



# Bureau of TennCare Policy Manual

Policy No. : HIP 06-007	
Subject: Use and Disclosure of Enrollee PHI	
Approved by: <i>D. J. Curran</i>	Date: 3/13/2009

## PURPOSE OF POLICY

This policy addresses how the Bureau of TennCare (the Bureau) uses and discloses enrollee protected health information (PHI). The Bureau must follow specific guidelines for both required and permitted disclosures pursuant to The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## POLICY

The Bureau shall use and disclose enrollee PHI whenever it is required by HIPAA and federal and state laws and regulations. However, the Bureau must seek authorization to use and disclose enrollee PHI unless required or expressly permitted by HIPAA to use and disclose such information without prior consent. The Bureau will provide enrollees with all the privacy rights granted by HIPAA and by federal and state laws and regulations.

## DISCUSSION & LEGAL BASIS

The Bureau shall seek authorization from an enrollee to use and disclose enrollee PHI pursuant to HIPAA when use or disclosure is outside of treatment, payment, and healthcare operations.

**Permitted Uses and Disclosures.** The Bureau may use or disclose PHI without an enrollee's prior consent for treatment, payment, and healthcare operations.

Treatment consists of:

- The provision of medical services;
- Care coordination; and,
- Case management.

The following are examples of permitted uses and disclosures for “payment:”

- Activities to obtain premiums;
- Eligibility determinations;
- Billing, claims processing, and collections; and,
- Medical necessity review.

The following are examples of permitted uses and disclosures for “health care operations:”

- Quality improvement activities;
- Medical review;
- Credentialing and licensing;
- Training operations;
- Underwriting/premium rating;
- Administrative functions; and,
- Fraud and abuse detection.

**Required disclosures.** The Bureau shall disclose PHI under several circumstances to include the following:

- To an enrollee when requested under applicable HIPAA regulations (See HIP 06-009. Enrollee Access to PHI – refers to a “Request for Enrollee Access to PHI” but I only see a “Permission to Release Record” form); and,
- To the Secretary of the Department of Health and Human Services to investigate or determine the Bureau’s compliance with HIPAA.

**Uses and disclosures for which enrollee authorization is required. (45 CFR §164.508).** According to HIPAA regulations, enrollee authorization is required:

- For any use or disclosure of psychotherapy notes; and,
- For any use or disclosure of PHI for marketing.

There are exceptions to the general rule of obtaining authorization for any use or disclosure of psychotherapy notes. For example, authorization is not required for any use or disclosure of psychotherapy notes to carry out certain treatment, payment or health care operations, or if required by the Secretary of Health and Human Services (HHS).

If the Bureau seeks an authorization form from an enrollee for a use or disclosure of enrollee PHI, then the Bureau must provide the enrollee with a copy of the signed authorization.

**Uses and disclosures requiring an opportunity for the enrollee to agree or to object (45 CFR §164.510).** The Bureau may orally inform an individual of or obtain the individual's oral agreement or objection to a use or disclosure permitted under HIPAA. There are two (2) circumstances where an opportunity for the enrollee to agree or to object to the use and disclosure of PHI:

- Use and disclosure for facility directories; and,
- Uses and disclosures for involvement in the individual's care and notification.

**Uses and disclosures for which enrollee authorization or opportunity to agree or object is not required (45 CFR §164.512).** Authorization to use or disclose PHI is not required under the following circumstances:

- Uses and disclosures required by law;
- Uses and disclosures for public health activities (or to facilitate public health investigations);
- Disclosures about victims of abuse, neglect or domestic violence;
- Uses and disclosures for health oversight activities (e.g. investigation by the DHHS and the Office of Civil Rights);
- Disclosures for judicial and administrative proceedings;
- Disclosures for law enforcement purposes;
- Uses and disclosures about decedents in certain circumstances;
- Uses and disclosures for cadaveric organs, eye or tissue donation purposes;
- Uses and disclosures for research purposes when authorization is waived by the institutional review board (IRB) or Privacy Board;
- Uses and disclosures to avert a serious threat to health or safety;
- Uses and disclosures for specialized government functions, especially to assure proper execution of a military mission, etc.; and,
- Disclosures for worker's compensation.

## **PROCEDURE**

1. Appropriate Bureau staff shall determine whether authorization is required in order to respond to a request to use or disclose enrollee PHI. Any questions regarding such a determination shall be forwarded to the TennCare Privacy Officer.

a) If a request for PHI involves a permitted use and disclosure (e.g. for treatment, payment, or healthcare operations), then the information should be released.

b) If a request for PHI involves a required use and disclosure of PHI under HIPAA regulations, then the information should be released.

c) If a request for PHI involves a use and disclosure that requires enrollee authorization, then the proper written documentation and approval must be obtained before releasing the information.

d) Whenever authorization is not required, the Bureau staff person should follow its departmental procedures and log or account for the release of specified information to various outside entities when applicable (See also HIP 06-008. Accounting of Disclosures of Enrollee Records).

2. The Bureau shall seek authorization from an enrollee to use and disclose enrollee PHI pursuant to HIPAA and utilize the appropriate forms provided on the Bureau of TennCare website (See "Permission to Release Protected Health Information" form).

**3. Authorization forms.**

a) Authorizations will be made utilizing the appropriate form approved by the TennCare Privacy Office and the Office of General Counsel (See "Permission to Release Protected Health Information" form).

b) If the Bureau requires a signed authorization form from an individual for a use or disclosure of PHI, then the Bureau must provide that individual with a copy of the signed authorization form.

4. A requestor can access the appropriate forms on the website or a Bureau staff person can send the individual the requested forms via U.S. Mail. When appropriate, a Bureau staff person may authenticate and verify the identity of an enrollee who calls requesting his or her own PHI (in limited circumstances).

5. Each division within the Bureau shall develop procedures related to the job functions of the employees that comply with the guidelines of HIPAA regarding uses and disclosures of Enrollee PHI.

6. When in doubt as to the appropriate use and disclosure of enrollee PHI, all employees must seek assistance from an immediate supervisor, who shall in turn, forward the inquiry to the TennCare Privacy Office, if necessary.

7. Any questions regarding required and/or permitted uses and disclosures of enrollee PHI should be directed to the TennCare Privacy Office.

**DEFINITIONS**

**Enrollee:** means those currently enrolled in all categories of TennCare Medicaid and TennCare Standard, including an individual eligible for and enrolled in the TennCare Program or in any Tennessee federal Medicaid waiver program pursuant to Sections 1115 or 1915 of the Social Security Act; and, for purposes of the Bureau Privacy policies, the term may also be used to reference one who was previously an enrollee during a period for which there is a privacy request or compliance inquiry.

**HIPAA:** means Health Insurance Portability and Accountability Act of 1996, for which administrative simplification, privacy and security regulations are codified at 45 CFR §§ 160-164.

**Protected Health Information (PHI):** means medical or health information, including non-medical facts such as address or date of birth, which identify an individual.

#### **OFFICE OF PRIMARY RESPONSIBILITY**

TennCare Privacy Officer, Office of General Counsel

#### **RELATED FORMS**

Permission to Release Protected Health Information (PHI)

<http://www.tn.gov/tenncare/forms/releaserecord.pdf>

#### **REFERENCES**

45 CFR § 164.501

45 CFR § 164.502

45 CFR § 164.506

45 CFR § 164.508

45 CFR § 164.512