

 <p>GEORGIA DEPARTMENT OF COMMUNITY HEALTH</p>	<p>Policy Number: 901</p> <p>Effective Date: April 14, 2003</p> <p>Revision Date:</p>
<p>Privacy Policy</p>	<p>Authorizations</p>
<p>Originating Work Unit: Privacy Office</p>	<p>Category: Legal Compliance</p>

SCOPE:

This policy applies to all DCH employees, agents and contractors that perform duties in conjunction with the access, distribution, dissemination, modification, and management of protected health information.

POLICY:

It is DCH's policy to ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule by obtaining authorization, as appropriate, from individuals whose protected health information (PHI) is used or disclosed for any purpose not otherwise permitted by the Privacy Rule. DCH must have authorization from individuals before using or disclosing protected health information (PHI) for any purpose not otherwise permitted or required by the HIPAA Privacy Rule. A valid authorization must be used only for the specific purpose(s) stated in the authorization and only by personnel listed in the authorization.

Situations in which DCH is **NOT** required to obtain the individual's authorization to use or disclose PHI include:

- Treatment, payment, and health care operations
- Disclosures to the individual who is the subject of the information;
- Uses and disclosures of PHI permitted under §164.510 (uses and disclosures requiring an opportunity for the individual to agree or object) or 164.512 (uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required); and
- Required disclosures to the Secretary for enforcement of the rule.

REPORTING VIOLATIONS:

Violation of this or any other DCH Privacy Policy should be reported to the DCH Privacy Officer.

LEGAL AUTHORITY:

- 45 CFR §164.502** Uses and disclosures of protected health information
- 45 CFR §164.508** Uses and disclosures for which an authorization is required
- 45 CFR §164.512** Uses and disclosures for which an authorization, or opportunity to agree or object is not required
- 45 CFR §164.522** Rights to request additional privacy protection for protected health information
- 45 CFR §164.530(e)** Sanctions not applicable for certain good faith reporting
- 45 CFR §164.530(j)** Documentation Requirements
- Preamble to the Final Privacy Rule, pg. 82513-21** Discussion of authorizations

SANCTIONS:

DCH will apply appropriate sanctions against members of its workforce who fail to comply with the DCH privacy policies and procedures or with the requirements of the regulations. Sanctions taken by HHS in enforcement against DCH are a separate matter.

Sanctions will be appropriate to the nature of the violation. For example, the type of sanction will vary depending on factors such as the severity of the violation, whether the violation was intentional or unintentional, and whether the violation indicated a pattern of improper use or disclosure of protected health information. Sanctions could range from warning to termination of employment with DCH.

Sanction policies will be documented so that employees are aware of what actions are prohibited and punishable. Training will be provided and expectations will be clear so individuals are not sanctioned for doing things that they did not know were inappropriate or wrong.

DCH will not impose sanctions for disclosures by whistleblowers or workforce member crime victims, where a disclosure is provided for by the privacy standards. In addition, complaints and cooperation in investigations under the privacy standards are not subject to sanctions.

For additional information, see the DCH Sanctions policy and procedures.

 <p>GEORGIA DEPARTMENT OF COMMUNITY HEALTH</p>	<p>Procedure Number: 901</p> <p>Effective Date: April 14, 2003</p> <p>Revision Date:</p>
<p>Privacy Procedures</p>	<p>Authorizations</p>
<p>Originating Work Unit: Privacy Office</p>	<p>Category: Legal Compliance</p>

PURPOSE

DCH must have a written authorization from an individual before using or disclosing the individual's protected health information (PHI) for any purpose not otherwise permitted by the Privacy Rule.

Situations in which DCH is **NOT** required to obtain the individual's authorization to use or disclose PHI include:

- Treatment, payment, and health care operations
- Disclosures to the individual who is the subject of the information;
- Uses and disclosures of PHI permitted under §164.510 (uses and disclosures requiring an opportunity for the individual to agree or object) or 164.512 (uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required); and
- Required disclosures to the Secretary for enforcement of the rule.

PROCEDURE:

DCH may use and disclose PHI for the purposes of treatment of the individual, payment of claims for the individual's care and operations of the DCH health plans. For other uses and purposes which are not permitted by the Privacy Rule, specific authorization by the individual or his or her personal representative is necessary.

