

3.6	HIPAA Privacy Rights to Individuals	Pages 1-14
Authorizing Code: 45 CFR part 160 and subparts A and E of part 164	Rule: None Federal Law	Division Staff
Issue date:	Revision date:	
Form(s): DSPD Notice of Privacy Practices, Acknowledgement of Privacy practices, Request for Accounting of Disclosure, Request for Amendment of Health Information, Request for Limited Use and Disclosure, HIPAA Information Request form		

Directive Purpose:

The purpose of this directive is to set forth procedures for Division of Services for People with Disabilities (DSPD) personnel regarding the privacy rights of individuals in services as required by the Health Insurance Portability and Accountability Act (HIPAA).

Definitions:

Protected Health Information (PHI): includes but is not limited to any of the following: name, street address (county, precinct, zip code and equivalent geocodes), all elements of dates (except year) for dates directly related to a service, telephone number, fax number, electronic email, social security number, medical record numbers, health plan ID numbers, account numbers, certificate/license numbers including license plate numbers, device identifiers and serial numbers, web addresses (URL's), internet IP addresses, biometric identifiers, including finger and voice prints, full face photographic images and any comparable images, any other unique identifying number, characteristic, or code (e.g., PID#), Person's initials.

DSPD Notice of Privacy Practices: The notice of Privacy Practices is a brochure that is given to individuals receiving DSPD services that outlines their rights under HIPAA.

Policy:

DSPD acquires, creates, accesses, uses, discloses, maintains, transmits and destroys protected health information in accordance with the "Health Insurance Portability Act of 1996" (HIPAA), 45 CFR 160, 162, and 164, as amended by the "American Recovery and Reinvestment Act of 2009, Health Information Technology for Economic and Clinical Health Act" (HITECH) and the Omnibus Rule.

Individuals have the right to access, inspect, amend, and obtain a copy of protected health information consistent with certain limitations and may file a complaint if they feel those rights have been violated.

- A. Individuals have the right to:

- a. Access, inspect, and obtain a copy of their protected health information, consistent with certain limitations outlined in part B b of this directive;
 - b. Receive a list of disclosures DSPD has made of their protected health information for up to six years prior to the date of the request.
 - c. Submit complaints if they have reason to suspect that information about them has been improperly used or disclosed, or if they have concerns about the privacy policies of DSPD; and
 - d. Be notified in writing, without unreasonable delay and in no case later than 60 calendar days after discovery, of any reportable breaches of their protected health information.
- B. Individuals may ask DSPD to take specific actions regarding the use and disclosure of their protected health information and DSPD may either approve or deny the request. Specifically, individuals have the right to request:
- a. Restrictions on the uses and disclosures of their protected health information while carrying out treatment, payment activities, or health care operations;
 - b. Protected health information be provided by alternate means, such as mail, e-mail, fax or telephone, or at alternate locations; and
 - c. Amendments to correct inaccurate or incomplete protected health information held by DSPD.

Procedure:

A. Notice of Privacy Practices (45 CFR 164.520)

- a. DSPD will use the, "DSPD Notice of Privacy Practices," to inform individuals about how DSPD may use and/or disclose their protected health information. The "Notice of Privacy Practices" also describes the actions an individual may take, or request DSPD to take, with regard to the use and/or disclosure of their protected health information.
 - a. The Notice will be presented to individuals or their personal representatives with the initial intake packet and then again at any time if requested;
 - b. Prominently posted in each DSPD facility;
 - c. Prominently posted on the DSPD website and

- d. Provided to anyone who asks for it.
- b. DSPD will request all individuals receiving the Notice to complete the "Acknowledgment of Receipt of Notice" form. If the individual does not acknowledge receipt of the Notice, DSPD will document its good faith efforts to obtain it and the reason why acknowledgment was not obtained.
 - a. The "Acknowledgment of Privacy Practices" form will be scanned and kept in the individual's case record in USTEPS.
- c. The DSPD Privacy Officer is responsible for ensuring the Notice is distributed, posted, and available as required.

