Bureau of TennCare
Policy Manual

Policy No: HIP 06-001	
Subject: Confidentiality of Enrollee Information	
Approved by: J.D. Hickey	Date: 1/26/06

PURPOSE OF POLICY STATEMENT: The purpose of this policy is to reiterate the responsibilities of the MCOs, BHOs, DBM, PBM and other TennCare contractors to ensure that all enrollee and potential enrollee information, materials and records provided to or obtained by or through said contractors, whether verbal, written, tape, or otherwise, will be treated confidentially as protected health information (PHI). This policy replaces TSOP 38.

POLICY:

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) require the Department of Health and Human Services to establish national standards for electronic health care transactions and national identifiers for providers, health plans and employers. These provisions also address the security and privacy of health data.

In compliance with those provisions, the MCO, BHO, DBM and PBM providers are required to maintain all information about enrollees related to their examination, care and treatment as confidential PHI. Confidential PHI is not to be divulged without the enrollee's authorization unless:

1. it is required by law;
2. it is necessary to coordinate the patient's care with physicians, hospitals or other health care entities;
3. it is necessary to coordinate insurance or other matters pertaining to payment;
4. it is necessary in compelling circumstances to protect the health and safety of an individual;
5. it is necessary for disaster relief purposes; and
6. it is necessary for the purpose of health care fraud and abuse detection and compliance.

45 CFR §164.512(e)(1) provides that information *may* be released in response to an order of a court or administrative tribunal and does not require notice to the enrollee provided only the PHI expressly authorized by such order is disclosed. Information may be released in response to a subpoena or discovery request in a pending judicial and administrative proceeding not accompanied by a court or administrative order if the enrollee has received actual notice of the request, or if written notice of the request has been sent to the enrollee's last known address.

An enrollee's records may be disclosed, with or without enrollee authorization, to qualified personnel for the purpose of conducting scientific research if approved by an Institutional Review Board (IRB) or a privacy board. Such research may not identify, directly or indirectly, any individual enrollee in any report of the research or otherwise disclose participant identity in any manner. The enrollee's PHI must be adequately stored and processed so that it is protected against unauthorized disclosure.

The MCOs, BHOs, DBM or PBM must limit the use or disclosure of PHI concerning potential enrollees and enrollees to the minimum necessary to accomplish the intended purpose directly connected with the administration of the plan except to the extent the use and disclosure is for treatment.

All MCOs, BHOs, DBM or PBM providers and subcontracting entities or organizations will be required to safeguard information about enrollees. The types of information to be safeguarded are:

1. name, address and other individually identifiable information;
2. medical services provided;
3. social and economic conditions or circumstances;
4. agency evaluation of personal information;
5. medical data, including diagnosis and past history of disease or disability;
6. any information received for verifying income eligibility and the amount of medical assistance payments and income information received from the SSA or IRS; and
7. any information received in connection with legally liable third party resources.

DEFINITIONS:

Protected Health Information (PHI): means information in any form, including demographic information, that identifies or may be used to identify an individual and that:
(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
(2) Relates to the physical or mental health or condition of an individual.
(See full definitions, with exceptions, at 45 CFR 160.103.)

OFFICES OF PRIMARY RESPONSIBILITY:
Office of General Counsel, Privacy and Compliance
Chief of Networks

REFERENCES:
42 CFR § 431.300 *et seq.*; 45 CFR §§ 160 & 164

Contractor Risk Agreement; Section 2.3c 2.(a); 2.3.c 2.(b)(8)
BHO Contractor Risk Agreement (East) 3.17 and 6.14
BHO Contractor Risk Agreement (Mid/West) 3.4.1.3.8
DBM Contract A.8.3.2.8