

**Department of Health Care Finance & Administration
Division of TennCare**

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| Policy Number: PRIV 008 | |
| Policy Subject: Accounting of Disclosures of Enrollee Records | |
| Approved by:  | Date: 1/22/2019 |

PURPOSE OF POLICY

This policy addresses how the Division of TennCare (TennCare) will account for disclosures of Enrollee protected health information (PHI) or personally identifiable information (PII) when required by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) or other federal and state laws, regulations, and polices.

POLICY

TennCare shall timely respond to Enrollee requests for accounting of disclosures of PHI or PII maintained by TennCare. TennCare will provide enrollees with all the privacy rights granted by federal and state laws and regulations.

DISCUSSION & LEGAL BASIS

TennCare complies with HIPAA and federal and state laws and regulations in responding to Enrollee requests for Accounting of Disclosures. Pursuant to HIPAA, TennCare is not compelled to provide an accounting of PHI disclosures made:

- for treatment, payment or health care operations;
- to enrollees or their personal representatives;
- pursuant to an authorization;
- to persons involved in the enrollee’s care if authorized by the enrollee;
- for national security or intelligence purposes;
- to correctional institutions or law enforcement in limited circumstances;
- as part of a limited data set (see definitions);
- incidental to a use or disclosure permitted by HIPAA and TennCare policy; or
- more than six years prior to the date of request or prior to *April 14, 2003*.

Publishing PHI or PII in a facility directory (e.g. by a hospital) is also exempt but would not generally occur in TennCare operations.

Some disclosures may be temporarily exempt from disclosure if requested by a law enforcement agency or a health care oversight agency.

PROCEDURE

1. The Privacy Office is responsible for receiving and processing requests for accountings of disclosures, and for responding to reports of disclosures that may not be permitted by HIPAA or by TennCare policies and procedures.
2. TennCare staff must report the following disclosures to the Privacy Office and record any disclosures of PHI *not otherwise allowed* by either:
 - a. an enrollee's authorization or
 - b. to carry out treatment, payment, or health care operations.

All improper disclosures are to be reported to the Privacy and Public Records Office, Office of General Counsel.

Enrollee PHI or PII disclosed by TennCare staff that should be logged:

- a. Disclosures to a public health official (FDA, CDC, Bureau of Vital Statistics) such as the reporting of disease or injury (would not include DHHS staff providing treatment);
- b. Disclosures in response to mandatory child or elder abuse reporting laws (other than protective services staff who respond to such report) to an entity authorized by law to receive the abuse report;
- c. Disclosures from an individual's record when reasonably believed to be a victim of abuse, neglect or domestic violence to an entity authorized by law to receive the abuse report;
- d. Disclosures from an individual's record to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations, proceedings or actions; inspections; licensure or disciplinary actions;
- e. Disclosures made for the purposes of research following privacy board approval;
- f. Disclosures for workers' compensation;
- g. Disclosures about an individual pursuant to a court order in a court case or other legal proceeding;
- h. Disclosures about an individual provided for law enforcement purposes;

- i. Disclosures about an individual related to decedent status or tissue donation;
 - j. Disclosures about an individual to prevent or lessen a serious threat to health or safety of a person or the public; and,
 - k. Disclosures about an individual provided for specialized government functions related to Armed Forces personnel.
4. For all disclosures covered by this policy, TennCare shall track and record the date, nature, and purpose of each disclosure of a record, and to whom the disclosure was made. Records of disclosures shall be retained for a minimum of six years after the disclosure was made.
 5. TennCare must act on an enrollee's request for an accounting of disclosures within sixty (60) days of receipt. If we are unable to provide the accounting within sixty (60) days, we have one opportunity to extend the time by giving the enrollee a written statement of the reasons for the delay, extending the time by no more than thirty (30) days.
 6. Enrollee requests for accounting of disclosures should be submitted to:

Division of TennCare
Privacy and Public Records Office
Attn: Privacy Officer
310 Great Circle Road
Nashville TN 37243
(866) 797-9469
(615) 507-6820
(615) 734-5289 fax

In the event of disclosure of an enrollee's PII or PHI not permitted under HIPAA or other federal or state laws or regulations, TennCare will attempt to mitigate any potential harmful effects and will log such a disclosure in a manner consistent with this policy.

7. Enrollees may receive one (1) accounting of disclosures free of charge per year. Additional accountings of disclosures are subject to applicable fees.

DEFINITIONS

Enrollee: Individuals 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.

Health care operations: Any TennCare activity related to covered functions such as eligibility determination and benefits administration.

HIPAA: Health Insurance Portability and Accountability Act of 1996 and for which administrative simplification, privacy, and security regulations are codified at 45 Code of Federal Regulations, Parts 160-164.

Incidental disclosure: A term of art used to describe inadvertent or uncalculated releases of information that may occur incidentally during TennCare operations, such as when a person overhears a nearby TennCare employee discuss health information on the phone.

Limited data set: PHI that excludes direct identifiers (e.g. names, address, social security numbers) of the individual, relatives, employers or household members.

Payment: Activities undertaken to obtain premiums, determine eligibility and benefits or provide reimbursement for the provision of health care.

Personal representative: An individual or entity legally authorized to act on behalf of the individual enrollee.

Personally Identifiable Information (PII): Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

Protected Health Information (PHI): Information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium., 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.

SSA-provided information: Information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs.



Treatment: means the provision, coordination, or management of health care.

OFFICE OF PRIMARY RESPONSIBILITY

TennCare Privacy and Public Records Office, Office of General Counsel

RELATED FORMS

Request for Accounting of Disclosures

REFERENCES

45 CFR § 160.103

45 CFR § 164.501

45 CFR § 164.512

45 CFR § 164.514

45 CFR § 164.528

45 CFR § 164.530

42 USCA § 1320d-5

5 U.S.C. § 552a (c)(1), (c)(3), (j), (k)

The Privacy Act of 1974

NIST SP800-53

OMB Circular A-130