

7005 RIGHT TO REQUEST RESTRICTION OF USES AND DISCLOSURES FOR PROTECTED HEALTH INFORMATION

EFFECTIVE DATE: 11/8/2023

REFERENCES: 45 C.F.R. § 164.522

PURPOSE

This policy applies to all Division of Developmental Disabilities (the Division) staff. This policy outlines the requirement when a Member requests a restriction of uses and disclosures, as permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

DEFINITIONS

1. "Designated Record Set" means a group of records maintained by the provider that contains the following:
 - a. Medical and billing records maintained by a provider,
 - b. Case and medical management records, or
 - c. Any other records used by the provider to make medical decisions about the Member.
2. "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.

3. "Health care operations" means the same as in 45 CFR 164.501.
4. "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.
5. "Member" means the same as "client" as defined in A.R.S. § 36-551.
6. "Payment" means the same as in 45 CFR 164.501.
7. "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 Member who has been deceased for more than 50 years.
8. "Responsible Person" means the same as in A.R.S. § 36-551.
9. "Treatment" means the same as in 45 CFR 164.501.
10. "Use" means the sharing, employment, application, utilization, examination, or analysis of PHI within the entity that maintains such information.

POLICY

- A.** The Division shall give Members the right to request a restriction of the uses and disclosure of their Protected Health Information (PHI) under the following circumstances:
- 1. For treatment, payment, or health care operations; and
 - 2. To family members, other relatives, or any other person identified by the Member who may be directly involved in the Member's care and for notification purposes.
- B.** The Division's Privacy Officer shall determine if the request will be accepted or denied based on the requirements of the Privacy Rule.

- C.** Notwithstanding the provision of section (A) of this policy, the Division shall not require the Division's Privacy Officer to agree to the restriction of the use and disclosure of PHI.
- D.** The Division shall advise the Responsible Person of the following:
1. If the Member is applying to another agency for benefits, restricting the disclosure of PHI may result in a delay or denial of benefits.
 2. By restricting which providers can receive PHI may limit the services that can be provided by the Division.
 3. If the restriction is agreed-upon, any use or disclosure by the Division contrary to the agreed restriction would be a violation of the Privacy Rule.
- E. RESTRICTED RECORDS DISCLOSED FOR EMERGENCY TREATMENT**
1. The Division shall request that the health care provider receiving the PHI shall not further use or disclose the information.
 2. The Division shall document this request to the provider in the Member's designated record set.
- F.** The Division shall not restrict PHI when that information is:

1. Required for investigations by the Secretary of the Department of Health and Human Services (DHHS).
2. Required by law.
3. Required for emergency treatment, unless the Member has expressly advised that they do not want treatment.

G. TERMINATION OF RESTRICTION ON USE OR DISCLOSURE

1. The Division shall terminate or modify an agreement to a restriction if:
 - a. The Responsible Person agrees to or requests termination or modification in writing;
 - b. The Responsible Person orally agrees to the termination and the oral agreement is documented; or
 - c. The Division informs the Member that it is terminating the agreement to a restriction with respect to the PHI created or received after the Division has informed the Member.

- H.** The Division's Privacy Officer shall provide a response to the request for restriction to the Member in writing within 30 days and maintain the response in the designated record set.