**Health Insurance Portability and Accountability Act Tip Sheet**

**Disclosure of Protected Health Information (PHI)**

The Division of Protection and Permanency (DPP) and its personnel obey federal law regarding the use of protected health information.

**DPP workforce staff complete the following tasks to ensure that clients’ PHI is remains confidential:**

* Provide the client/individual with a copy of the notice of privacy practices:
* Upon request by a client/individual;
* During the first face to face contact or first delivery of service; and
* Upon revisions of the notice:
* Such revisions can be viewed on the most recent version of the notice, found at the Cabinet’s web site at **http://chfs.ky.gov/**;
* Such revised notices will be posted at each DPP local office; and
* Will be available to the client/individual upon request on or after the effective date of the revision;
* Document in the client/individuals case record the date the CHFS-300-Notice of Privacy Practices was distributed;
* Make reasonable efforts to limit the type and nature of the PHI to the minimum necessary to accomplish the intended purpose of use, disclosure or request by completing the following:
* Obtain appropriate authorization from the client when the use or disclosure of protected health information is for purposes outside those permitted by federal or state law relating to treatment, payment, or health care operations;
* Use the CFC-305-Authorization for Release, Use or Disclosure of PHI to facilitate, to obtain and document authorization, except for psychotherapy and/or psychiatric records or notes, which will require authorization using the CFC-305A-Authorization for Release, Use or Disclosure of Psychotherapy and/or Psychiatric Records or Notes;
* Only uses/discloses a client’s/individual’s protected health information (PHI) without a signed written authorization from the client/individual only for the following purposes as designated by law:
* **Treatment**-DPP does not provide direct treatment for a client’s/individual’s medical needs, however DPP and authorized workforce staff may need to provide a client’s/individual’s PHI to other entities, including, but not limited to, medical personnel, medical institutions or community partners in order to ensure that the client/individual receives the Cabinet’s protective services to the fullest extent. Frequently, DPP, Social Service Workers (SSW) provide members of the medical profession with PHI in order to obtain their expertise and knowledge as to whether protective services are needed or to provide treatment when necessary;
* **Payment**-In order for Medicaid to pay for client’s/individual’s health care treatment, DPP in the Cabinet for Health and Family Services receives client/individuals health information from direct treatment providers and transmits that information electronically to the Department for Medicaid Services in the Cabinet for Health and Family Services;
* **Health Care Operations**-DPP mayneed a client’s/individual’s diagnosis, treatment and outcome information in order to improve the quality or cost of the health care service delivered. Furthermore, DPP may want to use health information, such as the client’s/individual’s name, address, phone number and treatment dates, to provide protective services or carry out the Cabinet’s responsibilities under state and federal law;
* **As required or permitted by law**-Sometimes DPP must report some of a client’s/individual’s PHI to legal authorities, such as law enforcement officials, court officials or government agencies. DPP may have to disclose PHI in a judicial or administrative proceeding or to respond to a court order;
* **Health oversight agency activities**–DPP may disclose a client’s/individual’s PHI to authorities so the authorities can monitor, investigate, inspect, discipline or license those who work in the health care system or for government benefit programs;
* **Public health activities**-DPP maybe required to report a client’s/individual’s PHI to authorities to help prevent or control disease, injury or disability. This may include, but is not limited to, using a client’s/individual’s PHI to report certain diseases, injuries, birth or death information or information related to child abuse or neglect;
* **Research**-Under certain circumstances, and only after approval by the Institutional Review Board as required by federal law, DPP may use and disclose a client’s/individual’s PHI for research;
