

Preble County Board of Developmental Disabilities

Policy: **HIPAA MODULE 2: GENERAL POLICY ON PRIVACY AND CONFIDENTIALITY**

Board Approved: May 13, 2014

Revised:

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Section: 5.2

I. SOURCES

- 45 CFR Part 160 and 164 generally
- 45 CFR 164.502(b)(1) minimum necessary standard
- 45 CFR 164.502(a)(1)(iii) incidental uses and disclosures
- 45 CFR 164.504(g) for entities with multiple functions
- ORC § 5126.044 Ohio law on confidentiality
- OAC § 5123.31 General DD Board confidentiality requirements
- OAC § 5123:1-6-01 Access to Confidential Personal Information
- OAC § 5123:2-2-01(D)3(b) Supported Living requirements for confidentiality policies

II. GENERAL POLICY

A. General Principles

The DD Board shall conform to all requirements for privacy and confidentiality set forth in HIPAA and other applicable laws. The DD Board shall not use or disclose PHI except in accordance with applicable requirements.

This policy shall apply whether the DD Board is acting as a covered health care provider or a Health Plan under HIPAA. If the DD Board is acting in more than one capacity, the DD Board shall be subject to the requirements applicable to that function and shall use or disclose PHI only for purposes related to the function being performed.

B. Treatment, payment and health care operations

The DD Board may use PHI for treatment, payment and health care operations without an individual's release or authorization to the extent that such activities occur within the DD Board program.

The DD Board shall obtain a release or authorization from the individual for any disclosure for treatment, payment or health care operations when such disclosure is to a person or entity which is not otherwise entitled to receive such information under applicable requirements.

C. Scope of Disclosure: Minimum Necessary Standard

In general, use, disclosure or requests of records must be limited to the minimum which is reasonably necessary to accomplish the purpose of the use, disclosure or request. The following are exceptions to this general principle:

1. The minimum necessary standard does not apply to disclosures to the individual.
2. When an individual has authorized disclosure, the scope of disclosure shall be in accordance with the authorization.
3. Disclosures required by law or for monitoring purposes shall be made in accordance with the authority seeking the information.

D. Incidental Uses and Disclosures

The DD Board may use or disclose PHI incident for a use or disclosure otherwise permitted or required by applicable requirements.

1. An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a result of another use or disclosure that is permitted by the Rule.
2. Permissible incidental uses and disclosures are those that occur as a by-product of another permissible or required use or disclosure, as long as the DD Board has applied reasonable safeguards and implemented the minimum necessary standard (see section 2.2.3), where applicable, with respect to the primary use or disclosure.
3. An incidental use or disclosure is not permitted if it is a byproduct of an underlying use or disclosure which violates applicable requirements and DD Board procedures.

E. Changes in Policies and Procedures

1. The DD Board shall change its policies and procedures as necessary and appropriate to comply with changes in applicable requirements.
2. Changes shall apply to existing PHI effective on the date of notice of the change.
3. The DD Board shall document material changes in policies and notices which reflect such changes. The DD Board shall retain such documentation for six years or as otherwise mandated by applicable requirements.

F. Mitigation

The DD Board shall mitigate, to the extent practicable, any harmful effect that is known to the DD Board of a use or disclosure of protected health information in violation of its policies and procedures or the requirements of applicable requirements and DD Board policies and procedures by the DD Board or its business associate.¹

The DD Board's duty to mitigate does not alter the DD Board's duty to report breaches as set forth in Module 8: Notice in Event of Breach of Unsecured PHI.

G. Prohibition against Retaliation or Intimidation

No office, program, facility or employee of the DD Board shall intimidate, threaten, coerce, discriminate against, or take other retaliatory action against

1. any individual for the exercise of their rights or participation in any process relating to HIPAA compliance, or
2. against any person for filing a complaint with the Secretary of the U.S. Department of Health and Human Services, participating in a HIPAA related investigation, compliance review, proceeding or hearing, or engaging in reasonable opposition to any act or practice that the person in good faith believes to be unlawful under HIPAA regulations as long as the action does not involve disclosure of PHI in violation of the regulations.

H. Prohibition against Waiver of Rights

No office, program, facility or employee of the DD Board shall require individuals to waive any of their rights under HIPAA as a condition of treatment, payment, and enrollment in a health plan or eligibility for benefits.

III. ADMINISTRATION

The DD Board shall conform to the policies and procedures on administration set forth in Module 3: Administration.

¹ The Preamble to the final Privacy Rule (65 Fed. Reg. No. 250, Part II, December 28, 2000 p. 82748) clarifies that the HIPAA rule does not define what mitigation policies and procedures must be implemented. Under the interpretation in the Preamble, the DD Board must mitigate harm only when the DD Board has actual knowledge of harm or a breach. The rule does not require the DD Board to eliminate harm unless it is practicable to do so. If, for example, the DD Board inadvertently discloses PHI on an adult individual to the adult's parent without a release, the DD Board can mitigate by notifying the individual of the disclosure and instructing staff that such a disclosure violates the law and DD Board policy.

IV. PERMISSIBLE USES AND DISCLOSURES

The DD Board shall use or disclose PHI only as follows:

- A. In accordance with a release or authorization of the individual in accordance with policy and procedure set forth in Module 4: Authorizations.
- B. To the extent required by law as set forth in Module 5: Uses And Disclosures For Which No Release Or Authorization Is Required.

V. NOTICE

The DD Board shall provide notice to all individuals enrolled with the DD Board in accordance with the policy and procedure set forth in Module 6: Notice.

VI. INDIVIDUAL RIGHTS

The DD Board shall ensure protection of individual rights to access to PHI, amendment of PHI and accounting of PHI as set forth in Module 7: Individual Rights Related to PHI.

VII. SAFEGUARDS FOR PHI

The DD Board shall implement safeguards for PHI as set forth in Module 9: Safeguards for PHI.

VIII. COMPLAINTS AND GRIEVANCES

The DD Board shall follow the policies and procedures set forth in Module 10: on Individual

IX. SANCTIONS

The DD Board shall impose sanctions as set forth in Module 11: Sanctions when the DD Board is aware that a member of the workforce or Business Associate has violated applicable law or these DD Board procedures.

X. BUSINESS ASSOCIATES

The DD Board shall ensure protection of the use, disclosure and creation of individuals' PHI to other persons or entities performing activities on behalf of the DD Board, by entering into Business Associate agreements or Memoranda of Understanding, as set forth in Module 12: Business Associates.

XI. DOCUMENT MANAGEMENT

The DD Board shall manage all documents required by DD Board policies and procedures, as set forth in Module 13: Document Management.

Date of PCBDD
Motion of Adoption

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Preble County Board of Developmental Disabilities