

DHMH POLICY

<http://www.dhmh.state.md.us/policies/inpolm.htm>

OFFICE OF THE INSPECTOR GENERAL (OIG)

DHMH POLICY 01.03.05

Effective Date: November 16, 2011

INDIVIDUAL RIGHTS POLICY

I. EXECUTIVE SUMMARY

The Department of Health and Mental Hygiene (DHMH) is committed to protecting the health information of Maryland citizens. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), and their implementing regulations require that DHMH adopt policies on specific issues. The purpose of this policy and related guidelines is to ensure department-wide consistency in fulfilling the individual rights requirements of Federal and State laws regarding protection of health information.

This policy explains the individual rights that are required under HIPAA standards and HITECH, including the requirements for adoption and distribution of the Notice of Privacy Practices, the rights of individuals to access and request amendment of their health information, restrictions on use and disclosure of health information, confidential communications, and accounting of disclosures that have been made of individual's health information. Individual rights under the Maryland Confidentiality of Medical Records Act of 1990 and other applicable Federal and State laws and regulations on health information are also included.

II. BACKGROUND

In adopting this policy, DHMH is demonstrating due diligence toward compliance with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and their implementing regulations. This policy also incorporates requirements of the Maryland Confidentiality of Medical Records Act of 1990 and other applicable laws and regulations. These laws and regulations protect and enhance the rights of consumers by ensuring them access to their health information and by providing restrictions over how their health information is used or disclosed. From a broader perspective, they also provide for improved efficiency and effectiveness in the healthcare system through a more uniform nationwide privacy framework.

This version supersedes policy 01.03.05 and replaces an earlier version dated August 17, 2006. This version adds HITECH Act modifications to HIPAA.

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III. POLICY STATEMENTS

A. AUTHORITY

The Health Insurance Portability and Accountability Act (HIPAA); Public Law 104-191 authorizes and mandates DHMH to issue this policy.

The Health Information Technology for Economic and Clinical Health Act (HITECH) as part of the American Recoveries and Reinvestment Act of 2009; Public Law 111-5

B. DEFINITIONS

A comprehensive set of definitions for this policy is contained in *DHMH HIPAA Guidelines*, which may be accessed on the DHMH Intranet.

C. ROLES AND RESPONSIBILITIES

The roles and responsibilities of the DHMH Privacy Officer, the Business Unit Privacy Contacts, and other DHMH components are included in DHMH Policy 01.03.06, Policy on Administrative and Organizational Requirements for Privacy of Health Information.

D. NOTICE OF PRIVACY PRACTICES

1. The DHMH Privacy Office shall issue a Notice of Privacy Practices (NPP), written in plain language that states the patient/client's rights with respect to use and disclosure of health information.
2. The Department shall provide adequate notice to a patient/client of the uses and disclosures of health information that may be made by DHMH and of patients/clients' rights with respect to health information or other confidential healthcare information and will maintain documentation of compliance with this policy.
3. DHMH will not limit its obligation to inform an individual of a use or disclosure of the individual's health information that either Federal or State law requires or permits.
4. DHMH will retain copies of the notices issued and if applicable, any written acknowledgments of the receipt of the notice, or documentation of its good faith efforts to obtain such written acknowledgment.
5. The Department will provide a copy of the NPP to any person upon request and will post the NPP on its website.
6. A copy of the NPP will be posted at each entry points of service where individuals access DHMH treatment or services.
7. The Department shall provide each patient/client with a copy of the NPP upon revision of its applicable policies and procedures as identified in the NPP.

8. DHMH business units administering covered functions will issue the NPP to their patient/clients pursuant to this policy.

E. INDIVIDUAL RIGHTS

1. An Individual's Right of Access to Inspect and Copy Health Information

a. An individual has a right of access to inspect and obtain a copy of health information contained in a designated record set upon payment of copying expenses as established under COMAR 10.01.08.04 for DHMH programs or Health General Article, §4-304, Annotated Code of Maryland for other healthcare providers, for as long as the health information is maintained in the designated record set. When DHMH maintains an individual's health information using electronic health records, DHMH will provide access in electronic format and transmit copies of the health information to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific.

b. DHMH must provide an individual with access to his/her health information in the form or format requested, when reasonable.

c. DHMH employees shall consult the Attorney General's Office regarding use of an exception, or for advice on any proposed denial of an individual's request to access his/her health information.

2. An Individual's Right to Request Restrictions on Use or Disclosure of Health Information

a. An individual may request that DHMH restrict use and disclosure of health information made for treatment, payment and healthcare operations or disclosures to family or others involved in the individual's care, though DHMH is not required to agree to the restriction requested, except as required by law.

b. The DHMH business unit is responsible for approving or denying a restriction. DHMH employees shall consult the Attorney General's Office as appropriate for advice on denial of any request for restriction.

3. An Individual's Right to Request Confidential Communications

a. The DHMH business unit will accommodate, when practicable, an individual's reasonable request to receive confidential communications of health information by allowing the individual to request that such communications be made to the person at an alternative location, or by an alternative means upon request. This right does not generally apply to individuals in residential facilities.

b. Although the information may be helpful, DHMH will not require an individual to explain why he/she wants a confidential communication.

