

2.11 HIPAA COMPLIANCE

Policy: WMHS and all Title X clinics must assure compliance with the Health Insurance Portability and Accountability Act (HIPAA). This policy addresses the use and disclosure of Protected Health Information (PHI) in order to provide necessary services and benefits to clients while maintaining reasonable safeguards to protect their PHI.

Procedure:

General HIPAA Compliance

1. WMHS and all Title X clinics must limit uses and disclosures of PHI to those which are required or allowed by law or are authorized by the client.
2. All Title X clinics must provide a copy of the Notice of Privacy Practice (NPP) when a client presents for services. The clinic must obtain written acknowledgement that the client received the NPP.
3. A client must sign a new NPP whenever it is revised, updated or changed. Clients do not need to sign the NPP annually.
4. All Title X clinics must immediately report to WMHS any unauthorized HIPAA disclosures of PHI. Clinic directors must submit information about a breach to WMHS and submit a copy of the breach to the DPHHS HIPAA Privacy Officer. The DPHHS toll-free HIPAA hotline is 1-800-645-8408. The elements of a breach that need to be reported are as follows:
 - a. Date of the breach and the date of the discovery of the breach
 - b. A description of the types of unsecured PHI involved in the breach such as, full name, Social Security Number (SSN), Date of Birth (DOB), home address, account number, diagnosis, etc.
 - c. Brief description of what the clinic is doing to investigate the breach, to mitigate harm to the individual, and to protect against further breaches
 - d. Any steps the individual needs to take to protect themselves from potential harm resulting from the breach (e.g. contacting credit card companies)
5. The clinic is required to disclose PHI:
 - a. To the client, with the following limitations:
 - i. When such disclosure, in the belief of the licensed health care professional, would be likely to cause harm
 - ii. When the clinic does not have the information
 - iii. When the professional believes that such disclosure might cause potential harm to other individuals
 - b. To the Secretary of Health and Human Services:
 - i. When required to investigate or determine the Department's compliance with the HIPAA regulation.

Permitted disclosures WITHOUT authorization

1. Treatment – Provision, coordination or management of health care and related services by one or more health care providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a client; or the referral of a client for healthcare from one health care provider to another.
2. Payment – The activities undertaken to determine or fulfill responsibilities for coverage and provision of benefits including: determination of eligibility or coverage; risk adjusting amounts due to health status or demographics; billing or collecting; obtaining payment for reinsurance purposes and all related data processing; review of health care services with respect to medical necessity, coverage, justification or appropriateness of care; and/or utilization review activities including pre-certification and preauthorization.

3. Healthcare Operations – Those business and management activities necessary to accomplish health care functions, including, but not limited to:
 - a. Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines
 - b. Reviewing the competence of qualifications of health care professionals, accreditation, certification, licensing or credentialing activities
 - c. Underwriting or premium rating
 - d. Conducting or arranging for medical review, legal services, and auditing functions, fraud and abuse detection and compliance programs
 - e. Business planning and development such as cost management, formulary development and payment or coverage policies
 - f. Customer service provisions