B. Decision-making authority within DSPD.

- a. Prior to any decision regarding an individual's request for access to protected health information or amendment to protected health information, assigned DSPD staff reviews the request and any related documentation.
- b. DSPD may deny an individual access to their protected health information on the grounds that access is reasonably likely to endanger the life and physical safety of the individual or another person. DSPD will not deny access merely on the basis of the sensitivity of the health information or the potential for causing emotional or psychological harm. However, prior to any decision to deny such access, the DSPD HIPAA steering committee reviews the request and any related documentation.
- c. All requests for disclosure of protected health information are directed to the Division HIPAA compliance officer. All requests for information are screened for approval by the compliance officer.

C. Requesting restrictions of uses and disclosures.

- a. Individuals may request that DSPD restrict the use and/or disclosure of their protected health information for:
 - a. Carrying out treatment, payment, or service operations
 - b. Disclosing PHI to a relative or other person who is involved in the person's care.

- b. All requests for restrictions will be made by having the individual complete a "Request for Restriction of Use and Disclosure" form.
- c. DSPD is not required to agree to a restriction requested by the individual.
 - a. DSPD will not agree to restrict uses or disclosures of information if the restriction would adversely affect the quality of the individual's care or services.
 - b. DSPD cannot agree to a restriction that would limit or prevent DSPD from making or obtaining payment for services.

Exception: Federal regulations 42 CFR Part 2 prohibit DSPD from denying a request for restrictions on uses and disclosures of an individual's information regarding alcohol and drug treatment.

- d. DSPD will document the individual's request for restrictions, and the reasons for granting or denying the request in the individual's case file.
 - a. Prior to any use or disclosure of protected health information, DSPD staff must confirm that such use or disclosure has not been granted a restriction by reviewing the individual's case file.
- e. If DSPD agrees to an individual's request for restriction, DSPD will not use or disclose information that violates the restriction.

Exception: If the individual needs emergency treatment and the restricted information is needed to provide emergency treatment, DSPD may use or disclose such information to the extent needed to provide the emergency treatment. DSPD requests that the emergency treatment provider not use or disclose the protected health information further.

- f. DSPD may terminate its agreement to a restriction if:
 - a. The individual agrees to or requests termination of the restriction in writing;
 - b. The individual orally agrees to, or requests, termination of the restriction. DSPD will document the oral agreement or request in the individual's DSPD case file; or
 - c. DSPD informs the individual in writing that DSPD is terminating its

agreement to the restriction. Information created or received while the restriction was in effect shall remain subject to the restriction.

D. Requesting information by alternate means or locations

- a. DSPD will accommodate reasonable requests by individuals to receive communications by alternate means, such as by mail, e-mail, fax or telephone; and DSPD must accommodate reasonable requests by individuals to receive communications at an alternate location such as an alternate mailing address.
 - a. The individual must specify the preferred alternate means or location;
 - b. Requests for alternate means or alternate locations for information may be made orally or in writing;
 - c. If an individual makes a request orally, DSPD will document the request and ask for the individual's signature;
 - d. If an individual makes a request by telephone or electronically, DSPD will document the request and verify the identity of the requester;
 - e. Prior to sending any protected health information to the individual, DSPD staff must confirm if the individual has requested an alternate location or by alternate means, and if DSPD has granted that request, by reviewing the individual's case file.

E. Requesting access to information

- a. Individuals may request to access, inspect, and/or obtain a copy of protected health information about themselves, subject to certain limitations.
 - a. All requests for access will be made by having the individual complete the "Access to Records Request" form. The form will be received and processed by the privacy officer or assigned DSPD staff.
- b. DSPD must act on an individual's request for access no later than 30 days after receiving the request.

