

**Health Information Privacy and Security, Including
HIPAA: Uses and Disclosures of Protected
Health Information and Other Consumer Data**

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I. SUBJECT

Health Information Privacy and Security, Including HIPAA: Uses and Disclosures of Protected Health Information and Other Consumer Data

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, as permitted by the Health Insurance Portability and Accountability Act (HIPAA) and its update by the Health Information Technology for Economic and Clinical Health Act (HITECH). This policy applies to PHI in any format.

This policy also requires the protection of consumer identifiable data (together with PHI, "Protected Information" or PI) by the Department's offices or programs that are not covered by HIPAA/HITECH, but are covered by other federal and state privacy and security laws. It applies to our workforce, affiliates, agents, and Business Associates, whether on site or working from remote locations.

III. RATIONALE

The HIPAA Privacy Rule requires that the Department's "covered entities" and "covered components" limit the use or disclose of PI without authorization to certain specific purposes. This policy sets forth the general parameters surrounding such use and disclosure. This policy also requires that non-HIPAA covered entities only use or disclose PI consistent with applicable legal and Department policy standards.

IV. PROCEDURE STATEMENT

A. **TPO:** Our HIPAA-covered workforce may use and disclose PI 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 eligibility/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.
 4. Our Non-HIPAA covered workforce may use and disclose PI as necessary to conduct the business of the applicable office or program.
- B. **Minimum Necessary:** Our workforce will use only the minimum necessary PI to provide our services and perform our work-related tasks. Different workforce members may have different access to PI or electronic PI depending upon his/her work-related role. For example, the entire client or consumer record may be considered the minimum necessary for a physician or case manager's treatment purposes, but more than necessary for claims-related functions. For further information, see the Department's Minimum Necessary Policy.
- C. **Specially Protected Categories:** Where access, use or disclosure of PI involves specially protected information under state or federal law, categories of information such as HIV/AIDS status or test results or substance abuse treatment information, the Department will require specific written consent or authorization, or court order, when appropriate, before that PI 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 PI be eliminated, so long as a) the Department has adopted reasonable safeguards, b) has an effective minimum necessary policy in place, and c) the use or disclosure was secondary to a permitted use or disclosure.
1. The Department is permitted to use sign in sheets for consumers we serve, call individuals by name when ready to see them, and discuss PI with individuals regarding their care, services or benefits.
 2. If a visitor or other individual overhears a Department workforce member speaking with a consumer, so long as the Department workforce member is acting reasonably under Department policy, the action should be considered an incidental use or disclosure, not a privacy violation. Where there are questions, consult the Department's Director of Healthcare Privacy.
 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 consumer records in public locations;
- d. Closing and locking, where possible, file cabinets or records rooms; or
- e. Only viewing PI where there is a need-to-know for work-related purposes.

E. **HIPAA Requirement: Certain Circumstances Giving the Consumer/Patient the Opportunity to Agree, Acquiesce, or Object:** In certain circumstances, the consumer has the right to agree or object to a use or disclosure of PI. Where the individual is incapacitated, in an emergency situation, or not available, consistent with state law, medical ethics and best practices, the Department may make such uses and disclosures, if determined to be in the best interests of the 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:** The Department may rely on a consumer’s informal permission (or failure to object, or acquiescence) to disclose PI to a 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 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 consumer has decisional capacity, Department 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 consumer’s informal permission to use or disclose PI 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 PI 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 PI does not give us an authorization to access, use, transmit, 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 PI 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 PI in any format that we obtain from our consumers, or their personal or legal representatives, to maintain the confidentiality, integrity and accessibility of our PI.
- 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.

5/8/17

Date



Mary C. Mayhew
Commissioner