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Exceptions to the general requirement for authorizations for uses and disclosures, include the following:

- Those required by law;
- For public health activities;
- About victims of abuse, neglect or domestic violence;
- For health oversight activities;
- For judicial and administrative proceedings;
- For law enforcement purposes;
- Those about decedents;
- For cadaveric organ, eye or tissue donation purposes;
- For research purposes;
- To avert a serious threat to health or safety;
- For specialized government functions; and
- For workers' compensation.

When authorization is necessary, the authorization form must be written in plain language and include these core elements and required statements:

1. A description of the information to be used or disclosed;
2. The name of the covered entity, or class of entities or persons, authorized to use or disclose the Protected Health Information;
3. The name or class of entities or persons to whom DCH may make the use or disclosure;
4. A statement of the purpose of the use or disclosure. If the authorization is initiated by the individual, the statement "At the request of the individual" is adequate;
5. An expiration date, time period or event. For authorizations for use or disclosure for a research study, the event may be defined as "end of the research study", or "none";
6. A statement regarding the individual's right to revoke the authorization and a description of how the individual may revoke the authorization or a reference to the covered entity's Notice of Privacy Practices where such information is contained;
7. A statement as to the ability or inability of the covered entity to condition treatment, payment, or enrollment upon the provision of an authorization (as may be permitted by the HIPAA Privacy Rule), including the consequences of refusal to sign the authorization;
8. A statement that the information may be subject to re-disclosure by the recipient and may no longer be protected by the federal privacy law;
9. The individual's signature and date of signature; and
10. If signed by a representative, a description of the representative's authority to act for the individual and/or relationship to the individual.

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Psychotherapy Notes

The Privacy Rule requires somewhat tighter restrictions concerning psychotherapy notes. An authorization is required for use and disclosure of psychotherapy notes except for the following uses:

- Use by the originator of the psychotherapy notes for treatment;
- Use or disclosure by the covered entity in training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
- Use or disclosure by the covered entity to defend a legal action or other proceeding brought by the individual; and
- Use or disclosure that is required or permitted by the HIPAA Privacy Rule with respect to the oversight of the originator of the psychotherapy note.

Authorizations for an entity's own uses and disclosure

If DCH seeks an authorization for use and disclosures for its own purposes, a copy of the signed authorization must be made available to the individual.

Compound Authorizations

An authorization for use or disclosure of Protected Health Information may not be combined with any other document to create a compound authorization except as follows:

- An authorization for use and disclosures of PHI for research may be combined with other types of written permission (or consent) for the same research study;
- An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes; and
- An authorization, other than for psychotherapy notes, may be combined with another authorization except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of one of the authorizations.

Defective authorizations

An authorization is not valid if it has any of the following defects:

- The expiration date or event has passed;
- The authorization was not filled out completely;
- The authorization is revoked;
- The authorization violates any of the requirements regarding Compound Authorizations or Conditioning of Authorizations;
- The authorization contains material information known by the covered entity to be false.

Prohibition on conditioning of authorizations

DCH may *not* condition provision of treatment, payment, enrollment, or eligibility for benefits on provision of an authorization except in the case of:

- Research related treatment;
- Pre-enrollment underwriting or risk determinations (excluding authorization for use or disclosure of psychotherapy notes);
- Provision of health care solely for the purpose of creating PHI for disclosure to a third party (e.g., pre-employment physicals).

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Revocation of an authorization

An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

- DCH has taken action in reliance on the authorization; or
- The authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself.

Data Use Agreement with DCH Business Associates

As part of its research, public health and health care operations activities, DCH may enter into a data use agreement between itself and an intended recipient of protected health information. This agreement allows DCH to share PHI with business associates through the use of a limited data set that does not include directly identifiable information. Under this agreement, the recipient of the PHI agrees to limit the use of the data set for the purposes for which it was given. The recipient of PHI agrees to ensure the security of the data and not to identify the information, or use it to contact any individual.

REPORTING VIOLATIONS:

Violations should be reported to the DCH Privacy Officer.

SANCTIONS:

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