



PENINSULA RSN

HIPAA AND MEDICAID COMPLIANCE POLICIES AND PROCEDURES

Policy Name: HIPAA CONFIDENTIALITY, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

Policy Number: 5.07

Reference: 45 CFR Parts 160, 162 and 164

Effective Date: 7/2005

Revision Date(s): 1/2008

Approved by: PRSN Executive Board

CROSS REFERENCES

- Agreement: Confidentiality and Security Agreement
- Policy: HIPAA Agency Staff Training
- Policy: HIPAA PRSN Staff Training Plan for Privacy and Security

PURPOSE

The Peninsula Regional Support Network (PRSN), in an effort to be compliant with the Health Insurance Accountability and Portability Act (HIPAA) confidentiality and use/disclosure of protected health information, provides a standards definition and procedure to be uniformly implemented throughout the region.

PROCEDURE

Confidentiality

In general, protected health information is confidential and cannot be disclosed without the authorization of the individual who is the subject of the records or his/her personal representative except as allowed by state or federal statutes and regulations. This shall also be construed to include protected health information and records compiled, obtained, or maintained relating to complaint or grievance investigation as confidential and disclosed only as authorized or otherwise provided by law.

PRSN employees shall be responsible to use reasonable efforts to safeguard an individual's protected health information and maintain confidentiality of such information. Any document, record, or other written material containing individually identifiable health information shall not be left unattended and/or unsecured in the PRSN Region Office. All employees shall read and sign the PRSN Confidentiality and Security Agreement.

Use and Disclosure: Valid Authorization Required

The fact of admission and all information and records compiled, obtained, or maintained in the course of providing mental health services by public or private agencies shall be confidential except as otherwise required or permitted by federal or state statute and regulations.

1. Valid Authorization

Protected health information will be disclosed to other individuals designated in a valid authorization. To be valid, the authorization must include, but not limited to, the following elements:

- a. Consumer or his/her personal representative: The name or other specific identification of the individual authorized to make the requested use or disclosure.
- b. Requester/recipient: The name or other specific identification of the individual/entity to whom PRSN may make the requested use or disclosure.
- c. Information/records to be used or disclosed: A description of the information to be used or disclosed that identifies the information in a specific and meaningful way.
- d. Purpose/reason for use or disclosure: A description of the purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of purpose.
- e. Statement of revocation: A statement that the authorization is subject to revocation at any time by the individual, except to the extent that the disclosure has been made prior to revocation.
- f. Expiration date: An expiration date, event, or condition upon which the authorization will expire, if not revoked. The date, event, or condition will be for no longer than reasonably necessary to serve the purpose of use or disclosure, not longer than 90 days.
- g. Signature and date: Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act for the individual must also be provided.

Disclosures Not Requiring Authorization

1. Required disclosures

PRSN is required to disclose protected health information:

- a. To an individual consumer when requested.
- b. When required by the Secretary of the U.S. Department of Human and Health Services to investigate or determine the agency's compliance with federal law.

2. Permitted Uses and Disclosures

PRSN is permitted to use or disclose protected health information for:

- a. Treatment, payment, and health care operations (TPO) of PRSN as described:
 - *Treatment* activities may include, but not limited to, the provision, coordination, or management of mental health care and related services by one or more mental health care providers, including coordination or management activities with a third party; consultation between mental health providers; or referral of a consumer to another provider.
 - *Payment* activities may include, but not limited to, those undertaken by PRSN to obtain premiums, or to determine or fulfill its responsibility for coverage and provisions of benefits or to obtain or provide reimbursement for the provision of care.
 - *Health Care Operations* may include, but not limited to, conducting quality assessment and improvement activities, reviewing competence of or qualifications of mental health professionals, evaluating provider and program performance, conducting or arranging for auditing functions, including fraud and abuse detection and compliance programs; business planning and development; business management and general administrative activities including, but not limited to, customer service; and resolution of internal grievances.
- b. Reporting victims of Abuse, Neglect, or Domestic Violence: Protected health information (PHI) may be disclosed about a consumer that PRSN staff or contracted providers reasonably believe to be a victim of abuse, neglect, or domestic violence to the appropriate government authority.
- c. Health Oversight Activities: PHI may be disclosed for purposes of health oversight activities such as audits, investigations, inspections, and licensure.
- d. Law Enforcement when related to public, or private safety or apprehension of an individual: PHI may be disclosed to law enforcement only to the

extent necessary to carry out responsibilities. Information is generally limited to fact, place, and date of involuntary commitment and release, and last known address.

