

JUVENILE COURT HEALTH SERVICES

Subject: PROTECTED HEALTH INFORMATION: USE AND DISCLOSURE REQUIRING AUTHORIZATION UNDER HEALTH PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)	Original Issue Date: 4/14/03	Policy # E-103
	Supersedes: 6/1/18	Effective Date: 5/21/2021
Departments Consulted: JCHS Health Information Management	Approved By: (Signature on File) Health Services Administrator (Signature on File) Medical Records Director	Approved By: (Signature on file) Medical Director

PURPOSE

To establish a JCHS/Probation policy regarding the use and disclosure of protected health information (PHI), and necessary authorization under the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Standards) for such use or disclosure, when the use or disclosure is for purposes outside of those permitted relating to treatment, payment, or health care operations, or under other provisions of the HIPAA Privacy Rule.

POLICY

It is the policy of JCHS/Probation to obtain an individual's written authorization before using or disclosing PHI for purposes other than treatment, payment, or healthcare operations, except as permitted by the HIPAA Privacy Rule. Use and disclosure of an individual's PHI will be consistent with the valid authorization obtained from that patient.

DEFINITIONS

Protected Health Information (PHI)

Individually identifiable information relating to past, present, or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present, or future payment for health care provided to an individual.

Authorization

The signed authorization language used by JCHS to obtain an individual's permission prior to using or disclosing that individual's PHI for purposes that do not fall within the definitions of treatment, payment, or health care operations activities, and other purposes that do not require the individual's permission.

Disclose or Disclosure

With respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner PHI outside of JCHS internal operations or to other than its workforce members.

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Use or uses

With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within the JCHS internal operations.

Marketing

To make a communication about a product or service for the purpose of which is to encourage recipients of the communication to purchase or use the product or service. Marketing excludes a communication made to an individual:

- To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or service (or payment for such product or service) is provided by a covered entity or included in a plan of benefits;
- For the treatment of that individual; or
- For case management or care coordination for the individual, or to direct or recommend alternate treatments, therapies, health care providers, or settings of care to that individual.

PROCEDURE

Authorization Form

The language of the authorization shall be in the form as provided in the DHS Authorization for *Use or Disclosure of Protected Health Information* form (Attachment A)

To be valid, an authorization must contain the elements listed below.

- **Description of PHI:** A specific, meaningful description of the PHI to be used or disclosed.
- **Identity of Disclosing Party:** The name or other specific identification of the person(s) or class of persons authorized to disclose the PHI.
- **Identity of Recipient:** The name or other specific identification of the person(s), or class of persons authorized to use or otherwise receive the PHI.
- **Purpose of Use or Disclosure:** A description of each purpose of the requested use or disclosure, including limitations on the recipient's use of the PHI, if any.
- **Expiration Date:** The end date for the permission granted by the authorization, which must be a specific date or event after which JCHS is no longer authorized to disclose the PHI.
- **Statement of Right to Revoke:** The authorization must include a statement that the individual has a right to revoke the authorization. The statement must also explain how revocation is accomplished, including that it must be in writing, and tell the individual about

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exceptions applicable to the revocation. These exceptions are listed below in "Implementation of Revocation."

- **Signature:** Signature of the individual and date of signature. An authorization signed by a personal representative of the individual must include a description of the personal representative's authority to act for the individual.
- **Authorization as a Condition:** The authorization must state that JCHS cannot condition treatment, payment, enrollment in the health plan, or eligibility for benefits on obtaining a signed authorization. **Exception:** JCHS may condition the provision of research-related treatment on obtaining an authorization to use or disclose PHI created for that research-related treatment.
- **Redisclosure:** The authorization must state that the PHI disclosed to others may not be further used or disclosed by the recipient unless the individual signs a new authorization, or such use or disclosure is specifically required or permitted by law.
- **Copy:** The authorization must state that an individual signing the authorization has the right to receive a copy of it.

Obtaining Authorization

- 1 JCHS shall provide the Authorization Form upon a patient's request or in conjunction with any authorization initiated by JCHS for the disclosure of PHI.
- 2 If the patient initiates the authorization, JCHS shall establish the identity of the requestor in accordance with its policy regarding verification of identity and authority.
- 3 JCHS shall explain the authorization language to the patient or personal representative and obtain the required signatures on the Authorization form.
- 4 JCHS shall ensure that all listed required elements are completed.
- 5 JCHS shall provide the patient or personal representative a copy of the signed Authorization form.
- 6 JCHS shall ensure that all authorizations are valid. An authorization is not valid, or is no longer valid, and may not be relied upon to use or disclose PHI, if any of the following conditions exist:
 - The expiration date has passed;
 - Any required element for a valid authorization is missing.
 - JCHS has received written revocation of the authorization;
 - JCHS knows that important information in the authorization is false; or
 - The authorization violates restrictions on compound authorizations.

