

## **7006 RIGHT TO REQUEST AMENDMENT OR CORRECTION OF PROTECTED HEALTH INFORMATION**

EFFECTIVE DATE: May 8, 2023

REFERENCES: 45 C.F.R. § 164.526

### **PURPOSE**

This policy applies to all Division of Developmental Disabilities (the Division) staff. The objective of this policy is to outline the requirement when a Member requests an amendment of their Protected Health Information (PHI) as permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### **DEFINITIONS**

1. "Day" means a calendar day, unless otherwise specified.
2. "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.

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. “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.
6. "Responsible Person" means the parent or guardian of a minor with a developmental disability, the guardian of an adult with a developmental disability or an adult with a developmental disability who is a member or an applicant for whom no guardian has been appointed.

## **POLICY**

### **A. THE RIGHT TO AN AMENDMENT**

- 1. The Division shall allow Members the right to request that changes be made in their Protected Health Information (PHI) maintained in the designated record set if the Members believe the information is inaccurate or incorrect.
- 2. The Division shall only amend or correct PHI that was originally created by the Division.

3. The Division shall ensure the requests for amendments be in writing and state what medical information needs to be amended or corrected, the time period of the documentation, and the reason why this is being requested.
4. The Division's Privacy Officer shall provide a response to accept or deny the request for amendment within 60 days of receipt.
5. The Division may extend the time frame by no more than 30 days if the Division is unable to respond within the time frame specified in subsection (4) and provide the Member with a written statement of the reasons for the delay and the date by which the Division will complete its action on the request.

**B. ACCEPTING THE AMENDMENT**

1. When the Division's Privacy Officer accepts the requested amendment, in whole or in part, the Division shall:
  - a. Make the amendment to the PHI.
  - b. Promptly inform the Member in writing that the amendment is accepted.

- c. Make reasonable efforts to notify and provide the amendment to persons the Division knows have previously received the information.
2. If the Division denies part of the amendment request, the Division shall follow the requirements of section (C) of this policy.

### **C. DENYING THE AMENDMENT**

1. The Division shall deny requests for amendment of member PHI a record that is the subject of the request under the following circumstances:
  - a. The request is not part of the designated record set.
  - b. The request was not created by the Division unless the Member provides a reasonable basis to believe that the originating entity is no longer available to act on the request.
  - c. The request is not available to be inspected because the PHI is:
    - i. Psychotherapy notes,

- ii. PHI compiled in reasonable anticipation of litigation,  
or
  - iii. It is accurate and complete.
- 2. When the Division denies the request for amendment, in whole or in part, the Division shall provide the Member within 30 days, written denial in plain language that contains:
  - a. The basis for the denial as stated in subsection (1) of this section.
  - b. The Member's right to submit a written statement disagreeing with the denial and how to file such a statement.
  - c. A statement that if the Member does not submit a statement of disagreement, they may request in writing, at any time, that the Division provide the Member's request for amendment and the denial along with any future disclosure of the PHI that is the subject of the denied amendment.

- d. A description of how the Member may complain to the Division pursuant to complaint procedures, including the name or title and telephone number of the contact person or office designated to receive such complaints.
3. The Division shall provide the Member with a written rebuttal to the Member's statement of disagreement within 30 days of receiving the written rebuttal.

**D. RECORDKEEPING**

1. The Division shall identify the PHI in the designated record set that is the subject of the disputed amendment and link the following to the designated record set:
  - a. The Member's request for an amendment;
  - b. The Division's denial of the request;
  - c. The Member's statement of disagreement, if any; and
  - d. The Division's rebuttal, if any.
2. The Division shall document the titles of persons responsible for receiving and processing requests for amendments by Members and retain the documentation in the Member's case file.



**E. NOTIFICATION OF AMENDMENT FROM ANOTHER HEALTH CARE PROVIDER**

Upon notification of an amendment from another health care provider, the Division shall amend the PHI in the designated record set.