- a. In cases where the information is not maintained or accessible on-site, DSPD must act on the individual's request no later than 60 days after receiving the request.
- b. If DSPD is unable to act within these 30-day or 60-day limits, DSPD may extend this limitation up to an additional 30 days, subject to the following:
 - i. DSPD must notify the individual in writing of the reasons for the delay and the date by which DSPD will act on the request.
 - ii. DSPD will use only one such 30-day extension to act on a request for access.
- c. If DSPD grants the individual's request, in whole or in part, DSPD must inform the individual of the access decision and provide the requested access.
 - a. If DSPD maintains the same information in more than one format (such as electronically and in a hard-copy file) or at more than one location, DSPD need only provide the requested protected information once.
 - b. DSPD must provide the requested information in a form or format requested by the individual, if readily producible in that form or format. If not readily producible, DSPD will provide the information in a readable hard-copy format or such other format as agreed to by DSPD and the individual.
 - c. DSPD may provide the individual with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access had been provided, if:
 - i. The individual agrees in advance; and
 - ii. The individual agrees in advance to any fees DSPD may impose.
 - d. DSPD must arrange with the individual for providing the requested access in a time and place convenient for the individual and DSPD. This may include mailing the information to the individual if the individual so requests or agrees.

- e. An individual may request a copy of their protected health information or a written summary or explanation. DSPD will provide a copy of the requested protected health information without charge to the individual in accordance with R495-810-2, Fee Schedule for Record Copies.

F. Denial of access - reviewable grounds for denial

- a. An individual has the right to a review of a decision to deny access in the following circumstances:
 - a. Endangerment: A licensed health care professional has determined, in the exercise of professional judgment, that the information requested is reasonably likely to endanger the life or physical safety of the individual or another person; or
 - b. Personal Representative: The request for access is made by the individual's personal representative, and a licensed healthcare professional or other designated staff has determined, in the exercise of professional judgment, that allowing the personal representative to access the information is reasonably likely to cause substantial harm to the individual or to another person.
 - c. Reference to Another Person: The protected health information makes reference to another person, and a licensed health care professional has determined, in the exercise of professional judgment, that the information requested is reasonably likely to cause substantial harm to that person.
- b. The individual has the right to have the decision to deny reviewed by a licensed healthcare professional not directly involved in making the original denial decision. DSPD will provide or deny access in accordance with this review.
 - a. The reviewer must determine, within a reasonable time, whether to approve or deny the individual's request for access.
 - b. DSPD must then:
 - i. Promptly notify the individual in writing of the reviewer's determination; and

- ii. Take action to carry out the reviewer's determination.
- c. If DSPD denies access, in whole or in part, to the requested information, DSPD must:
 - i. Give the individual access to any other requested individual information, after excluding the information to which access is denied;
 - ii. Provide the individual with a timely written denial. The denial must:
 - 1. If the reason for the denial is due to danger or harm to the individual or another, explain the individual's review rights, Denial of Access – Reviewable Grounds for Denial of this procedure, above, including an explanation of how the individual may exercise these rights; and
 - 2. Provide a description of how the individual may file a complaint with DSPD, (including the name or title and telephone number of the contact person) or with the United States Department of Health and Human Services (DHHS) Office for Civil Rights
- d. If DSPD does not maintain the requested protected health information, and knows where such information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non DSPD entity), DSPD must inform the individual of where to direct the request for access.

G. Requesting amendments of Protected Health Information

- a. All requests for amendments will be made by having the individual complete the, "Amendment of Health Record Request" form.
- b. DSPD must act on the individual's request no later than 60 days after receiving the request. If DSPD is unable to act on the request within 60 days, DSPD may extend this time limit by up to an additional 30 days, subject to the following:
 - a. DSPD must notify the individual in writing of the reasons for the delay and the date by which DSPD will act on the receipt; and:

