
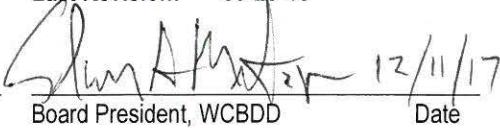


**Wood County Board of Developmental Disabilities**

**POLICY**

<b>Policy #:</b>	01-ALL-ALL-0131	<b>Subject:</b>	HIPAA (Use and Disclosure of PHI for Personal Representatives, Minors, and Deceased Individuals)
<b>Effective Date:</b>	04-01-03	<b>Last Revision:</b>	09-23-13
<b>Person Responsible:</b>	HIPAA Privacy Officer		
<b>Approvals/Date:</b>			
	Superintendent, WCBDD	Date	Board President, WCBDD
		12/11/17	Date

The following definitions apply:

**Confidentiality** – The property that data or information is not made available or disclosed to unauthorized persons or processes.

**Disclosure** – The release, transfer, provision of access to, or divulging in any manner (orally, written, electronically, or other) of information outside the entity holding the information.

**Individual, or Individual receiving services** – A person who received services from WCBDD. In the event that the individual is a minor, the term “individual” in this policy may also include the parent or guardian of the individual. In addition, in regard to any privacy rights, individual may also mean an individual’s “personal representative” as it is defined under HIPAA regulations.

**Personal Representative** – A person who has authority under applicable law to make decisions related to health care on behalf of an adult or an emancipated minor, or the parent, guardian, or other person acting in loco parentis who is authorized under law to make health care decisions on behalf of an unemancipated minor, except where the minor is authorized by law to consent, on his/her own or via court approval, to a health care service, or where the parent, guardian or person acting in loco parentis has assented to an agreement of confidentiality between the WCBDD and the minor.

**Protected Health Information or PHI** – Individually identifiable information that is (i) transmitted by electronic media, (ii) Maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Records of individual's deceased for more than 50 years are not PHI. For the purposes of this manual, and the board's compliance program, PHI shall also include “Education Records” as defined by FERPA. This creates a consistent set of policies for both types of confidential information.

WCBDD will establish requirements to maintain confidentiality and to permit the legal release of protected health information (PHI) to minors and personal representatives, and for the release of PHI of deceased individuals.

1. **Rights of Legally Consenting Minors** - Individuals being served, who are minors, and who are legally allowed to consent to treatment under Ohio Law may exercise all rights regarding access to, requests for amendment to, and release of their PHI pursuant to a written authorization.
2. **Rights of an Individual's Personal Representative** - WCBDD recognizes an individual's personal representative as a person authorized to exercise rights of access and/or inspection of PHI, rights to request amendment of PHI, and the right to sign the WCBDD Form 03-ALL-ALL-0294 Authorization Form which permits release of PHI.
3. **Recognized Personal Representatives** - WCBDD recognizes the following persons to be personal representatives:
  - A. The parent of a child younger than 18 years old
  - B. The non-custodial parent of a child younger than 18 years old (ORC 3109.051(H))
  - C. An individual who is recognized through durable power of attorney to have authority to act on the behalf of the individual (ORC § 1337.13)
  - D. The legal guardian of the individual
  - E. Any other person authorized by law **except** in Abuse, Neglect, and/or Endangerment situations, or where WCBDD has received a court order or other documentation limiting privileges of a non-custodial parent as provided below.
    1. Abuse, Neglect and/or Endangerment Situations. Notwithstanding a state law of any requirement of this paragraph to the contrary, WCBDD may elect not to recognize a person as a personal representative of an individual. In order for WCBDD to choose not to recognize a person as a personal representative, WCBDD must decide that it is not in the best interest of the individual to treat the person as the individual's personal representative and must believe that one of the following conditions exist:
      - a. The individual has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian, or personal representative.
      - b. Treating such person as the personal representative could endanger the individual.
    2. Receipt of a court order limiting privileges of a non-custodial parent. In the event that WCBDD receives from the custodial parent a court order limiting the privileges of the non-custodial parent to act in the capacity of the child's personal representative, WCBDD shall adhere to the restrictions in the court order.
4. **Deceased Individuals**
  - A. **Disclosure of PHI After Death** - PHI generated during the life of an individual is protected from disclosure after death unless disclosure is for treatment or payment (with a valid consent), quality assurance or other auditing or program review

functions. WCBDD and its employees cannot release PHI regarding a deceased individual unless a valid personal representative has been established and has requested the PHI through the proper authorization process.

- B. Disclosure of PHI to Administer Estate - PHI may be disclosed to the executor or administrator of the estate when the information is necessary to administer the estate (ORC § 5126.044).
- C. Proper Party to Authorize Release of PHI Absent Executor, Administrator, or Court Appointed Representative - Absent an executor, administrator, or other court-appointed representative for the deceased individual's estate, the following persons listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (i.e. no people in the category exist or are still alive) before moving to the next category.
  - 1. Spouse (if married)
  - 2. The person's children
  - 3. The person's parents
  - 4. The person's brothers or sisters
  - 5. The person's uncles or aunts
  - 6. The person's closest relative by blood or adoption
  - 7. The person's closest relative by marriage

References: 45CFR 164.502(f), 164.502(g)(1), 164.502(g)(2), 164.502(g)(3), 164.510(b)(5)  
ORC § 1337.13, 3109.051(H), 5126.044

Forms: 03-ALL-ALL-0294

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