- e. Court Proceedings: PHI may be disclosed to the courts as required for the administration of Chapter 71.05, or pursuant to a valid authorization or court order authorizing the disclosure of information.
- f. Research and Evaluation: PHI may be disclosed to an individual, organization or agency (such as MHD) as necessary for management or financial audits, or program monitoring and evaluation.
- g. Workers' Compensation: PHI may be disclosed as permitted by statute.
- h. Department of Corrections: PHI may be disclosed about an inmate to the correctional institution.
- i. Special Government Functions: PHI may be disclosed to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law. PHI may also be disclosed to authorized federal officials to provide protection to the President, other authorized persons, or foreign heads of state or so they may conduct special investigations.

Minimum Necessary

Uses and disclosures of protected health information are to consist of only the minimum necessary information required to fulfill the request and/or purpose of the use or disclosure.

1. "Minimum Necessary" applies:

When using or disclosing protected health information, or, when requesting protected health information from another covered entity, PRSN must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

2. "Minimum Necessary" *does not* apply to:
 - a. Disclosures to or requests by a health care provider for treatment.
 - b. Uses or disclosures made to the individual.
 - c. Disclosures pursuant to a properly formatted authorization for release of information.
 - d. Disclosures made to the Secretary of DHHS to investigate or determine the agency's compliance with federal law.

Other Uses and Disclosures

Additionally, PRSN may use and disclose protected health information for the following purposes and as allowed:

1. De-Identified Protected Health Information

PRSN may use protected health information to create information that is not individually identifiable health information (see definition below) or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by PRSN. Health information that meets the standard and implementation specifications for de-identification under this policy is considered not to be individually identifiable health information, i.e., de-identified. "Individually identifiable health information" is information that is a subset of health information, including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse.
- b. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- c. That identifies the individual.
- d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

2. Business Associates

PRSN may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if PRSN obtains satisfactory assurance that the business associate will appropriately safeguard the information. PRSN must document, through a written contract or other written agreement or arrangement, the satisfactory assurances that a business associate meets the standards of this policy with respect to protection of identifiable health information. This standard does not apply with respect to disclosures by PRSN to a health care provider concerning the treatment of the individual.

3. Deceased Individuals

PRSN must comply with the requirements of this policy with respect to the protected health information of a deceased individual. If under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, PRSN must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.

4. Personal Representatives

PRSN must treat a personal representative as the individual for purposes of this policy.

- a. **Adults and Emancipated Minors:** If under applicable law, a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, PRSN must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.
- b. **Unemancipated Minors:** If under applicable law a parent, guardian, or other person acting *in loco parentis* has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, PRSN must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:
 - The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;
 - The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service; or
 - A parent, guardian, or other person acting *in loco parentis* assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.
- c. **Abuse, Neglect, Endangerment Situations:** Notwithstanding a state law or any requirement of this paragraph to the contrary, PRSN may elect not to treat a person as the personal representative of an individual if PRSN has reasonable belief that:
 - The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - Treating such person as the personal representative could endanger the individual and, PRSN, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

5. Consistent With Privacy Notice

PRSN is required by HIPAA regulation to have a notice in public view and available to consumers that it may not use or disclose protected health information in a manner inconsistent with established regulation and policy.

6. Disclosures by Whistleblowers and Workforce Member Crime Victims

- a. Disclosures by Whistleblowers: PRSN is not considered to have violated the requirements of this policy if a member of its workforce or a business associate discloses protected health information, provided that:
 - The workforce member or business associate believes in good faith that PRSN has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more consumers, workers, or the public; and the disclosure is to:
 - A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of PRSN or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or
 - An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described above.

- b. Disclosures By Workforce Members Who Are Victims Of A Crime: PRSN is not considered to have violated the requirements of this policy if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:
 - The protected health information disclosed is about the suspected perpetrator of the criminal act; and
 - The protected health information disclosed is limited to the information listed in this policy as minimum necessary information.

Authority to Disclose Information

When questions arise concerning the authority to disclose information or the type of information to be disclosed, staff shall first consult with and obtain approval of the Privacy Officer before releasing information.

Authentication of Requester

Prior to disclosure of any protected health information, even with authorization, authenticity of the requester must be established by means reasonably certain of verifying the authenticity of the requestor.

When presented with a valid authorization, check a document to verify the signature is similar to the consumer's signature. The requester will be required to present picture identification to ensure information is given to the person intended.

Accounting of Disclosures

When any disclosure of information or records is made, an entry must be promptly entered into the record to include the date and circumstances under which the disclosure was made, the names and relationships to the individual or agency receiving the information, the information disclosed, identification, and signature of the staff disclosing the information.

MONITORING

This policy is mandated by contract or statute.

1. This policy will be monitored through use of PRSN:
 - Annual PRSN Provider and Subcontractor Administrative Review
2. If a provider performs below expected standards during the review listed above, a Corrective Action will be required for PRSN approval. Reference PRSN Corrective Action Plan Policy.