- b. DSPD will use only one such 30-day extension.
- c. If DSPD grants the request, in whole or in part, DSPD must:
 - a. Make the appropriate amendment to the protected health information in the designated record set and document the amendment in the individual's file or other designated record set;
 - b. Provide timely notice to the individual that the amendment has been accepted, pursuant to the time limitations in Section G.b. of this procedure, above;
 - c. Seek the individual's agreement to notify other relevant persons or entities, with whom DSPD has shared, or needs to share, the amended information; and
 - d. Make reasonable efforts to inform, and to provide the amendment within a reasonable time to:
 - i. Persons named by the individual as having received protected information and who need the amendment; and
 - ii. Persons, including business associates of DSPD, who have the protected information that is the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the individual's detriment.
- d. Prior to any decision to amend protected health information, the request and any related documentation shall be reviewed by the HIPAA Steering Committee and a DSPD staff person involved in the individual's case.
- e. DSPD may deny the individual's request for amendment if:
 - a. DSPD finds the information to be accurate and complete;
 - b. The information was not created by DSPD, unless the individual provides a reasonable basis to believe that the originator of such information is no longer available to act on the requested amendment;
 - c. The protected health information is not part of the DSPD designated record set.

- d. The protected health information is not available for inspection under Section F of this policy, Rights of Individuals to Access Protected Health Information.
- f. If DSPD denies the requested amendment, in whole or in part, DSPD must provide the individual with a timely written denial. The denial must:
 - a. Be sent or provided within the time limits specified in Section G.b, of this procedure, above;
 - b. State the basis for the denial, in plain language;
 - c. Explain the individual's right to submit a written statement disagreeing with the denial. The statement is limited to four pages in length.
 - i. DSPD will scan and enter the information into the person's USTEPS records;
 - ii. DSPD may prepare a written rebuttal of the individual's written statement and scan and enter it into the individual's USTEPS records. DSPD will send or provide a copy of the written rebuttal to the individual;
 - iii. DSPD will include a copy the individual's request, the denial, the statement, and the written rebuttal, with any future disclosures of the relevant information;
 - iv. Explain that if the individual does not submit a written statement of disagreement, the individual may ask that if any future disclosures of the relevant information, will include a copy of the individual's original request for amendment and a copy of the DSPD written denial; and
 - v. Provide information on how the individual may file a complaint with DSPD, (including the name or title and telephone number of the contact person) or with the U.S. Department of Health and Human Services (DHHS), Office for Civil Rights.

H. Individuals have the right to receive an accounting of disclosures of protected health information that DSPD has made.

- a. The accounting to the individual will only include health information not previously authorized by the individual for use or disclosure, and will not include information collected, used or disclosed for treatment, payment or health care operations for that individual.
 - i. This right does not apply to disclosures made prior to the effective date of this policy, which is **INSERT DATE**.
- b. When an individual requests an accounting of disclosures that DSPD has made of their protected health information (PHI), DSPD must provide that individual with a written accounting of such disclosures made during the six- year period (or lesser time period if specified by the requesting individual) preceding the date of the individual's request.
- c. All requests for an accounting of disclosures will be made by having the individual complete the "Accounting of Disclosures Request" form.
- d. Examples of disclosures of protected health information (PHI) that are required to be listed in an accounting (unless prohibited by federal law or restricted by the individual) include:
 - i. Abuse Report: PHI provided pursuant to mandatory abuse reporting laws to an entity authorized by law to receive the abuse report.
 - ii. Audit Review: PHI provided in relation to an audit or review (whether financial or quality of care or other audit or review) of a provider or contractor.
 - iii. Business Associates: PHI disclosed to or by business associates of DSPD.
 - iv. Health and Safety: PHI provided to avert a serious threat to health or safety of a person.
 - v. Licensee/Provider: PHI provided in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
 - vi. Legal Proceeding: PHI that is ordered to be disclosed

pursuant to a court order in a court case or other legal proceeding. A copy of the court order shall be provided with the accounting.

