

Wood County Board of Developmental Disabilities

PROCEDURE

Procedure #:	02-ALL-ALL-0451 (SS)	Subject:	Confidentiality of Consumer Information
Effective Date:	08-29-94	Last Revision:	12-08-17
Person Responsible:	Director of Service and Support Administration		
Approvals/Date:	<u>Ment Coban</u> 12/14/17	<u>Claude R. [Signature]</u> 12/15/17	
	Superintendent, WCBDD	Date	Department Director

The following definitions will apply:

Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.

CFR – Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

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.

Employee – Any person employed by the Board, volunteers, board members and other persons whose conduct, in the performance of work for the DD Board, is under the direct control of the DD Board, whether or not they are paid by the DD Board.

FERPA – The Family Educational Rights and Privacy Act, which are federal regulations that govern the privacy of records maintained by schools, as well as the rights of parents and students to access those records. These regulations are codified in CFR Title 34 Part 99.

Individual, or Individual Receiving Services – A person who receives services from WCBDD. In the event that the individual is a minor, the term “individual” in these policies 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”.

Guardian of the Person – An individual appointed by the Probate Court to provide consent for and make decisions for the ward.

HIPAA – The Health Insurance Portability and Accountability Act of 1996, codified in 42 USC §§ 1320-1320d-9 and at 42 CFR Parts 160, 162 and 164. In common terms, this includes the HIPAA Enforcement Rule, Transactions Rule, Privacy Rule, Breach Notification Rule and Security Rule.

Parent – Either parent. If the parents are separated or divorced, “parent” means the parent with legal custody of the child. “Parent” also includes a child’s guardian, custodian, or parent surrogate. At age eighteen, the participant must act in his or her own behalf, unless he/she has a court-appointed guardian.

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.

Individual’s Rights to Access Records - Individuals served by WCBDD, and their personal representatives, have the right to access and/or inspect the PHI contained in the designated record set, subject to any limitations imposed by law.

1. Who May Access Records:

- A. An individual served by the board above the age of 18, the parent/guardian of a child, the guardian of an adult not able to act on their own behalf, or any “personal representative”, of any of those individuals may access the records. See Policy 01-ALL-ALL-0131 HIPAA (Use and Disclosure of PHI for Personal Representatives, Minors, and Deceased Individuals).
- B. 3rd Party Review - An individual or parent may include any 3rd party of their choosing, including an attorney, to review the records.
- C. Presumption of Parental Right to Access Records - WCBDD may presume that either parent of a minor may have access unless presented with documentation that the parent does not have authority under applicable state law governing such matters as guardianship, separation, or divorce.

2. Procedure, Form and Method of Access:

- A. Requests for Access - Requests for access to records shall be directed to the Privacy Officer or his/her designee.
- B. Verification Procedure - The Privacy Officer shall follow the verification process state in Policy 01-ALL-ALL-0135 HIPAA (Identity Verification for PHI Release) to verify the identity of the requestor. Any grant of access to someone other than the parent.
- C. Forms of Access Requested by the Individual - The WCBDD shall provide the individual with access to their records in any of the following ways requested by the individual:

1. By inspection - WCBDD shall provide a private room for the individual to review the records under the supervision of a WCBDD staff member who will insure that the record is not altered.
2. Photocopy - WCBDD shall provide a photocopy of the entire record or portion of the record requested.
3. Electronic format – WCBDD shall provide an electronic copy of the entire record, or portion of the record requested, in PDF format to be securely transmitted to the individual PHI in the form or format requested by the individual.
- D. The Privacy Officer or his/her designee shall maintain a record of parties accessing records (except the access by the individual or their parent) including the name of the party, the date access was given, and the purpose of access.
3. **Other Services/Rights of Individuals, Parent and Guardians:**
 - A. WCBDD will respond to reasonable requests for explanation and interpretation of the records.
 - B. Upon request, WCBDD must provide individuals, parents and guardians a list of the types and locations of records maintained or used by WCBDD.
 - C. If the WCBDD does not maintain the PHI that is the subject of the individual's request for access, and the WCBDD knows where the requested information is maintained, the WCBDD must inform the individual where to direct the request for access.
4. **Time for Response to Request for Access:**
 - A. Access shall be granted without unnecessary delay. In particular, requests should be honored prior to any scheduled IEP meeting, hearing, or administrative procedure. Requests in all cases shall be honored within 5 business days.
5. **Fees for Copying/Electronic Media:**
 - A. WCBDD at present has no fees for photocopies, postage or electronic media used to provide records.

Individual's Right to Request Amendment of Records – Subject to the rules set forth in applicable requirements and WCBDD procedures, an individual has the right to have the WCBDD amend PHI or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record set.