Written authorization is NOT required

1. Uses and disclosures permitted or required by state or federal law for which a written authorization is not required (in most cases, these disclosures will need to be kept in an accounting log):
 - a. To Business Associates who conduct health care activities on behalf of a DPHHS entity and who provide assurances that the PHI will be safeguarded.
 - b. For public health activities related to the prevention or control of diseases, injuries or disabilities, including surveillance, vital events such as birth and death, public health investigations and interventions.
 - c. To a government authority authorized to receive reports of child or adult abuse or neglect or domestic abuse. These disclosures are required from most health care professionals (*MCA 52-3-811*).
 - d. To report adverse events regarding food and drugs.
 - e. To workers compensation regarding work related injuries.
 - f. To health oversight agencies such as government regulatory bodies who determine program standards, eligibility and compliance.
 - g. To administrative or judicial proceedings in response to a subpoena or court order. Where federal or state law requires a court order for disclosure of specific information, that information will not be released without that court order.
 - h. To coroners or medical examiners, for the purpose of identifying a deceased person or determining a cause of death
 - i. To funeral directors, consistent with applicable law, as needed to carry out their duties regarding the decedent. Montana law (*MCA 50-16-530*) allows for these disclosures and will not interfere with disclosures required for death certificates.
 - j. To organ procurement organizations or other entities engaged in procuring, banking, or transplanting of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation.
 - k. To avert a serious threat to health or safety, if such information is necessary to prevent or lessen a serious and imminent threat.
 - l. For other specialized government functions related to lawful intelligence, counterintelligence or other national security activities.
 - m. To a correctional institution having lawful custody of an inmate for the purpose of providing health care or ensuring the health and safety of clients or other inmates or protecting the safety, security and good order of the institution.
 - n. In case of emergency, information may be disclosed to the extent needed to provide emergency treatment.
 - o. Government agencies administering public benefits may share information between government agencies to determine eligibility or to coordinate benefits and may maintain

such information in a single or combined data system if such sharing is permitted or required by statute or regulation.

- p. The Family Educational Rights and Privacy Act (FERPA) and state law applicable to student records governs access to, use, and disclosure of student records.

Permitted disclosures for which a written authorization IS required

1. Except as otherwise permitted or required by law and consistent with these policies, all clinics shall obtain a completed and signed authorization for release of information from the client, or the client's personal representative, before obtaining or using information about a client from a third party or disclosing any information about the client to a third part. A written authorization is required:
 - a. Prior to a client's enrollment in a DPHHS administered health plan, if necessary for determining eligibility or enrollment.
 - b. For the use and disclosure of psychotherapy notes and addiction treatment notes (*42 CFR*). Psychotherapy notes and addiction treatment notes are notes that are recorded in any medium and kept separate from the rest of the medical record by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress.
 - c. For disclosures to an employer for use in employment related determinations.
 - d. For research purposes unrelated to the client's treatment.

Required Authorization Elements

1. The clinic may obtain, use, or disclose information only if the written authorization includes all of the following required elements of a valid authorization:
 - a. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
 - b. The name or other specific information about the person(s) classification of person(s), or entity authorized to make the specific use or disclosure.
 - c. The name or other specific identification of the person(s), classification of person(s), or entity to whom the clinic may make the requested use or disclosure.
 - d. A description of each purpose of the requested use or disclosure. If the client does not wish to specify a purpose for the information, they may specify "at the request of the client."
 - e. An expiration date or an expiration event that relates to the client or to the purpose of the use or disclosure. If a date is not included, the authorization expires in 6 months. No expiration event or date can be listed that is greater than 30 months.
 - f. Signature of the client or of the client's Personal Representative ("Representative") and the date of the signature.
 - g. If the client's representative signs the authorization form instead of the client, a description or explanation of the Representative's authority to act for the client, including a copy of the legal court document (if any) appointing the Representative, must also be provided.

Additional Requirements

1. Prior to any permitted disclosures, the clinic must verify the identity of the person requesting the client's PHI and the authority of that person to have access to the PHI.
2. The clinic must provide the client with a copy of the signed authorization form.
3. The clinic must document and retain each signed authorization form for a minimum of six years and three months.
4. Uses and disclosures must be consistent with what the client has authorized on the signed authorization form. Under any such authorization, the clinic will disclose only the minimum amount of PHI necessary to fulfill the purpose for which the PHI is requested.
5. An authorization must be voluntary.
6. An authorization that is required for enrollment in a health plan or to determine eligibility for benefits or the health plan cannot be combined with a voluntary authorization. A required authorization and a voluntary authorization must be separate documents, signed separately.
7. Clients have a right to restrict the uses and disclosures of information. Such restrictions must be submitted in writing and do not affect disclosures that have already taken place in good faith.