Policy #:** DHHS-03-15

**Issue Date:** April 14, 2015

**I. SUBJECT**

HIPAA: Uses and Disclosures of Protected Health Information

**II. POLICY STATEMENT**

The Maine Department of Health and Human Services (the Department) will comply with federal and state privacy and security regulations and requirements for the protection of identifiable consumer information. The Department will limit the use and disclosure of Protected Health Information ("PHI") or electronic PHI without authorization to treatment, payment, and healthcare operations ("TPO") purposes, or as permitted or required by law. This policy applies to PHI in any format. It applies to our workforce, affiliates, agents, and Business Associates, whether on site or working from remote locations.

**III. RATIONALE**

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule requires that the Department's "covered entities" and "covered components" limit the use or disclose of PHI without authorization to certain specific purposes. This policy sets forth the general parameters surrounding such use and disclosure.

**IV. PROCEDURE STATEMENT**

A. **TPO:** Our workforce may use and disclose PHI for TPO purposes. Examples of TPO include, but are not limited to, the following:

1. **Treatment:** To provide health care services or treatment, which may include sharing information between providers and potentially outside health care entities that provide services for, or are involved in, the client or consumer's care;
2. **Payment:** To bill and collect for treatment and services rendered to the client or consumer, which may include determining prior authorization or approval for services, as well as information needed for the disclosure of claims, and for billing and collection efforts;
3. **Health Care Operations:** To conduct the business of running the Department, including to determine effectiveness of treatments, what services should be offered or are not needed, for comparison with similar organizations and to make improvements in services, for utilization review, educational or peer review purposes, to ensure quality of care, and to work with our attorneys and accountants to keep our organization working appropriately.

- B. Minimum Necessary:** Our workforce will use only the minimum necessary PHI to provide our services and perform our tasks. Different workforce members may have different access to PHI or electronic PHI depending upon his/her role in the Practice. For example, the entire client or consumer record may be the minimum necessary for a physician or case manager's treatment purposes. Further information is located in our Minimum Necessary Policy.
- C. Specially Protected Categories:** Where access, use or disclosure of PHI involves specially protected information under state or federal law, categories of information such as HIV/AIDS status or test results, licensed mental health treatment information, or substance abuse treatment information, we will require specific written consent or authorization, or court order, when appropriate, before that PHI may be shared outside the Department. State law provides that the sharing of Mental Health Information is permissible for continuity of care/care management purposes, where a good faith effort to notify the client or consumer or is made.
- D. Incidental Uses and Disclosures:** The HIPAA Privacy Rule does not require that every risk of an incidental use or disclosure of PHI be eliminated, so long as a) we have adopted reasonable safeguards, b) have an effective minimum necessary policy in place, and c) the use or disclosure was secondary to a permitted use or disclosure.
1. We are permitted to use sign in sheets for client or consumers we serve, call individuals by name when ready to see them, and discuss PHI with individuals regarding their care or benefits.
  2. If a visitor or other individual overhears a Department workforce member speaking with a client or consumer, so long as the Department workforce member is acting reasonably under Department policy, the action would be considered an incidental use or disclosure, not a privacy violation.
  3. Examples of our reasonable safeguards include:
    - a. Speaking quietly when discussing a client or consumer's condition, or details of member benefits, and avoiding discussions in the waiting room or other public areas;
    - b. Closing examining room or interview room doors when the client or consumer is receiving Department services;
    - c. Not displaying client or consumer records in public locations;
    - d. Closing and locking, where possible, file cabinets or records rooms; or
    - e. Only viewing identifiable information where there is a need-to-know for work-related purposes.
- E. Certain Categories of PHI Giving the Patient the Opportunity to Agree, Acquiesce, or Object:** In certain circumstances, the client or consumer has the right to agree or object to a use or disclosure of PHI. Where the individual is incapacitated, in an emergency situation, or not available, we may make such uses and disclosures, if determined to be in the best interests of the client or consumer.
1. **Hospital Facility Directory:** To the extent that a facility directory is in use, a patient has the right to "opt out" of the directory listing.
  2. **Involvement of Family or Personal Representative:** We may rely on a client or consumer's informal permission (or failure to object, or acquiescence) to disclose PHI to a client or consumer's family, relatives, or friends, or to other persons whom

the client or consumer identifies, that is directly relevant to that person's involvement in the client or consumer's clinical care or payment for care. This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the client or consumer. It also allows our providers to speak with the client or consumer's companion in the examination or interview room unless the client or consumer objects.

Where a client or consumer or member has decisional capacity, our providers will make efforts to honor the client or consumer's request that information not be shared with a companion, friend or family member, so long as honoring the request will not result in harm to the client or consumer or another person.

3. **Notification:** The Department may rely on a client or consumer's informal permission to use or disclose PHI for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the client or consumer's care to inform them about:
    - a. The client or consumer's location
    - b. The client or consumer's general condition
    - c. The client or consumer's death.
  4. **Disaster Relief:** The Department may disclose PHI for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.
- F. **Need to Know, Monitoring Audits:** Our proximity to PHI does not give us an authorization to access, use, alter or disclose such information unless related to our role within the Department. Our electronic access is recorded on an audit trail and will be periodically reviewed to ensure that we are maintaining our commitment to only utilizing that PHI or ePHI that we need to accomplish our tasks. Failure to comply with this or any privacy or security policy may result in the application of our Privacy and Security Sanctions policy.
- G. **Training:** The Department will ensure that workforce members receive training and education on appropriate use and disclosure of the PHI and ePHI we obtain from our client or consumers, or their personal or legal representatives, to maintain the confidentiality, integrity and accessibility of our confidential data.
- H. **Questions:** Any questions regarding uses or disclosures of PHI in any format should be directed to the Director of Healthcare Privacy or the General Counsel.

## V. DISTRIBUTION

All Staff via e-mail and posting on the Department Intranet.

April 14, 2015

Date



Mary C. Mayhew  
Commissioner