

7002 AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

EFFECTIVE DATE: 11/8/2023

REFERENCES: 45 C.F.R. § 164.502 and 45 C.F.R. § 164.508

PURPOSE

This policy applies to all Division of Developmental Disabilities (the Division) staff. It outlines the process for the authorization for use and disclosure of Protected Health Information (PHI) as otherwise permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

DEFINITIONS

1. "Disclosure" means the release, transfer, or provision of access to or divulgence in any other manner of PHI to parties outside the entity holding the information.
2. "Health care operations" means the same as in 45 CFR 164.501.
3. "Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule" means the Federal Regulation that establishes national standards to protect individuals' medical records and other individual health information that applies to health plans, health care clearinghouses, and those health care providers that

conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of individual health information and sets limits and conditions on the uses and disclosures that may be made of such information without authorization from the Responsible Person. The Rule also gives members rights over their health information, including rights to examine and obtain a copy of their health records and to request corrections.

4. "Member" means the same as "client" as defined in A.R.S. § 36-551.
5. "Payment" means the same as in 45 CFR 164.501.
6. "Protected Health Information" or "PHI" means individually identifiable health information about a Member that is transmitted or maintained in any medium where the information is:
 - a. Created or received by a:
 - i. Health care provider,
 - ii. Health plan,
 - iii. Employer, or

- iv. Health care clearinghouse.
- b. Relates to the:
 - i. Past, present, or future physical or mental health condition of a Member;
 - ii. Provision of health care to a Member; or
 - iii. Payment for the provision of health care to a Member.
- c. PHI excludes information in:
 - i. Education records covered by the Family Educational Rights and Privacy Act as amended, 20 U.S.C. 1232g;
 - ii. Records described at 20 USC 1232g(a)(4)(B)(IV);
 - iii. Employment records held by a Covered Entity in its role as an employer; or
 - iv. Regarding a person who has been deceased for more than 50 years.
- 7. "Responsible Person" means the same as in A.R.S. § 36-551.
- 8. "Treatment" means the same as in 45 CFR 164.501.

9. "Use" means the sharing, employment, application, utilization, examination, or analysis of PHI within the entity that maintains such information.
10. "Psychotherapy Notes" are notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the patient's medical record.

POLICY

A. AUTHORIZATIONS

1. Uses and disclosures for which authorization is required.
 - a. The Division shall develop an authorization form in writing and in plain language.
 - b. The Division shall not require the Member to use the Division's authorization form.
 - c. The Division's Privacy Officer and Records Manager shall determine whether an authorization form that was not

developed by the Division contains all of the required elements, as stated per the HIPAA Privacy Rule.

- d. If a determination could not be reached, the Division's Privacy Officer and Records Manager shall consult the Attorney General's Office for additional guidance before disclosing protected health information based on that authorization.

B. VALID AUTHORIZATION CORE COMPONENTS

1. The Division shall verify that an authorization form contains the following components:
 - a. A description of the information to be used or disclosed;
 - b. The name or other specific identification of the Member or class of persons authorized to make the requested use or disclosure;
 - c. The name or other specific identification of the Member or class of persons to whom the Division shall make the requested use or disclosure;
 - d. A description of each purpose of the requested use or disclosure;

- e. The statement “at the request of the Member” is a sufficient description of the purpose when a Member initiates the authorization and does not, or elects not to, provide a statement of the purpose;
- f. An expiration date or an expiration event that relates to the Member or the purpose of the use or disclosure;
- g. The signature of the Member and date;
- h. If the authorization is signed by a personal representative of the Member, a description of such representative’s authority to act for the Member, including a copy of the legal court document, if any, appointing the personal representative.

C. REQUIRED ADDITIONAL AUTHORIZATION INFORMATION

- 1. The Division shall ensure that the authorization form contains a statement informing the Member of their right to revoke the authorization at any time and how the Member may revoke the authorization.
- 2. The Division shall:

- a. Not require the Member to sign an authorization as a condition of eligibility for benefits, enrollment in a health plan or the provision of treatment or payment; and
 - b. Make a statement on the authorization form to that effect.
3. Notwithstanding the requirement in subsection (2) of this section:
 - a. The Division may condition services to a Member on a signed authorization for the use or disclosure of protected health information for research purposes prior to providing research-related treatment.
 - b. The Division shall require a Member to sign an authorization if the information needed will determine the Member's eligibility, and the authorization does not include the use or disclosure of psychotherapy notes.
 - c. The Division shall require a Member to sign an authorization form before providing health care services unless otherwise approved by the Division as creating an impediment to the health and well-being of the Member.

D. INVALID AUTHORIZATION

1. The Division shall consider an authorization invalid if:
 - a. The expiration date has passed or the expiration event is known by the Division to have occurred;
 - b. The authorization form has not been filled out completely as to the core elements outlined in this policy;
 - c. The authorization has been revoked;
 - d. An authorization that states eligibility for benefits, enrollment in a health plan or treatment or payment of an authorization is a required condition, except as outlined in this policy;
 - e. The authorization is a compound authorization, requesting information from separate and distinct sources that require separate authorizations, such as psychotherapy notes along with other protected health information;
 - f. The Member did not voluntarily sign the disclosure form or was coerced into signing the authorization form; or
 - g. Any material information in the authorization is known to be false.

- E.** The Division shall give a copy of the authorization to the Member upon request and maintain a copy in the Member's case file.