

<b>3.8</b>	<b>HIPAA Use and Disclosure</b>	<b>Pages 1 -13</b>
<b>Authorizing Code: 45 CFR part 160 and subparts A and E of part 164</b>	<b>Rule:</b>	<b>Division Staff</b>
<b>Issue date: 11/2016</b>	<b>Revision date:</b>	
<b>Form(s): Authorization to release P.H.I. (form 3-4), Revocation of Authorization to Release P.H.I. (form 3-5), Fax Cover Sheet,</b>		

**I. Directive Purpose:**

This directive aims to give the Division of Services for People with Disabilities (DPSD) employees direction for using, storing, and disclosing Protected Health Information.

**II. Definitions:**

Protected Health Information (P.H.I.): is 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 photography images and any comparable images, any other unique identifying number characteristic or code (PID#), Person's initials.

**III. 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.

**A. Using and disclosing information for treatment, payment, and operations. (CFR 45 164.506)**

- a. DSPD may use or disclose protected health information for treatment, payment, and coordination of services without the prior authorization of the individual.

**B. Authorization for use and disclosure of protected health information. (45 CFR 164.508)**

- a. Except as otherwise permitted or required by law or these policies, DSPD shall obtain a completed and signed authorization for release of protected health information from the

individual or the individual's personal representative.

**C. Uses and disclosures not requiring authorization. (CFR 164.512)**

- a. To the extent required or permitted by law and these policies, DSPD may use or disclose protected health information without the written authorization of the client.
  - i. DSPD is permitted to disclose PHI without authorization to public health authorities who are legally authorized to receive such information, such as Adult Protective Services and Child Protective Services.

**D. Re-disclosure of an individual's information.**

- a. Unless prohibited by state and federal laws, information held by DSPD and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by DSPD policy. Whether or not the information remains protected depends on whether the recipient is subject to federal laws, court protective orders or, other lawful process.
- b. Federal regulations (42 CFR part 2) prohibit DSPD from making further disclosure of alcohol and drug treatment information without the specific written authorization of the individual to whom it pertains.

**E. Verification of individuals requesting information. (45 CFR 164.514)**

- a. Protected health information may not be disclosed without verifying the identity of the person requesting the information and the authority of such person to have access to protected health information if the person and their authority is not known to the DSPD staff member fulfilling the request.

**F. Denial of requests for information.**

- a. Unless an individual has signed an authorization, or the information about the individual can be disclosed pursuant to this policy, DSPD denies any request for protected health information.
- b. Records containing identifying information other than that of the patient or staff may be redacted.
- c. Documents containing a person's information may be transmitted by FAX (facsimile machine) with the expectation that the following have occurred:
  - i. Verification that receiving FAX machine is located in a secure area,
  - ii. Verification of receiving FAX number, and
  - iii. A cover sheet stating that the transmittal contains confidential and privileged information intended for the use of the recipient, prohibiting any dissemination

or copying by unauthorized individuals, and giving instructions for transmittals received in error is sent with all patient information being faxed.

**G. Revocation of an authorization:**

- a. A person in services may revoke in writing an authorization at any time.

**PROCEDURE:**

**A. DSPD may disclose protected health information without authorization for its own treatment activities or for the treatment activities of its business associates.**

- a. For the provision, coordination, or management of services and related services by one or more providers, including:
  - i. The coordination or management of services by a provider or service provider with a third party;
  - ii. Consultation between providers or other providers relating to an individual; or
  - iii. The referral of an individual for services from one service provider or service provider to another.

*Example: A person in services may be in transition into the services of a provider agency, DSPD may exchange protected health information without prior authorization in order to facilitate the transition.*

**B. DSPD may disclose protected health information without authorization for its own payment activities or to another covered entity for that entity's payment activities.**

- a. Payment means the activities undertaken to obtain or provide reimbursement for the delivery of services includes:
  - i. Eligibility or coverage determinations;
  - ii. Billings, collection activities, claims management, and related health care data processing;
  - iii. Medical necessity reviews, appropriateness of care, or justification of charges;
  - iv. Utilization reviews; and
  - v. Disclosures to consumer reporting agencies related to collection of reimbursement.