* **To avoid a serious threat to health or safety**-DPP may release a client’s/individual’s PHI to the proper authorities if DPP believe, in good faith, that such release is necessary to prevent or minimize a serious and approaching threat to the client/individual or the public’s health or safety, as required by law;
* **Military, national security, or incarceration/law enforcement custody**-If the client/individual is involved with the military, national security or intelligence activities or is in the custody of law enforcement officials or an inmate in a correctional institution, DPP may release the client’s/individual’s PHI to the proper authorities so the authorities may carry out their duties under the law;
* **Workers’ compensation**–DPP may disclose a client’s/individual’s PHI to the appropriate persons in order to comply with the laws related to worker’s compensation or other similar programs;
* **Activities related to death**–DPP may disclose a client’s/individual’s PHI to coroners, medical examiners and funeral directors so they can carry our their duties related to your death, such as identifying the body, determining cause of death, or in the case of funeral directors, to carry out funeral preparation activities;
* **Organ, eye or tissue donation**–DPP may disclose a client’s/individual’s PHI to people involved with obtaining, storing or transplanting organs, eyes or tissue of cadavers for donation purposes, if the clients has signed in advance a health care directive signifying the desire to be an organ donor; or
* **De-identified PHI**-De-identified individual PHI is not considered to be individually identifiable health information and the HIPAA privacy regulations do not apply.
* DPP, offices, facilities, programs and workforce staff may rely on a request for disclosure as being for the minimum necessary amount of PHI if:
* The disclosure is to a public official and is permitted under 45 CFR 164.512, Uses and disclosures for which an authorization or opportunity to agree or object is not required;
* The request is from another covered entity; or
* The request is from DPP, offices, facilities, programs, and workforce staff or from a business associate in order for TPO.
* Exceptions to the minimum necessary disclosure requirement include disclosure:
* To the client/individual who is the subject of the information;
* Made pursuant to an authorization;
* To or requests by healthcare providers for treatment purposes;
* Required for compliance with HIPAA transactions;
* To the Federal Department of Health and Human Services pursuant to a privacy investigation; and
* Otherwise required by HIPAA regulations or other law.
* Each authorization for the use or disclosure of an individual’s PHI will be written in plain language and is to include the following content information requirements:
* A specific and meaningful description of the information to be used or disclosed;
* The name or identification of the person or class of person(s) authorized to make the use or disclosure;
* The name or identification of the person or class of person(s) to whom the requested use or disclosure may be made;
* Purpose of the disclosure or statement that disclosure is at request of the client/individual;
* An expiration date, condition or event that relates to the client/individual or the purpose of the use or disclosure; the authorization shall state that it will expire on the date the client/individual specifies by written revocation using CFC-306-Revocation of Authorization;
* A statement of the individual's right to revoke the authorization in writing, and exceptions to the right to revoke, together with a description of how the individual may revoke the authorization. Upon written notice of revocation, further use or disclosure of PHI shall cease immediately except to the extent that the office, facility, program or workforce staff has acted in reliance upon the authorization or to the extent that use or disclosure is otherwise permitted or required by law;
* A statement that treatment, payment, enrollment or eligibility cannot be conditioned on individual signing the authorization or statement setting forth consequences of not signing;
* A statement that the information may only be re-released with the written authorization of the individual, except as required by law;
* The dated signature of the individual; and;
* If the authorization is signed by a personal representative of the individual, a description and proof of the representative's authority to act on behalf of the individual.

