

Policy Number: 18.1

Client and Participant Privacy Rights - HIPAA

I. Purpose

The intent of this policy is to establish the privacy rights that DHH clients and participants or their personal representatives have regarding the use and disclosure of their information that is held by DHH, and to describe the process for filing a complaint should clients or participants or their personal representatives believe those rights have been violated.

DHH staff and workforce members should refer to DHH Policy #72 (Public Information) prior to any use or disclosure of PHI. If the workforce member determines that there is a conflict between that policy and DHH HIPAA Privacy Policies, the workforce member must contact his/her supervisor prior to the use or disclosure. The supervisor shall then consult with the Privacy Officer and other appropriate DHH executive management.

II. Applicability

DHH's HIPAA Privacy Policies are applicable to DHH's workforce and its business associates.

III. Implementation

The implementation date of these policies is April 14, 2003.

IV. Definitions

The definitions are included in the body of these policies.

V. Responsibilities

DHH's workforce and its business associates are responsible for assuring that DHH's HIPAA Privacy Policies are followed. The DHH Privacy Officer and the Program Privacy Officers are responsible for the implementation, resolution and enforcement of all aspects related to DHH HIPAA Privacy Policies.

VI. E x c e p t i o n s

The exceptions are listed in the policies.

VII. Policy: Client and Participant Privacy Rights

- A. This policy grants rights only to clients, participants or their personal representatives as defined in DHH Policy #17, General Privacy Policy.
- B. DHH clients and participants or their personal representatives have the following rights which DHH may not deny:
 - 1. Access to their own information, consistent with certain limitations;
 - 2. An accounting of disclosures DHH has made of their PHI for up to six years prior to the date of requesting such accounting. Information will not be available prior to the effective date of this policy (April 14, 2003) and certain limitations do apply as outlined in this policy, Section VII. J; and
 - 3. Submit complaints if they believe or suspect that information about them has been improperly used or disclosed, or if they have concerns about the privacy policies of DHH.
- C. Clients and participants or their personal representatives may ask DHH to take specific actions regarding the use and disclosure of their information and DHH may either approve or deny the requests. Specifically, clients and participants or their personal representatives have the right to request:
 - 1. That DHH restrict uses and disclosures of their PHI;
 - 2. That DHH send or receive information to or from DHH by alternative means, such as mail, e-mail, fax or telephone, or at alternative locations; and
 - 3. That DHH amend their information held by DHH.
- D. Notice of Privacy Practices
 - 1. DHH will use the "DHH Notice of Privacy Practices" (DHH HIPAA Privacy Form #101P), to inform clients and participants or personal representatives authorized by law about how DHH may use and/or disclose their information. The Notice of Privacy Practices also describes the actions clients/participants or their personal representatives may take, or request DHH to take, with regard to the use and/or disclosure of their information.

The policies related to the "Notice of Privacy Practices" (DHH HIPAA Privacy form #101P) and the distribution of the Notices are addressed in DHH Policy #17, "General Privacy Policy."

2. Nothing in this policy, or the policy related to the DHH "Notice of Privacy Practices," shall prevent DHH from changing its policies or the notice at any time, provided that the changes in the policies or notice comply with State and Federal laws. DHH is required to follow the terms of the notice currently in effect. However, DHH may change its privacy practices and make that change effective for all PHI maintained by the Department.

E. Decision-making Authority within DHH

1. Prior to any decision based on a request from a client or participant or his/her personal representative for DHH to amend health information in a medical record, the program's medical director or a licensed health care professional designated by the program administrator shall review the request and any related documentation. The licensed health care professional may be a DHH workforce member involved in the client or participant's case.
2. Prior to any decision to amend any other information, a DHH workforce member, designated by the program administrator, shall review the request and any related documentation.
3. DHH may deny a client or participant or his/her personal representative access to health information on the grounds that access may result in risk or harm to the client/participant or to another person. However, prior to any decision to deny such access, the program's medical director or a licensed health care professional, designated by the program administrator, shall review the request and any related documentation. The licensed health care professional may be a DHH workforce member involved in the client or participant's case.
4. Decisions related to any other requests made to DHH under this policy shall be handled in a manner consistent with Federal and State rules and regulations and/or DHH policies and procedures applicable to the program, service or activity.
5. All such requests are subject to review by the DHH Privacy Officer.

F. Rights of Clients and Participants or Their Personal Representatives

1. Right to request additional restrictions on uses or disclosures of their information
 - a) Clients and participants or their personal representatives have the right to request additional restrictions on the use and/or disclosure of their information.

- b) DHH applies confidentiality laws applicable to specific programs or activities to protect the privacy of client/participant information. Even if those laws would permit DHH to make a use or disclosure of information, a DHH client/participant has the right to request a restriction on a use or disclosure of that information.
- c) All requests will be submitted by completing a "Restriction of Use and Disclosures Request Form" (DHH HIPAA Privacy form #501P).
- d) DHH is not obligated to agree to a restriction and may deny the request or may agree to a restriction more limited than requested.

Exception: Certain programs can only use or disclose information that is authorized by the client or participant or his/her personal representative. For those program clients or participants, DHH will honor their requests for restriction by making sure that the authorizations clearly identify the authorized recipients of the information.

- e) All such requests are subject to review by the DHH Privacy Officer.

G. Right to Request Information from DHH by Alternative Means or at Alternative Locations

1. DHH should accommodate reasonable requests by clients or participants or their personal representatives to receive communications by alternative means, such as by mail, e-mail, fax or telephone; and
2. DHH should accommodate reasonable requests by clients or participants or their personal representatives to receive communications at an alternative location.
3. In some cases, sensitive health information or health services must be handled with strict confidentiality under State laws. DHH will comply with the more restrictive requirements.
4. All such requests are subject to review by DHH Privacy Officer.