**C. DSPD may use or disclose protected health information without authorization for its own services operations.**

- a. DSPD may disclose information without authorization to another covered entity for the service operations of that entity, if:
  - i. Both that entity and DSPD has or had a relationship with the individual who is the subject of the information;
  - ii. The information pertains to such relationship; and
  - iii. The disclosure is for the purpose of:
    - 1. Conducting quality assessment and improvement activities, including: outcome evaluation and development of best practices, provided that obtaining generalized knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health and safety protocol development; case management and care coordination; contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; or
    - 2. Reviewing provider performance; or
    - 3. Detecting fraud and abuse or for compliance purposes.

**D. When an authorization *is* required.**

- a. A valid authorization is required in the following situations:
  - i. For disclosures to an employer for use in employment-related determinations;
  - ii. For research purposes unrelated to the individual's treatment;
  - iii. For any purpose in which federal law requires a signed authorization;
  - iv. For disclosures to any person(s) designated by the individual including relatives who are not legal guardians.
- b. DSPD may obtain, use, or disclose information only if the written authorization includes all the required elements of a valid authorization. DSPD staff will use the approved "Authorization to Release Protected Health Information" form (Form 3-4). A valid authorization must contain the following information:
  - i. A description of the information to be used or disclosed, that identifies the purpose of the information in a specific and meaningful fashion, except that "at the request of the individual" is sufficient when the individual initiates the authorization;

- ii. The name or other specific identification about the person(s) or class of person(s), authorized to make the specific use or disclosure;
  - iii. The name or other specific identification of the person(s) or class of persons, to whom DSPD may make the requested use or disclosure;
  - iv. An expiration date, or an expiration event that relates to the individual or to the purpose of the use or disclosure, and the expiration date/event has not yet expired;
  - v. Signature of the client, or of the client's personal representative, and the date of signature; and
  - vi. If the individual's personal representative signs the authorization form instead of the individual, a description or explanation of the representative's authority to act for the individual, including a copy of the legal court document (if any) appointing the personal representative, must also be provided.
  - vii. A description of the individual's right to revoke the authorization;
- c. Uses and disclosures must be consistent with and limited to what the individual has authorized on a signed authorization form.
- d. An authorization must be voluntary and informed. DSPD may not require the individual to sign an authorization as a condition of providing treatment or coordination of services, except:
- i. Before providing research-related treatment, DSPD may require the individual to sign an authorization for the use or disclosure of protected health information for such research; or
  - ii. DSPD may require an individual to sign an authorization before providing health care that is solely for the purpose of creating protected health information for disclosure to a third party.
- e. An authorization for use and disclosure of protected health information may not be combined with any other document to create a compound authorization, except for consents for research studies.
- f. DSPD must provide a signed copy to the individual or the individual's personal representative when DSPD initiates the authorization.
- g. DSPD must document and retain each signed authorization form for a minimum of six years from when it was revoked or expired.
- h. Following authorized disclosure of a person's information, the signed authorization is scanned in the person's record. There is a notation of the specific information disclosed,

the date of the disclosure, and the name of the individual disclosing the information. The information is documented in the "accounting of disclosures".