**Client Requests Pertaining to PHI: Alternate Communication, Access, Accounting of Disclosure, Amendments to the Record, Request Restrictions to Use of Disclose**

The Health Insurance Portability and Accountability Act (HIPAA) provides specific rights to clients/individuals pertaining to protected health information PHI:

* The right to request a specific method of communication;
* The right to access to PHI records;
* The right to request an accounting of PHI disclosures by the agency;
* The right to request an amendment of PHI records held by the agency; and
* The right to request restrictions to the use or disclosure of PHI.

Clients/individuals may assert these rights for as long as the agency maintains the records. All requests and agency correspondence pertaining to PHI will be carried out by the Office of the Ombudsman via the DPP Records Management Section. The Office of the Ombudsman works with the agency’s HIPAA privacy officer, Records Management, or other agency personnel as appropriate to approve, deny, or otherwise process requests pertaining to PHI. The agency acts on a client request no later than thirty (30) calendar days after receipt unless the time period is extended. The request may extend the time for response by no more than thirty (30) calendar days, provided the client/individual is provided written notice of the reasons for the delay and the date the by which a responsive action will be taken.

In accordance with federal law, the following information will be maintained by the Records Management Section, in written or electronic form, for a period of six (6) years:

* Correspondence, forms and records of any nature relating to client PHI requests;
* Information required to be included in an accounting of disclosures of protected health information (PHI); and
* Titles of workforce staff or offices responsible for receiving and processing request for an accounting from client/individuals.
* DPP will accommodate a reasonable request by a client/individual to request or receive **communications of PHI by alternate means or at alternate locations**.
* The client will be provided the CFC-301-Request for Client’s Access to PHI;
* Upon receipt of a completed CFC-301, the Ombudsman’s Office approves or denies the request; and
* Forwards the client or personal representative’s request (approved or denied) to DPP Records Management Section for documentation and reply;
* DPP allows a client to request accessto their PHI.
* The Office of the Ombudsman via the Records Management Section:
* Acknowledges receipt of a client request within three (3) business days via letter and includes an approximate date when the requested case record information will be mailed if, after review, they have legal access;
* Informs the client/individual using the CFC-301-Request for Client’s Access to PHI if the request is approved or denied;
* If approved, and within the timeframes designated by federal law, provides the client/individual with access to the information in a form or format requested if it is readily producible in such a form or formats or in a readable hard copy as mutually agreed upon by:
* Informing the client/individual of the applicable cost-based fee using the CFC-301 (if applicable);
* Arranging for a convenient time/place for inspection and copying; or
* Mailing the information at the client/individual’s request upon receipt of the fee;
* If denied, provides a timely, written denial of access to the client/individual, written in plain language, explaining the basis for denial and any applicable right of review and the complaint process available to them using the CFC-301.
* The department allows the client or personal representative to request an **accounting of PHI disclosures**:
* The client/individual is provided the CFC-304-Request for Accounting of Disclosure;
* Upon receipt of the CFC-304, the Ombudsman’s Office approves or denies the request;
* The request (approved or denied) is sent to the DPP Records Management Section for processing and reply;
* If approved, the accounting must include requested disclosures of PHI that occurred during six (6) years (or such shorter time period as is specified in the request prior to the date of the request). The accounting for each disclosure is to include the:
* Date(s) of disclosure;
* Name of entities or individuals who received the PHI, and, if known, the address of such entities or individuals;
* A brief description of the PHI disclosed; and
* A brief statement of the purpose of the disclosure that reasonably informs the client/individual of the basis for the disclosure, or in lieu thereof, a copy of the client’s/individual’s authorization or the request for the disclosure. If, during the time period for the accounting, multiple disclosures have been made to the same entity or client/individual for a single purpose, or pursuant to a single authorization, the accounting may provide the information set forth above for the initial disclosure and then summarize the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period;
* Records Management uses the CFC-309 Accounting of Disclosure Tracking Log to track each client’s PHI disclosure and each request for an accounting of disclosure.
* The department allows a client/individual to **request amendment of PHI**:
* The client/individual submits the CFC-302 Request for Amendment to PHI to Ombudsman's Office;
* The Ombudsman’s Office approves or denies the request.
* If approved, the Records Management Section:
* Informs the client/individual that the amendment is accepted and approved;
* Verifies, on the CFC-302, that the client/individual has authorized notification of all relevant individuals or entities with which the amendment needs to be shared;
* Places of the amendment to PHI in the client’s case record and documents the amendment in the same section of the record as the original information; and
* Makes reasonable efforts within a reasonable time frame to notify all:
* Individuals and/or entities identified by the client on the CFC-302; and
* Relevant individuals or entities, including business associates with whom DPP knows has been provided the PHI that is subject to the amendment who may have relied upon the information prior to amendment to the detriment of the client. If a service for which billing or a charge has already been submitted, a review will occur to see if it should be amended or changed as well to reflect the amended information.