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- 7 JCHS shall ensure that the authorization does not violate restrictions on compound authorizations. A HIPAA authorization applies only to the use or disclosure of PHI and may be combined with another type of written permission only as follows:
 - An authorization for use and disclosure of PHI for a research study may be combined with any other written permission for the same research study, such as the patient consent to participate in the research study, so long as the HIPAA authorization portion is clearly separate from any other language present on the same page and is executed by a signature for the sole purpose of executing the authorization.
- 8 JCHS may not condition the provision of health care on obtaining an authorization even if the only purpose of providing health care is to create PHI for disclosure to a third party (e.g., fitness for duty, school or summer camp physical, pre-employment examinations).
 - JCHS will disclose the PHI directly to the patient, unless JCHS receives a signed HIPAA authorization from the patient for the disclosure to the third party.
- 9 JCHS may not condition the individual's treatment upon obtaining an authorization.
Exception: JCHS may condition the provision of research-related treatment on obtaining an authorization to use or disclose PHI created for that research-related treatment.
- 10 JCHS shall obtain an authorization for any use or disclosure of PHI for marketing, except if the marketing communication is in the form of:
 - Face-to face communications with the patient by JCHS; or
 - A gift to the patient from JCHS of nominal value, e.g., a pen with JCHS logo.

If the marketing involves direct or indirect remuneration to JCHS from a third party, the authorization must state that such remuneration is involved.

Implementation of Revocation

1. A patient may revoke or modify his or her authorization in writing.
2. A modification or revocation is valid, except to the extent JCHS has taken action in reliance on such authorization.
3. The individual may use the Revocation of Authorization section at the bottom of the Authorization form or write his or her own revocation.

Use and Disclosure of HIV Antibody Test Results

Except as specifically set forth below, HIV antibody test results, whether positive or negative, or even the fact that an HIV antibody test was ordered, may be disclosed only pursuant to a valid, written authorization.

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1. Use and Disclosure of HIV Antibody Test Results Pursuant to a Written Authorization

- To be valid, the authorization must be signed by the same individual who validly signed the consent for the HIV antibody test and who is one of the following:
 - An adult with medical decision-making capacity;
 - A minor who is twelve (12) years of age or older and mature enough to give effective informed consent to an HIV test;
 - A parent or legal guardian for a minor under twelve (12) years of age; or
 - A conservator or agent pursuant to a power of attorney for health care.
- Additionally, the authorization must specifically state that it authorizes the use or disclosure of HIV test results and must be signed by a witness.
- A general authorization for the use and disclosure of medical records is not sufficient to authorize use or disclosure of HIV antibody test results.
- If a general authorization for use or disclosure of medical information is received that does not specifically authorize the use or disclosure of HIV test results, the HIV test results must be redacted from the information that is used or disclosed (if any) and may not be used or disclosed.
- A separate written authorization must be obtained for each use and disclosure of an HIV test result.

2. Exceptions to the Written Authorization Requirement

HIV test results may, but are not required to, be disclosed to the following persons without the written authorization of the test subject:

- Subject of test or the subject's representative, conservator, or to any person authorized to consent to the test;
- Subject's provider of health care for the purpose of diagnosis, care, or treatment of the patient (but not to a health care plan);
- An agent or employee of the test subject's provider of health care who provides direct patient care and treatment;
- A provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act, as well as to a procurement organization, a coroner, or a medical examiner in conjunction with such donation;

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- The “designated officer” of an emergency response employee, or from that designated officer to an emergency response employee, regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. Section 201);
- In some instances, to a health care worker who has been exposed to the potentially infectious materials of a patient, provided that strict procedures for consent and testing are followed. Legal counsel should be consulted with regard to such disclosures;
- A court pursuant to a court order for disclosure of HIV test results of a defendant to a criminal charge; and
- A county health officer (without identifying the individual believed to be infected).

3. Disclosures to Persons at Risk of Infection

In addition to the foregoing, a patient’s physician may, but is not required to, disclose a positive HIV antibody test result to specified individuals under circumstances indicating that such individual may be in danger of HIV infection

- The physician may make a disclosure to the following:
 - Any person known or believed to be the spouse of the test subject;
 - Any person known or believed to be a sexual partner of the test subject; and
 - Any person known or believed to have shared hypodermic needles with the test subject.
- Before disclosing test results under this provision, the physician must do the following:
 - Provide appropriate education and psychological counseling for the test subject;
 - Inform the test subject of the physician’s intent to notify such person; and
 - Attempt to obtain voluntary consent from the test subject. If consent cannot be obtained, the results may then be disclosed but only for the purpose of obtaining care, follow-up, and/or treatment for the person(s) to whom disclosure is made and to interrupt the chain of infection
- The disclosing physician must refer the person notified for appropriate care, counseling, and follow-up. The physician may not disclose any identifying information about the test subject.

Documentation and Retention

JCHS shall document and retain all documents required to be created or completed under this policy.

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- Signed Authorizations must be retained for at least six (6) years after the date they were last in effect.
- Revocation documents must be retained for at least six (6) years after the date JCHS receives the revocation documents.

AUTHORITY / REFERENCES

Health Information Management Policy and Procedure Manual
DHS Policy 361.4: "Use and Disclosure of Protected Health Information Requiring Authorization"

REVIEW DATES

March 1, 2007; January 13, 2013; June 1, 2018; May 21, 2021