**E. When an authorization *is not* required:**

- a. DSPD may disclose information without authorization to individuals who have requested disclosure of their information to themselves.
  - i. Individuals must complete the "Request for Protected Health Information" form and submit it to dspddocuments@utah.gov
- b. Child Abuse Reporting: DSPD will use or disclose protected health information without written authorization of the individual if DSPD has reason to believe that a child is a victim of abuse or neglect. DSPD may disclose information to the Division of Child and Family Services or the nearest law enforcement agency:
  - i. When required by law (62A-3-304); or
  - ii. When DSPD staff, in the exercise of professional judgment believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
  - iii. When the individual is unable to agree because of incapacity, a law enforcement agency or other public official authorized to receive the report represents that:
    1. The protected information being sought is not intended to be used against the individual, and
    2. An immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
  - iv. When DSPD staff make a disclosure permitted above, DSPD must promptly inform the individual that such a report has been or will be made, except if:
    1. DSPD staff, in the exercise of professional judgment believes informing the individual would place the individual at risk of serious harm; or
    2. DSPD staff would be informing a personal representative and DSPD staff reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the individual, as determined by DSPD staff, in the exercise of professional judgment.
- c. Public Health: In accordance with Utah Law DSPD will disclose protected health information to a public health authority to prevent or control a disease, injury or

disability.

- d. Health Oversight: DSPD will disclose protected health information to a health oversight agency for oversight activities that are authorized by state and federal laws.
  - i. Types of oversight activities include:
    - 1. Audits;
    - 2. Civil, administrative, or criminal investigations;
    - 3. Inspections;
    - 4. Licensure or disciplinary actions;
    - 5. Civil, administrative, or criminal proceedings or actions; or
    - 6. Other activities necessary for oversight of the health care system, government benefit programs, determining compliance with program standards.
    - 7. If a health oversight activity is conducted in conjunction with an oversight activity involving a non-health claim for public benefits, the joint activity is considered a health oversight activity and the disclosure may be made.

Exception: A health oversight activity does not include: The individual is the subject of the investigation or activity; and The investigation or activity does not relate to the following; receipt of health care, Claim for public benefits related to health, or qualification for, or receipts of public benefits or services when an individual's health is integral to the claim for the benefits or services.

- e. Judicial and Administrative Proceedings: DSPD may disclose protected health information in response to an order of a court or administrative tribunal, provided that DSPD discloses only the protected health information authorized by the order.
  - i. DSPD may disclose protected health information in response to a subpoena, discovery request, or other lawful process, without a court order if one of the following circumstances applies:
    - 1. DSPD receives satisfactory assurance from the party seeking the protected health information that reasonable efforts have been made to ensure that the individual who is the subject of the protected health information has been given notice of the request for the protected health information by providing DSPD with a written statement and documentation demonstrating that:
      - a. A good faith effort was made to provide a written notice to the individual

- b. The notice included sufficient information about the litigation or proceeding to permit the individual to raise an objection to the court or administrative tribunal; and
  - c. The time for the individual to raise objections has elapsed, and;
  - d. No objections were filed, or
  - e. All objections filed by the individual have been resolved by the court or administrative tribunal and the disclosures being sought are consistent with such resolution.
2. DSPD receives satisfactory assurance from the party seeking the protected health information that reasonable efforts have been made by DSPD to secure a qualified protective order.
- a. The party seeking protected health information must Provide DSPD with a written statement and documentation demonstrating that:
    - i. The parties to the dispute have agreed to a qualified protective order and have presented it to the court or administrative tribunal; or
    - ii. The party seeking PHI has requested a qualified protective order from a court or administrative tribunal
  - b. A "qualified protective order" means an order of the court or administrative tribunal or stipulation by the parties that:
    - i. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which the information was requested; and
    - ii. Requires the return or destruction of the protected health information (including all copies) at the end of the litigation or proceeding.
- f. Law Enforcement: DSPD may use or disclose protected health information to law enforcement officials without the written authorization of the individual for the following law enforcement purposes.
- i. DSPD shall disclose protected health information, in accordance with UCA 26-23a-2, to report wounds or other physical injuries caused by the use of a deadly weapon (knife, gun, or explosive device).