* If the request to amend PHI is denied the Records Management Section:
* Issues a written denial using the CFC-302,
* Provides notice of the client/individual’s rights to:
* Submit a written statement of disagreement and instructions on how to file the statement; or
* Request that future disclosure of the PHI include copies of the request and denial; and
* How to file a complaint to the Cabinet, Privacy Officer or U.S. Secretary of Health and Human Services;
* Provides a copy of any rebuttal to the client/individual; and
* Places the disputed amendment to PHI and append and or otherwise link the request, the denial and any statement of disagreement and/or rebuttal to the client’s case record; and
* Insures that future disclosures of this case record to include:
* Any statement of disagreement; or
* In response to the client/individual, the amendment request and the denial;
* If the agency is informed by another covered entity about an amendment to a client’s PHI the DPP, Records Management Section will amend the information in the client’s case record by, at minimum, identifying the affected record and appending or otherwise providing a link to the location of the amendment;
* The department allows a client/individual to request that DPP **restrict use and disclosure of PHI** made for treatment purposes or disclosure to family or others involved in care:
* Department staff provide the client with a CFC-303-Request to Restrict PHI to be filled out and submitted to the Cabinet’s, Ombudsman's Office at central office;
* The Ombudsman’s Office approves or denies the request;
* If approved, the Records Management Section, informs the client/individual using the CFC-303;
* The Records Management Section places the CFC-303, approving the restriction in the client’s case record and document the restriction in the same section of the case record as the original information;
* If approved, department staff abide by the restriction, unless the client is in need of emergency treatment and the:
* Information is needed for treatment;
* Disclosure is to a treatment provider for purposes of such treatment; and
* DPP request the treatment provider agree not to further disclose the PHI.
* The client/individual may agree to or request termination of the restriction using the CFC-303, or the client may verbally agree to terminate the restriction as documented by the CFC-307-Record of Verbal Agreement Concerning PHI. If received, the Records Management Section places the form terminating restriction in the case record and documents the termination of the restriction in the same section of the case record as the original information;
* If the request for a restriction of PHI is denied, Records Management informs the client/individual using the CFC-303 and places the CFC-303 in the client’s case record.
* **Right to Access:**
* Client/individual’s have a right to access and obtain a copy of their protected health information (PHI) and any information in their designated case record except as set forth below:
* Information was compiled in anticipation of litigation;
* Psychotherapy notes were obtained;
* Information was collected in the course of research that includes treatment of the client/individual agreed to a suspension of the right of access during the research period; and
* Information was obtained as otherwise authorized by law.
* When denied access to their PHI, the client/individual has, in some circumstances, a right to have the denial reviewed by another licensed professional who did not participate in the original denial decision. Such review must be completed in a reasonable period of time and the Records Management Section, will promptly:
* Provide the client/individual with notice of the reviewer’s decision; and
* Comply with the determination to provide or deny access.
* Clients/individuals have the right may have a right to a review of a denial of access where:
* Access is determined by a licensed professional to be likely to endanger life or physical safety of the client/individual or another person and such determination is documented; and
* A personal representative requests access and a licensed professional determines that such access is reasonably likely to cause substantial harm to the client/individual or another person and such determination is documented.
* **Right to an accounting of disclosure**:
* A client/individual has a right to receive an accounting of disclosures of PHI by DPP during a time period specified up to six (6) years prior to the date of the request for an accounting **except** for disclosures:
* That occurred prior to April 14, 2003;
* To carry out treatment purposes as permitted under law;
* To the client/individual about their own PHI;
* Pursuant to the client’s/individual’s authorization;
* To persons involved in the client’s/individual’s care; or
* Other notification purposes permitted under law.
* If, during the time period for the accounting, multiple disclosures have been made to the same entity or client/individual for a single purpose, or pursuant to a single authorization, the accounting may provide the information set forth above for the initial disclosure and then summarize the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.
* The first accounting of disclosure in any twelve (12) month period will be provided to the client/individual without charge. A cost-based fee of ten cents per page, plus postage will be charged for additional accounting of disclosures within the twelve (12) month period, provided the client/individual is informed in advance of the fee and is permitted an opportunity to withdraw or amend the request.
* The client’s/individual’s right to receive an accounting of disclosures of PHI to a health oversight agency or law enforcement official must be suspended for the time period specified by such agency or when an official provides a written statement asserting that the disclosure would be reasonably likely to impede the activities of the agency or official and specifying a time period for the suspension.
* Such a suspension may be requested and implemented based on a verbal notification for a period up to thirty (30) days.
* Such verbal requests are documented on the CFC-307-Record of Verbal Agreement concerning PHI, including the identity of the agency or official making the request.
* The suspension may not extend beyond thirty (30) days unless the written statement described herein is submitted during that time period.

