

Department of Public Health and  
Human Services (DPHHS)

## Health Insurance Portability and Accountability Act ("HIPAA") Privacy Policy

*John Chappuis, Deputy Director*

Date: February 27, 2003

Revised Date:

<b>Policy Title:</b>	Uses and Disclosures of Protected Health Information		
<b>Policy Number:</b>	002	<b>Version:</b>	1.0
<b>Approved By:</b>	John Chappuis		
<b>Date Approved:</b>	February 27, 2003		

### Purpose:

This policy addresses the use and disclosure of Protected Health Information ("PHI") in order to provide necessary services and benefits to clients while maintaining reasonable safeguards to protect their PHI.

### Policy:

**DPHHS will limit uses and disclosures of PHI to those uses and disclosures which are required or allowed by law or are authorized by the client.**

### **Required Disclosures – DPHHS is required to disclose PHI:**

1. To the client, with certain specific limitations.
  - a. When such disclosure, in the belief of the licensed health care professional, would be likely to cause harm;
  - b. When DPHHS does not have the information; and
  - c. When the professional believes that such disclosure might cause potential harm to other individuals.
2. To the Secretary of Health and Human Services when required to investigate or determine the Department's compliance with the HIPAA regulation.

**Permitted disclosures without Authorization – DPHHS may disclose PHI without the client's authorization to the extent necessary for the following purposes:**

1. Treatment – Provision, coordination or management of health care and related services by one or more health care providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a client; or the referral of a client for healthcare from one health care provider to another.
2. Payment – The activities undertaken to determine or fulfill responsibilities for coverage and provision of benefits including: determination of eligibility or coverage; risk adjusting amounts due to health status or demographics; billing or collecting; obtaining payment for reinsurance purposes and all related data processing; review of health care services with respect to medical necessity, coverage, justification or appropriateness of care; and/or utilization review activities including precertification and preauthorization.
3. Healthcare Operations – Those business and management activities necessary to accomplish health care functions, including, but not limited to:
  - a. Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines;
  - b. Reviewing the competence or qualifications of health care professionals, accreditation, certification, licensing or credentialing activities;
  - c. Underwriting or premium rating;
  - d. Conducting or arranging for medical review, legal services, and auditing functions, fraud and abuse detection and compliance programs;
  - e. Business planning and development such as cost management, formulary development and payment or coverage policies; and/or
  - f. Customer service provisions.

**Uses and disclosures permitted or required by state or federal law for which a written authorization is NOT required (in most cases, these disclosures will need to be kept in an accounting log):**

1. To Business Associates who conduct health care activities on behalf of a DPHHS entity and who provide assurances that the PHI will be safeguarded.
2. For public health activities related to the prevention or control of diseases, injuries or disabilities, including surveillance, vital events such as birth and death, public health investigations and interventions.
3. To a government authority authorized to receive reports of child or adult abuse or neglect or domestic abuse. If DPHHS staff makes such a disclosure, they must promptly inform the client that such a report has been or will be made, unless they believe that informing the

client or the client's personal representative would place that client or another individual at risk of serious harm. These disclosures are required from most health care professionals (MCA 52-3-811).

4. To report adverse events regarding food and drugs.
5. To workers compensation regarding work related injuries.
6. To health oversight agencies such as government regulatory bodies who determine program standards, eligibility and compliance.
7. To administrative or judicial proceedings in response to a subpoena or court order. Where federal or state law requires a court order for disclosure of specific information, that information will not be released without that court order.
8. For limited law enforcement activities, such as reporting certain injuries or wounds, identifying or locating a suspect, victim or witness, alerting law enforcement of a death as a result of criminal conduct, and information which constitutes evidence of criminal conduct on DPHHS premises. Montana law (MCA 50-16-530(4)) requires an investigative subpoena to make such disclosures.
9. To coroners or medical examiners, for the purpose of identifying a deceased person or determining a cause of death
10. To funeral directors, consistent with applicable law, as needed to carry out their duties regarding the decedent. DPHHS may also disclose such information prior to, and in reasonable anticipation of, the death. **Montana law (MCS 50-16-530 allows for these disclosures and will not interfere with disclosures required for death certificates.**
11. To organ procurement organizations or other entities engaged in procuring, banking, or transplanting of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation.
12. For research purposes with the approval of an Institutional Review Board (IRB).
13. To avert a serious threat to health or safety, if DPHHS believes such information is necessary to prevent or lessen a serious and imminent threat.
14. For other specialized government functions related to lawful intelligence, counterintelligence or other national security activities.
15. To a correctional institution having lawful custody of an inmate for the purpose of providing health care or ensuring the health and safety of clients or other inmates or protecting the safety, security and good order of the institution.
16. In case of emergency, DPHHS may use or disclose information to the extent needed to provide emergency treatment.