- ii. DSPD may disclose information in compliance with, and limited to the relevant specific requirements of:
  - 1. A court order or warrant, summons, or subpoena issued by a judicial officer;
  - 2. A grand jury subpoena; or
  - 3. An administrative request, including administrative subpoena or summons, a civil or authorized investigative demand, or similar lawful process, provided that the information is relevant, material, and limited to a legitimate law enforcement inquiry, and de-identified information could not reasonably be used.
- iii. DSPD may disclose limited protected health information upon the request of a law enforcement official without authorization for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:
  - 1. The information DSPD may disclose is **limited** to:
    - a. Name and address;
    - b. Date and place of birth;
    - c. Social security number;
    - d. ABO blood type or RH factor;
    - e. Type of injury;
    - f. Date and time of treatment;
    - g. Date and time of death if applicable; and
    - h. A description of distinguishing physical characteristics including height, weight, gender, race, hair, and eye color, presence or absence of beard or mustache, scars, and tattoos. In cases of criminal court commitments, a photo-graph may be provided.

Exception: DSPD may not disclose, for purposes of identification or location protected health information related to the subject's DNA or DNA analysis, dental records, or typing, samples or analysis of bodily fluids or tissues.

- g. Crime Victims: DSPD may disclose protected health information upon request to a law enforcement official about an individual who is or is suspected to be the victim of a crime, if:

- i. DSPD is otherwise authorized by law to disclose that information for purposes of an abuse reporting law or for public health or health oversight purposes; or
- ii. The individual agrees to the disclosure, either orally or in writing; or
- iii. DSPD is unable to obtain the individual's agreement due to incapacity or emergency circumstance, if:
  - 1. The law enforcement official represents that such information is needed to determine whether a violation of law by someone other than the victim has occurred and such information is not intended for use against the victim;
  - 2. The law enforcement official represents that immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
  - 3. DSPD determines that the disclosure is in the best interests of the individual.
- iv. DSPD may disclose protected health information to a law enforcement official about an individual who has died, for the purpose of alerting law enforcement of the death, **if** DSPD suspects that death may have resulted from criminal conduct.
- v. DSPD may disclose protected health information to a law enforcement official if DSPD believes in good faith that the information constitutes evidence of criminal conduct on DSPD premises.
- vi. DSPD may use or disclose protected health information, if consistent with applicable law and standards of ethical conduct, when in good faith it believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the use or disclosure is to person(s) reasonably able to prevent or lessen the threat, including the target of the threat, or except that the use or disclosure may not be made if the statement is made in the course of treatment for the criminal conduct that is the basis of the statement, counseling, therapy or in the course of requesting treatment, counseling, or therapy;
  - 1. Who has made a statement admitting participation in a violent crime that DSPD reasonably believes may have caused serious harm to the victim, or for law enforcement authorities to identify or apprehend an individual.
  - 2. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- h. Government Functions: DSPD may disclose protected health information without the

authorization of the individual for the following specialized government functions unless federal or state law prohibits such disclosure.

- i. For individuals who are Armed Forces personnel, as deemed necessary by appropriate military command authorities to ensure the proper execution of the military mission, when an appropriate notice is published in the Federal Register
  - ii. To authorized federal officials for conducting lawful intelligence, counter-intelligence, and other national security activities, as authorized by the federal National Security Act (50 U.S.C. 401, et seq.) and implementing authority.
  - iii. To authorized federal officials for the protection of the President or of other persons authorized by applicable federal law.
  - iv. To the United States Department of Health and Human Services when required to investigate or determine DSPD compliance with HIPAA.
- i. Correctional Institutions: DSPD may disclose protected health information without the written authorization of the individual to a correctional institution or a law enforcement official having lawful custody of that individual, if the institution or official represents that the information is necessary for:
- i. Providing health care to the person;
  - ii. The health or safety of the individual or of other inmates;
  - iii. The health and safety of the officers, employees, or others at the correctional institution;
  - iv. The health and safety of the individual and officers or other person responsible for transporting inmates;
  - v. The administration and maintenance of the safety, security, and good order of the correctional institution.
- j. Workers Compensation: DSPD may disclose protected health information to the extent necessary to comply with workers' compensation laws or laws relating to other similar programs that are established by law and provide benefits for work-related injuries or illness.
- k. Disaster Relief: DSPD may use or disclose protected health information to federal, state, or local government agencies engaged in disaster relief activities, as well as private disaster assistance organization (Red Cross) for the purpose of coordinating the notification of a family member, personal representative, or other person responsible for the individual's care, of the individual's location, general condition or death.
- l. Organ/Tissue Donation: DSPD will disclose protected health information, in accordance

with UCA 26-28-6, to an appropriate procurement organization for the purpose of facilitating organ, tissue, eye, or other body part donation and transplantation.