**Complaint Process**

Federal law provides clients/individuals with the right to make a complaint if the client/individual believes that their protected health information privacy rights have been violated.

**DPP and/or workforce staff:**

* Provides the client with the CFC-308-HIPAA Complaint Form;
* Advises the client of their right to contact the Cabinet’s HIPAA compliance officer for further assistance in filing a complaint with DPP and/or with the Secretary of the U.S. Department of Health and Human Services;
* Refers a client/individual that has any questions or concerns regarding their privacy rights or desires to file a complaint to contact the:

The Cabinet for Health and Family Services

Office of the Ombudsman

ATTN HIPAA Compliance Officer

285 East Main St

1E-B

Frankfort, KY 40621

(502) 564-5497

* If the complaint is submitted without using a CFC-308 form, the information is transferred to the CFC-308.
* If the client submits additional information in writing, the written correspondence is attached to the completed CFC-308.

**The Cabinet’s, HIPAA compliance officer:**

* Investigates the circumstances of the alleged HIPAA rights violation with support from the Cabinet, HIPAA privacy officer, Records Management Section, central office and service region administrators and designees as required;
* Takes all reasonable and appropriate steps to mitigate the effects of any violation or actions to amend or create SOP as necessary to mitigate violations;
* Informs the client/individual via DPP, Records Management Section, using the CFC-308, the resolution to the complaint; and
* Forwards the CFC-308, to DPP, Records Management Section to facilitate placement of the complaint in the client’s:
* Case record; and
* Accounting of disclosure file.

**Retaliation, Intimidation or Waiver of HIPAA Privacy Regulations Prohibited**

* DPP nor any office, facility, program or workforce staff will retaliate against or intimidate a client/individual for exercising their rights or participating in any process relating to HIPAA compliance or for filing a complaint.
* Neither will DPP nor any office, facility, program or workforce staff require that a client/individual waive any of their rights under HIPAA as a condition of DPP service.
* Workforce staff or any entity of DPP will not intimidate, threaten, coerce, discriminate against or take retaliatory action against any client or other individual for the following:
* The exercise of his/her rights pursuant to HIPAA privacy regulations;
* Participation in any process, proceeding or investigation relating to HIPAA compliance; and
* The filing of a complaint related to PHI investigation, compliance review or legal proceeding with the Cabinet or the Secretary of the U.S. Department of Health and Human Services.
* Workforce staff or any entity of DPP will not require a client or other individual to waive any of their rights under HIPAA as a condition of treatment, payment or enrollment in a health plan or eligibility for benefits.
* Violations of these requirements may result in disciplinary action as outlined in the Penalties section below.

**Penalties**

* It is the expectation of the Division of Protection and Permanency (DPP) that all workforce staff follow the guidelines as set forth concerning employee standards, code of ethics and confidentiality pertaining to a client’s case record information and PHI.
* Any DPP workforce staff that violates the confidentiality requirements of HIPAA privacy regulations will be disciplined pursuant to 101 KAR 1:345(1).
* Any DPP workforce staff that intentionally or repeatedly violates the requirements of HIPAA privacy regulations will be disciplined pursuant to 101 KAR 1:345(2) up to and including termination.
* Documentation of such disciplinary action is included in the employee’s personnel file.
* The Cabinet’s Ombudsman’s Office (HIPAA compliance officer) coordinates mitigation efforts with support from the Cabinet, HIPAA privacy officer, Records Management Section, central office and service region administrators and designees as required.

**All forms and resources mentioned in this tip sheet are located in SOP 1.16 Confidentiality.**