- vii. Law Enforcement Official/Court Order: PHI provided to a law enforcement official pursuant to a court order. A copy of the court order shall be provided with the accounting.
 - viii. Law Enforcement Official/Deceased: PHI provided to law enforcement officials or medical examiners about a person who has died for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law.
 - ix. Law Enforcement Official/Warrant: PHI provided to a law enforcement official in relation to a fleeing felon or for whom a warrant for their arrest has been issued and the law enforcement official has made proper request for the information, to the extent otherwise permitted by law.
 - x. Media: PHI provided to the media (TV, newspaper, etc.) that is not within the scope of an authorization by the individual.
 - xi. Public Health Official: PHI about an individual provided by staff to a public health official, such as the reporting of disease, injury, or the conduct of a public health study or investigation.
 - xii. Research: PHI about an individual provided by DSPD staff for purposes of research conducted without authorization, using a waiver of authorization approved by an Institutional Review Board (IRB). DSPD shall include a copy of the research protocol with the accounting, along with the other information required under the HIPAA privacy rule, 45 CFR 164.528(b)(4).
- e. DSPD is not required to provide the individual with an accounting of disclosures that are:
- i. Authorized by the individual;
 - ii. Made prior to the original effective date of this policy, which is **INSERT DATE**;

- iii. Made to carry out treatment, payment, and health care operations;
 - iv. Made to the individual;
 - v. Made to persons involved in the individual's health care;
 - vi. Made as part of a limited data set in accordance with the De-identification of Individual Information and Use of Limited Data Sets policy.
 - vii. Made for national security or intelligence purposes; or
 - viii. Made to correctional institutions or law enforcement officials having lawful custody of an inmate.
- f. The accounting must include, for each disclosure:
- i. The date of the disclosure;
 - ii. The name, and address if known, of the person or entity who received the disclosed information;
 - iii. A brief description of the information disclosed; and
 - iv. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, a copy of any request for disclosure from the Department of Health and Human Services, public health authority, court order, or authorized government authority.
- g. If DSPD has made multiple disclosures to the same person or entity for the same purpose, DSPD need not list the same person or entity if DSPD adds to the first disclosure:
- i. The frequency or number of disclosures made during the accounting period; and
 - ii. The last date of the disclosure made during the requested time period.
- h. DSPD must act on the individual's request for an accounting no

later than 60 days after receiving the request, subject to the following:

- i. If unable to provide the accounting within 60 days after receiving the request, DSPD may extend this requirement by another 30 days. DSPD must provide the individual with a written statement of the reasons for the delay within the original 60-day limit, and inform the individual of the date by which DSPD will provide the accounting.

- 1. DSPD will use only one such 30-day extension.

- i. DSPD must document, and retain in the individual's USTEPS records, the information required to be included in an accounting of disclosures and provide a copy of the written accounting to the individual.
- j. DSPD will temporarily suspend an individual's right to receive an accounting of disclosures that DSPD has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if:
 - i. The agency or official provides a written statement that the accounting would likely impede their activities.
 - ii. However, if such agency or official makes an oral request, DSPD will:
 - 1. Document the oral request, including the identity of the agency or official making the request;
 - 2. Temporarily suspend the individual's right to an accounting of disclosures pursuant to the request; and
 - 3. Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

I. Individuals have a right to submit a complaint if they believe that DSPD has improperly used or disclosed their protected health information, or if they have concerns about the privacy policies of

DSPD or concerns about DSPD compliance with such policies.

- a. Individuals may file complaints with DSPD, or with the U.S. Department of Health and Human Services (DHHS) - the Office for Civil Rights.

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- b. DSPD will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint.
- c. DSPD may not require individuals to waive their rights to file a complaint as a condition of providing of treatment, payment, and enrollment in a health plan, or eligibility for benefits.
- d. DSPD will document all complaints, the findings from reviewing each complaint, and DSPD actions resulting from the complaint. The documentation for each specific complaint will include a description of corrective actions taken, or a description of why corrective actions were not needed.