H. Right to Access Their Information

1. Clients and participants or their personal representatives have the right to access, inspect, and obtain a copy of information on their own cases in DHH files or records, consistent with applicable Federal and State laws and regulations.

2. All requests for access must be made by completing a DHH HIPAA Privacy form #201P, "Access to Records Request Form."
3. Clients and participants or their personal representatives may request access to their own information kept by DHH by using a personal identifier (such as the client's name or DHH case number).
 - a) If DHH maintains information about the client or participant in a record that includes information about other people, the client or participant is authorized to see only information about him or herself, except as provided below:
 - (1) If a person identified in the file is a minor child of the client or participant, and the client or participant is authorized under Louisiana law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client or participant may obtain information about the minor.
 - (2) If the person requesting information is recognized under Louisiana law as a guardian or legal custodian of the client or participant and is authorized by Louisiana law to have access to the client or participant's information or to act on behalf of the client or participant for making decisions about the client or participant's services or care, DHH will release information to the requestor.
 - (3) Entities or advocates who are authorized under Federal or State laws to advocate for clients or participants will be given access to information on the individual they represent to the extent allowed under the applicable Federal or State law to the extent necessary to perform the task or duty that the advocate has been charged under law to do on behalf of the client or participant.
4. DHH may deny clients or participants or their personal representatives, with reasons in writing, access to their own health information if Federal or State law prohibits the disclosure. Under Federal law, clients or participants have the right to access, inspect, and obtain copies of health information on their own cases in DHH files or records 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) Information that, in good faith and using professional judgment, DHH believes could cause harm to the client, participant or to any other person;
 - e) Documents protected by attorney work-product privilege, and
 - f) Information where release is prohibited by State or Federal laws.
5. DHH may also deny, with reasons in writing, a request for access made by the client's or participant's personal representative for any of the grounds stated above, or if, in good faith and using professional judgment, DHH believes that disclosure of such information to the personal representative or to any other person to whom the client or participant has authorized disclosure could cause harm to the client, participant or to any other person, or that the requestor has caused or may cause harm to the client or participant or any other person.
6. Before DHH denies a client or participant or his/her personal representative or anyone else disclosure or access to PHI because there is a good faith belief that disclosure or access could cause harm to the client or participant or to another person, DHH's decision to deny must be made by a licensed health care professional with reasons in writing and DHH must make a review of this denial available to the client/participant and/or requestor. If the requestor wishes to have this denial reviewed, the review must be done by a licensed health care professional who was not involved in the original decision.
7. All such requests and denials are subject to review by the DHH Privacy Officer.
8. DHH and its program offices may establish reasonable conditions for access to information.
- I. Right to Request Amendments to PHI
- 1. Clients or participants or their personal representatives have the right to request that DHH amend their information in DHH files and records.
 - 2. All requests for amendments must be made by having the requestor complete a DHH HIPAA Privacy form #301P "Amendment of Health Record Request Form."

3. DHH is not obligated to agree to an amendment and may deny the requests or limit its agreement to amend.
4. All such requests are subject to review by DHH Privacy Officer or his designee.

J. Right to an Accounting of Disclosures of PHI

1. Clients and participants or their personal representatives have the right to receive an accounting of disclosures of PHI that DHH has made for any period of time, not to exceed six years, preceding the date of requesting the accounting.
2. The accounting will only include PHI NOT authorized by the client or participant or their personal representative for use or disclosure, and will not include information collected, used or disclosed for treatment, payment, health care operations or a limited data set, or other uses or disclosures for which accounting is not required.

Policy:

DHH Policy #17 - "General Privacy Policy"

DHH Policy #19 - "Use and Disclosures of Client or Participant Information"

DHH Policy #20 - "De-identification of Client and Participant Information and Use of Limited Data Sets"

DHH Policy #21 - "Uses and Disclosures for External Research Requests, Internal Research Needs and Waiver of Privacy Rights for Research Purposes" DHH HIPAA Privacy Policy #6 - "Minimum Necessary Information"

DHH Policy #23 - "DHH Business Associate Relationships"

DHH Policy #24 - "Administrative, Technical, and Physical Safeguards"

DHH Policy #25 - "Enforcement, Sanctions, and Penalties for Violations of DHH HIPAA Privacy Policies"

Form(s):

DHH HIPAA Privacy form #101P - "Notice of Privacy Practices"

DHH HIPAA Privacy form #201P - "Access to Records Request Form"

DHH HIPAA Privacy form #301P - "Amendment of Health Record Request Form"

DHH HIPAA Privacy form #302P - "30-Day Extension to Respond to Amendment Request"

DHH HIPAA Privacy form #303P - "Acceptance of Amendment Request"

DHH HIPAA Privacy form #304P - "Denial of Amendment Request"

DHH HIPAA Privacy form #305P - "Statement of Disagreement for Denial of Amendment Request"

DHH HIPAA Privacy form #306P - "Response to Statement of Disagreement for Denial of Amendment"

DHH HIPAA Privacy form #501P - "Restriction of Use and Disclosures Request Form"

DHH HIPAA Privacy form #701P - "Accounting of Disclosures Request Form"

Reference(s):

45 CFR Part 164.522-164.528

Contact(s):

State of Louisiana
Department of Health and Hospitals
Office of the Secretary
Privacy Office
P.O. Box 629
Baton Rouge, LA 70821-0629
Phone : 1-877-559-9664
Email : privacy-dhh@dhh.la.gov