Requests for Amendments:

1. An individual, parent, guardian, or other person acting as a HIPAA personal representative may request amendment of PHI about the individual (and exercise rights for hearing and statements of disagreement), which they believe is inaccurate, misleading, or violates the rights of the individual, and is held by the WCBDD or any Business Associate. Such request shall be in writing and shall be subject to the requirements set forth in these procedures.
2. The Privacy Officer of the WCBDD is responsible for receiving requests for amendment, processing the requests, arranging for any hearings, and completing required documentation.
3. The WCBDD will act on a request for amendment without unnecessary delay and no later than 60 days after the date of the request.
4. If the WCBDD accepts the requested amendment, in whole or in part:
 - A. The WCBDD must make the appropriate amendment, and inform the individual and other persons or entities who have had access to the information.

Otherwise, if the WCBDD believes the existing record is correct as is, it may deny the amendment:

- A. If an amendment is denied, the WCBDD will give written notice in plain language which includes the following:
 1. The basis for denial;
 2. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
 3. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the WCBDD provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment;
 4. The individual's right for a hearing to challenge the information.
- B. If the individual submits a statement of disagreement, the Privacy Officer will insert this statement into the appropriate portion of the records. Otherwise, the Privacy Officer will insert into the record that the individual requested an amendment and the WCBDD's denial.
- C. The WCBDD may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the WCBDD must provide a copy to the individual who submitted the statement of disagreement.
- D. The inserted statement of disagreement and any rebuttal become a part of the permanent record and must be included with all future disclosures of the covered records.
- E. At the individual's request, WCBDD will send a copy of the changed record to any party requested by the individual, per ORC 1347.09.
- F. If the disclosure which was the subject of amendment was transmitted using a standard EDI format, and the format does not permit including the amendment or notice of denial, the WCBDD may separately transmit the information to the recipient of the transaction in a standard EDI format.

Records Hearings:

WCBDD must offer a Records Hearing to any individual who is denied a requested amendment of their records.

1. Hearing Procedures:
 - A. The Privacy Officer will arrange the Records Hearing.
 - B. The Privacy Officer must schedule the hearing within a reasonable time upon receiving a request.
 - C. WCBDD shall give the individual notice of date, time and place reasonably in advance of the hearing.
 - D. To conduct the hearing, the Privacy Officer may appoint any individual, including an official of WCBDD, who does not have a

direct interest in its outcome.

- E. During the hearing, the parent shall have a full and fair opportunity to present evidence relevant to their objection. The individual or parent may obtain assistance of any individual(s), including an attorney hired at their own expense, to assist them.
- F. The decision shall be based solely on the evidence presented.
- G. The decision shall be documented in writing, within a reasonable time of the hearing, and shall include a summary of the evidence presented and the reasons for the decision.

2. Results of Hearing:

- A. If, as a result of the hearing, WCBDD decides that the information it records is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it must amend the information accordingly and inform the individual in writing.
- B. If, as a result of the hearing, WCBDD decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it must inform the individual of their right to place in the record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of WCBDD.
- C. Any information placed in the record as a result of this hearing, WCBDD must maintain this statement as part of its permanent record, and include it with any subsequent disclosure.

Individual's Right to Receive an Accounting of Disclosures – In accordance with HIPAA Regulations, Individuals must be told, if they ask, what personal health information has been sent to whom and why.