17. Government agencies administering public benefits may share information between government agencies to determine eligibility or to coordinate benefits and may maintain such information in a single or combined data system if such sharing is permitted or required by statute or regulation.
18. The Family Educational Rights and Privacy Act (FERPA) and state law applicable to student records governs access to, use, and disclosure of student records.

**Uses and disclosure for which a client's authorization is not required if they are informed in advance and given a chance to object.**

There are some circumstances in which DPHHS may disclose PHI without authorization if the person is informed in advance and is given an opportunity to agree or disagree or to restrict the disclosure. Except as otherwise provided by law, DPHHS may orally inform the client of and obtain the client's oral agreement or objections and must document this occurrence. These circumstances are:

1. For maintaining a directory of clients in a DPHHS health care facility. State law (MCA 50-16-530) restricts this disclosure to the patient's presence and a general condition;
2. For disclosure of health care information to a family member, other relative, or close personal friend of the client, or any other person named by the client, subject to limitations; and
3. Oral permission to use or disclose information for the purposes described in this Section is not sufficient when the client is referred to or is receiving substance abuse treatment services or mental health treatment services, where written authorization for the program to make such disclosures is required.

**Uses for which a written Authorization IS required**

1. Except as otherwise permitted or required by law and consistent with these policies, DPHHS shall obtain a completed and signed Authorization for release of information from the client, or the client's personal representative, before obtaining or using information about a client from a third party or disclosing any information about the client to a third party. An Authorization is required:
  - a. Prior to a client's enrollment in a DPHHS administered health plan, if necessary for determining eligibility or enrollment;
  - b. For the use and disclosure of psychotherapy notes and addiction treatment notes (42 CFR). Psychotherapy notes and addiction treatment notes are notes that are recorded in any medium and kept separate from the rest of the medical record by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. Psychotherapy notes

do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress;

- c. For disclosures to an employer for use in employment related determinations; and
  - d. For research purposes unrelated to the client's treatment.
2. DPHHS may obtain, use, or disclose information only if the written Authorization includes all the required elements of a valid Authorization. The required elements are:
- a. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
  - b. The name or other specific information about the person(s) classification of person(s), or entity (such as DPHHS specified program) authorized to make the specific use or disclosure;
  - c. The name or other specific identification of the person(s), classification of person(s), or entity to whom DPHHS may make the requested use or disclosure;
  - d. A description of each purpose of the requested use or disclosure. If the client does not wish to specify a purpose for the information, they may specify "at the request of the client";
  - e. An expiration date, or an expiration event that relates to the client or to the purpose of the use or disclosure. If a date is not included, the Authorization expires in 6 months. No expiration event or date can be listed that is greater than 30 months;
  - f. Signature of the client or of the client's Personal Representative ("Representative") and the date of the signature; and
  - g. If the client's Representative signs the Authorization form instead of the client, a description or explanation of the Representative's authority to act for the client, including a copy of the legal court document (if any) appointing the Representative, must also be provided.
3. Prior to any permitted disclosures, DPHHS must verify the identity of the person requesting the client's PHI and the authority of that person to have access to the PHI.
4. DPHHS must provide the client with a copy of the signed Authorization form.
5. DPHHS must document and retain each signed Authorization form for a minimum of six years and three months.

6. Uses and disclosures must be consistent with what the client has authorized on the signed Authorization form. Under any such authorization, DPHHS will disclose only the minimum amount of PHI necessary to fulfill the purpose for which the PHI is requested.
7. An Authorization must be voluntary. DPHHS may not require the client to sign an Authorization as a condition of providing treatment, payment, services, enrollment in a health plan or eligibility for health plan benefits, except:
  - a. Before providing research related treatment, a DPHHS health care provider may condition the client to sign an Authorization for the use or disclosure of health information for such research;
  - b. Before enrolling the client in a DPHHS health plan, DPHHS can condition the client to sign an Authorization if needed to help determine the applicant's eligibility for enrollment and the Authorization is not for the use or disclosure of psychotherapy notes; and
  - c. DPHHS and its contracted health care providers can condition the client 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. For example, in a juvenile court proceeding, where a parent is required to obtain a psychological evaluation by DPHHS, the evaluator may, as a condition of conducting the evaluation, require the parent to sign an Authorization to release the evaluation report (but not the underlying psychotherapy notes) to DPHHS.
8. An authorization that is required for enrollment in a health plan or to determine eligibility for benefits or the health plan cannot be combined with a voluntary authorization. A required authorization and a voluntary authorization must be separate documents, signed separately.
9. Clients have a right to restrict the uses and disclosures of information. Such restrictions must be submitted in writing and do not affect disclosures that have already taken place in good faith.