- c. An individual may request that confidential communication be sent to an alternative address that the individual feels is secure, so that information will not be placed in someone else's possession inadvertently.
- d. If an individual indicates that the information will cause endangerment if the request is not approved, the business unit ordinarily shall discontinue consideration of the reasonableness of the individual's request in determining whether it must accommodate the request.
- e. DHMH may refuse a request for confidential communication if the individual provides no alternative address or method of contact, or if the individual provides no information on how applicable payment will be made.
- f. DHMH business units are responsible for approving or denying a request for confidential communications. The Privacy Contact shall consult the Attorney General's Office for advice on denial of any request.

4. An Individual's Right to Request Amendment of Health Information

- a. The Department recognizes an individual's right to request an amendment or correction of the individual's health information if the individual believes that the information is incomplete or inaccurate.
- b. When a DHMH business unit is informed by another covered entity of an amendment to an individual's health information, the business unit must amend the health information in written or electronic form.

5. An Individual's Right to an Accounting of Disclosures

- a. Upon an individual's request, the business unit shall provide the person with an accounting of the disclosures of the individual's health information over the previous six (6) years, or a shorter period, if all data is included.
- b. Exceptions- DHMH is not required to provide an accounting of disclosures of health information made:
 - (1) For treatment, payment, or healthcare operations;
 - (2) To the individual;
 - (3) That are incidental to a use or disclosure otherwise permitted or required by law;
 - (4) Pursuant to an Authorization;
 - (5) For facility directories, to people involved in an individual's care, or other allowable notification purposes;
 - (6) For national security or intelligence purposes;
 - (7) To correctional institutions law enforcement officials;
 - (8) Of limited data sets; or
 - (9) That occurred prior to the April 14, 2003 compliance date.

c. DHMH will provide an accounting for disclosures made through an electronic health record for treatment, payment, and health care operations, but information is limited to the three (3) years prior to the date of request.

d. DHMH shall temporarily exclude disclosures made to health oversight agencies or law enforcement from an accounting if DHMH has written notice from the requesting agency or official that providing an accounting would impede the agency's or official's activities.

e. DHMH must provide the individual with the first request for a list in any 12-month period with no charge. DHMH may charge the individual a reasonable, cost-based fee in accordance with COMAR 10.01.08.04 for each future request within the 12-month period provided that DHMH informs the individual in advance of the fee and offers the individual the chance to withdraw or modify the request to avoid or reduce the fee.

IV. REFERENCES

- Health Insurance Portability and Accountability Act (HIPAA); Public Law 104-191.
<http://aspe.hhs.gov/admsimp/pl104191.htm>.
- Health Information Technology for Economic and Clinical Health Act (HITECH) as part of the American Recoveries and Reinvestment Act of 2009; Public Law 111-5.
<http://www.gpo.gov/fdsys/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf>:
- DHMH POLICY 01.03.06
<http://www.dhmh.state.md.us/policies/pdf/010306sof.pdf>
- DHMH HIPAA Websites
<http://www.dhmh.state.md.us/hipaa/> or <http://indhmh/hipaa> - (inside DHMH)
- DHMH HIPPA GUIDELINES
<http://indhmh/hipaa/html/guideandforms.html>
- Maryland Confidentiality of Medical Records Act of 1990, Health General Article, § 4-301 et seq., Annotated Code of Maryland
<http://www.dhmh.maryland.gov/psych/pdfs/Medicalreports.pdf>
- State Government Article, §10-633, Annotated Code of Maryland
http://mlis.state.md.us/asp/web_statutes.asp?gsg&10-633
- COMAR 14.18.02 Records Retention and Disposal Schedules
http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=14.18.02.*
- DHMH 02.10.02 Records Policy
<http://www.dhmh.state.md.us/policies/021002v5x.pdf>.
- Maryland Public Information Act Manual (12th ed.), OAG, 2011.
<http://www.oag.state.md.us/opengov/pia.htm>

- The following sections of the Final Privacy Rule, as modified in 45 CFR Parts 160 and 164, revised as of October 1, 2010, discuss the individual's right to inspect and copy protected health information:

<http://aspe.hhs.gov/admsimp/final/PvcPre01.htm>

§164.502 – Uses and disclosures of Protected Health Information: general rules

§164.508 – Uses and disclosures for which an authorization is required

§164.512 – Uses and disclosures for which an authorization or opportunity to agree or object is not required

§164.520 – Notice of Privacy Practices for Protected Health Information

§164.522(a)–Standard: Right of an individual to request restriction of uses and disclosures.

§164.524 – Access of individuals to protected health information

§164.526 – Amendment of Protected Health Information

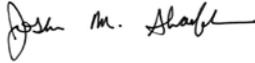
§164.522(b) – Rights to request privacy protection for protected health information

Standard: Confidential communications requirements

§164.528 – Accounting of disclosures of Protected Health Information

§164.530 (j) – Standard: Documentation

APPROVED:



Joshua M. Sharfstein, M.D., Secretary, DHMH

November 16, 2011

Effective Date