- 1. The Privacy Officer shall be responsible for insuring that proper records are kept to allow for proper and complete responses to any requests for accountings of disclosures. See Policy 01-ALL-ALL-0133 HIPAA (Permissive Information Disclosure) and Procedure 02-ALL-ALL-0843 (AD) Confidential Records which detail the use of Form 03-ALL-ALL-0484 WCBDD Disclosure Log Form.
- 2. Generally, an individual has the right to request an accounting of disclosures of their PHI by WCBDD and its business associates during a time period of up to six years prior to the date of the individual's request. Most disclosures are **not** required to be included in the accounting. The types of disclosures which are **not** required to be accounted for are:
 - A. For the purposes of treatment, payment and health care operations (45 CFR § 164.502)
 - B. To the individual receiving services, or to a parent, guardian or personal representative, of the individual's own PHI (45 CFR § 164.502)
 - C. Incidental disclosures, as detailed in (45 CFR § 164.502)
 - D. Pursuant to an authorization (45 CFR § 164.508)
 - E. To persons involved in the individual's care or other notification purposes (45 CFR § 164.510)
 - F. For national security and intelligence purposes, as detailed in (45 CFR § 164.512(k)(2))
 - G. Disclosures to prisons and other law enforcement agencies regarding an individual who is in custody, as detailed in (45 CFR § 164.512(k)(5))
- 3. Any employee who makes a disclosure other than listed above shall document the disclosure in the individual file, with all information described in step 6b below. More specifically, the following types of disclosures must be documented:
 - A. To public health authorities
 - B. Birth and death reporting
 - C. To law enforcement regarding crime on premises
 - D. To law enforcement in emergencies where crime is suspected
 - E. For cadaveric organ, eye, tissue donation purposes
 - F. For judicial and administrative proceedings
 - G. For research with an IRB waiver
 - H. To military command authorities
 - I. For Workers Compensation purposes
 - J. To correctional institutions except as detailed in 2G above
 - K. About decedents to medical examiners, funeral directors, coroners
 - L. For public health activities
 - M. About victims of abuse
 - N. Regarding child abuse or neglect
 - O. To the FDA
 - P. To a person who may have been exposed to a communicable disease
 - Q. To health oversight agencies for adults, civil or criminal investigations, inspections, licensure or disciplinary actions
 - R. In response to a court order
 - S. In response to a subpoena or discovery request
 - T. As required by law for wound or injury reporting
 - U. For identification & locating suspect or fugitive
 - V. Unlawful and unauthorized disclosures we have knowledge of
- 4. Health oversight agencies and law enforcement officials may request a suspension of an individual's rights to disclosure. If such a request is received, follow procedures in 45 CFR § 164.528.
- 5. The HIPAA Privacy Officer shall comply with an individual's request for an accounting within 45 days of the request. Any valid written request from an individual must be honored; an individual may use Form 03-ALL-ALL-0485 Request for Accounting for Disclosures of Consumer File. The WCBDD does not charge a fee for accountings.

6. The written accounting must meet the following requirements:
 - A. All disclosures of the individual's PHI during the 6 years prior to the request (or such shorter period as is specified in the request) as stated above.
 - B. As to each disclosure, the accounting must include: (Form 03-ALL-ALL-0486 Accounting for Disclosures may be used if desired)
 1. The date of the disclosure
 2. The name of the entity or person who received the PHI, and, if known, the address of such entity or person
 3. A brief description of the PHI disclosed
 4. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis of the disclosure, or as an alternative, a copy of the request for the disclosure
 5. If during the time period for the accounting, multiple disclosures have been made to the same entity or person for a single purpose, the accounting may provide the information as set forth above for the first disclosure, and then summarize the frequency, periodicity, or number of disclosure made during the accounting period and the date of the last such disclosure during the accounting period
 6. If the accounting request includes school records, consult legal counsel regarding the need to obtain records of redisclosures by state or local school officials (see 34 CFR 99.32)
 - C. WCBDD will retain documentation (in written or electronic format) for a period of 6 years:
 1. All information required to be included in an accounting of disclosures of PHI
 2. All written accountings provided to individual

Speaking with the Family and Friends of an Individual Receiving Services: WCBDD personnel are allowed to disclose protected health information to individuals involved with the care of an individual being served, in specific situations, after giving the individual the opportunity to either agree to or object to the disclosure.

1. If the individual is present:
 - A. If a family member, or friend of the individual is present while services are being rendered, an employee serving the individual may disclose PHI after one of the following:
 1. Verbally seeking permission for the disclosure, and the individual agrees, or
 2. Giving the individual the opportunity to object to the disclosure, and the individual does not express an objection, or
 3. The staff member reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.
2. If the individual is not present:
 - A. Communication about the individual's care
 1. In the event of a phone call or other discussion with a family member or one involved with the care of the individual being served by WCBDD, where the individual is not present, the employee may use their professional judgment to determine if the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant to the person's involvement with the individual's care.
 - B. Notifications
 1. An employee may disclose PHI to notify a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location or general condition.

References: 34 CFR Part 99; 34 CFR 99.20; 34 CFR 99.21; 34 CFR 99.22; 34 CFR 99.32
 42 CFR Parts 160, 162, 164
 45 CFR 164.502; 164.508; 164.510I 164.510(b); 164.512(k)(2); 164.512(k)(5); 164.524(b); 164.524(c); 164.524(e);
 164.526(f); 164.528; 164.528(d)
 42 USC §§ 1320-1320d-9
 OAC § 3301-51-04; OAC § 5123:2-1-02(M)
 ORC § 1347.08(A)(2); ORC § 1347.09
 01-ALL-ALL-0131; 01-ALL-ALL-0133; 01-ALL-ALL-0135
 02-ALL-ALL-0843(AD)

Forms: 03-ALL-ALL-0484; 03-ALL-ALL-0486

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