- m. Coroners, Medical Examiners, and Funeral Directors: DSPD may disclose protected health information without authorization for the purpose of identifying a deceased person, determining a cause of death, or duties authorized by law, to coroners and medical examiners. DSPD may disclose protected health information to funeral directors, consistent with Utah law, as required to carry out their duties.
- n. Use and disclosure for notifying family or friends:
  - i. DSPD may use and disclose protected health information to a family member, other relative, or close personal friend of the individual, or any other person named by the individual, subject to the following limitations:
    - 1. DSPD may reveal only the protected information that directly relates to such person's involvement with the individual's care.
    - 2. DSPD may use or disclose protected information for notifying (including identifying or locating) a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death.
    - 3. If the individual is present for, or available prior to, such a use or disclosure and has the capacity to make healthcare decisions, DSPD may disclose the protected information if it:
      - a. Obtains the individual's agreement to disclose to the third parties involved in his/her care.
      - b. Provides the individual an opportunity to object to the disclosure, and the individual does not express an objection; or
      - c. Reasonably infers from the circumstances that the individual does not object to the disclosure.
    - 4. If the individual is not present, or the opportunity to object to the use or disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, DSPD may determine, using professional judgment, whether the use or disclosure is in the individual's best interests and if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care.
      - a. Any agreement, objection, refusal, or restriction by the individual, may be oral or in writing. DSPD will document any such oral communication in the client's Log Notes.

- b. DSPD will also document in the Log Notes the outcome of any opportunity provided to object; the individual's decision not to object; or the inability of the individual to object.
- o. Re-disclosure of an individual's protected health information:
  - i. Unless prohibited by state and federal laws, information held by DSPD and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by DSPD policy. Whether or not the information remains protected depends on whether the recipient is subject to federal laws, court protective orders or other lawful process.
  - ii. Federal regulations (42 CFR part 2) prohibit DSPD from making further disclosure of
  - iii. Alcohol and drug treatment information without the specific written authorization of the individual to whom it pertains.

#### **F. Revocation of an authorization**

- a. An individual must complete the Revocation of Authorization to Disclose Protected Health Information for (form 3-5), to revoke a written authorization to disclose information. DSPD must ensure that it is clearly communicated to all parties involved in the individual's care that the revocation has been initiated by clearly documenting the information in the person log notes and on the form.
- b. When an individual revokes only one record holder on the authorization form, DSPD will scan the document into USTEPS.
- c. No revocation applies to information already released while the authorization was valid and in effect.

#### **G. Verification of individuals requesting information**

- a. DSPD may rely on any of the following to verify identity of a public official or a person acting on behalf of the public official:
  - i. Agency identification badge, or other proof of government status;
  - ii. A written statement on appropriate governmental letterhead;
  - iii. If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority, or other evidence such as a contract for services, memorandum of understanding, or purchase order.
- b. For all other requesters, any of the following may be relied upon to verify identity:

- i. Identification badge;
  - ii. Driver's license or other government issued identification;
  - iii. Written statement of identification on agency letterhead; or
  - iv. Similar proof
- c. Verification of Authority
  - i. Legal documentation that includes the authority to make health care decisions on behalf of the individual.
- d. If DSPD is responding to a telephone call with a caller requesting Protected Health Information regarding a person receiving waived services DSPD staff must have the person call the DSPD HIPAA Privacy Officer.