

## **7007 RIGHT TO RECEIVE ALTERNATIVE MEANS OF COMMUNICATION FOR PROTECTED HEALTH INFORMATION**

EFFECTIVE DATE: 11/8/2023

REFERENCES: 45 C.F.R. § 164.522 and 45 C.F.R. § 164.502

### **PURPOSE**

This policy applies to all Division of Developmental Disabilities (the Division) staff. This policy outlines the Member's right to request privacy protection utilizing alternative means of communication.

### **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 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 same as in A.R.S. § 36-551.

## **POLICY**

- A.** The Division shall allow the Responsible Person the right to request an alternate means of communication and an alternative address to receive communication of Protected Health Information (PHI).
1. The Division shall condition on the provision of a reasonable accommodation on:
    - a. When appropriate, information as to how payment, if any, will be handled; and

- b Specification of an alternative address or other method of contact.
  - 2. If a Member clearly indicates in the request for an alternative means of communication that disclosure of the PHI would put them in danger, then the Division shall make the accommodation.
- B.** The Member shall make the request for, and describe, the alternative means of communication or alternative location in writing.
  - 1. The Division's Privacy Officer shall grant or deny the request based on 45 C.F.R. § 164.522 and 45 C.F.R. § 164.502.
  - 2. The Division's Privacy Officer shall maintain all documentation regarding the request and whether the request is granted or denied in the designated record set.
- C.** The Division shall allow the Responsible Person to request the Division to send electronic PHI (ePHI) in an unencrypted format.
- D.** If the Responsible Person requests to receive PHI in an unsecured email transmission, prior to using an unsecured email transmission to provide PHI, the Division shall:

1. Inform the Responsible Person of the risk of unsecured email transmissions, and
  2. Require the Responsible Person to acknowledge in writing the risk of unsecured email transmissions when transmitting PHI.
- E.** The Division shall review requests for an unencrypted transmission on an annual basis and maintain all documentation identified, reviewed, or involved in the request, in the case records.