

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

Introduction	<p>Disclosures of “Protected Health Information” (PHI) under the Health Insurance Portability and Accountability Act (HIPAA) must be accounted for by every single-covered entity under HIPAA. DPHHS declared itself a single-covered entity and enacted DPHHS policies located in (DPHHS OURS website: front page, and click the HIPAA link, and then click the Policies link). CFSD coordinates with the DPHHS Privacy Officer regarding disclosures and breaches and the Privacy Officer documents disclosures and breaches in the HIPAA Database (referred to as “the Database” hereinafter. CFSD has opted to utilize Doc Gen and CAPS to document CFSD authorizations, court orders, and requests to ensure compliance with Federal and State Regulations.</p> <p>Each division has at least one designated liaison that reports to and coordinates with the DPHHS HIPAA Privacy Officer.</p>
HIPAA Database Entries	<p>CFSD employees are granted HIPAA Database access utilizing the OM-300A if found necessary for work duties. However, ONLY the Privacy Officer and the CFSD liaison enter or modify information in the Database.</p>
Roles and Responsibilities of CFSD Liaisons	<p>The division liaison acts on behalf of CFSD.</p>
Division Liaison	<p>The division liaison is located at central office and coordinates all activities and develops policies, reference tools, protocol, and training related to HIPAA. The division liaison reports to and coordinates with the DPHHS Privacy Officer.</p> <p>When made aware of HIPAA violations, the division liaison communicates with the individual’s supervisor regarding the violation (or potential violation). The division liaison also coordinates with the DPHHS HIPAA Privacy Officer regarding possible HIPAA violations, and the DPHHS Privacy Officer ensures the violation is entered into the Database. Corrective actions taken due to a violation are NOT to be entered into the Database. SEE policy 501-3 for more details on violations.</p>
IV E Unit	<p>The IV-E Unit monitors Court Orders and informs the division liaison when absence of HIPAA language is discovered in relevant</p>

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

orders (e.g., Emergency Protective Services, Temporary Investigative Authority). This sentence may be listed by itself, or combined with another, *"The Department is designated as the youth's personal representative as set out in the Federal Health Insurance Portability and Accountability Act (HIPAA) regulations."*

If the language is not present, the IV E Unit staff will notify the division liaison. The division liaison will then notify the supervisor and provide assistance using the Judges Desk Guide to request the HIPAA language in future CFSD court documents templates.

DPHHS HIPAA Database

The DPHHS HIPAA Database was created to address DPHHS accountability with regard to disclosure of individual's PHI.

DPHHS Uses of the HIPAA Database

DPHHS utilizes the HIPAA Database to:

The DPHHS Privacy Officer record only those PHI disclosures NOT authorized by individuals for whom CFSD does not have custody or for whom CFSD is not the authorized representative, barring any exceptions under HIPAA Statute (i.e. cross reporting to law enforcement). As applicable, the Risk Assessment with supporting documentation are completed and submitted to the DPHHS Privacy Officer.

CFSD Uses of the Doc Gen and CAPS

The following HIPAA documentation is uploaded and recorded by administrative support and field staff in Doc Gen and CAPS. The CFSD Liaison will be responsible for coordinating and providing CFSD documentation to the DPHHS Privacy Officer as necessary to comply with HIPAA regulations and avoid significant financial penalties for noncompliance.

- 1) Authorizations to release PHI: CFS-210/ CFS-210L
- 2) Request to Revoke Authorization
- 3) Designated personal representatives for individuals: HPS-401 and Court Orders appointing CFSD the individual's personal
- 4) Requests/denials to restrict the use of his/her PHI
- 5) Requests/denials to amend PHI in the case record

**Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records
DPHHS HIPAA Database and CFSD Liaisons**

- CFS-210/ CFS-210L Authorization to Disclose Information** To be considered a valid authorization, it must be completed and have a dated signature of the individual authorizing the department to release information. The individual needs to initial by each check box showing what can be shared and to whom. Once the form has been signed and dated by the individual additional information cannot be added to the authorization at a later date. The CFS-210/ CFS-201L shall become part of the individual's case record. One individual is listed per each form.
- The form will be provided to administrative support to upload into Doc Gen.
- Revoked CFS-210/ CFS-210L** Authorizations may be revoked at any time. When an individual wants to revoke an authorization he or she must indicate this in the revocation in writing on the bottom of the CFS-210/ CFS-210L (gray box) with a dated signature. Revocations cannot be effective earlier than the date of the signature in the revocation box.
- The form will be provided to the administrative support to upload in Doc Gen. Once signed and dated, the revoked Authorization will become part of the individual's case record and shall be entered in CAPS on the ACTD screen by the field staff under Activity Type: ARI (Authorized Revoked Information).
- HPS 401 Authorized Personal Representative for Health Information** An individual's authorized representative must complete the HPS-401 form or present a copy of a legal document appointing the representative, PRIOR to the representative signing an authorization form to disclose PHI.
- Court Orders EPS, TIA, TLC, PLC, LTC** When CFSD is appointed as the personal representative for an individual by court order, the order will be maintained in the case record as verification that CFSD may self-authorize disclosure of the individual's PHI as necessary to meet the needs of the individual; as long as the court order is in effect (i.e. youth remains a minor).

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

- The court order will be provided to the administrative support to upload in Doc Gen. The court order will become part of the individual's case record and entered in CAPS on the CRTL screen utilizing the appropriate code for each order.

Access to PHI

Under HIPAA, individuals have the right to access, read and obtain copies of their PHI.

Health Care Providers

CFSD will recommend individuals contact their health care provider(s) so that they may view the records with the health care provider where the records were originated. **CFSD shall NOT provide copies of medical reports (including mental health evaluation and treatment) directly to the individual, without written authorization from the health care provider stating a determination has been made that disclosure of the information would not be detrimental to the individual or harmful to another person who is the subject of the information.**

CFSD will provide the individual with the name and location of the health care provider(s) from whom he/she is requesting the PHI.

When the division denies an individual access to PHI, the denial must be submitted to the individual in writing within 10 working days, stating why the individual was denied the information. This letter will be maintained in the individual's case record.

Accounting for Disclosures

Individuals also have the right to request an accounting to whom CFSD has sent the individual's PHI. DPHHS must respond to these requests within 30 days of receipt. In addition, a 30-day extension may be requested. **DPHHS will provide a list of disclosures of PHI that were made outside of an authorization from the individual or when CFSD has not been named the individual's personal representative by court order.**

These requests will be processed through the division liaison and the DPHHS Privacy Officer. The field staff works with his/her supervisor and submits the request to the division liaison, and the division liaison provides the request to the DPHHS Privacy Officer. The DPHHS Privacy Officer gathers a listing of PHI disclosures department-wide and submits the PHI disclosures listing to the requestor in writing.

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

Legal But Unauthorized Disclosures

A disclosure of PHI can be permitted by law, but may not be 'authorized' by the individual or that individual's personal representative. These disclosures (verbal or written) must be entered into the HIPAA Database to ensure accountability for the disclosures made in which the individual did not authorize, barring any exceptions under HIPAA Statute and/or State of Montana Statute. In general, if a permitted by law, but not authorized by the individual the disclosure has to be logged in the Database. However, limited exceptions exist; the following examples provide a permitted disclosure requiring Database documentation and a permitted disclosure not allowing Database documentation.

Permitted Disclosure requiring entry in the Database: CFSD is ordered by the Court to release PHI from a CPS case record. The individual who is the subject of the PHI did not authorize this release and CFSD was not appointed by court order to be that individual's personal representative. This disclosure must be made pursuant to the court order, and must be logged in the Database to account for the disclosure.

Cross Reporting to Law Enforcement: HIPAA Caveat

Permitted Disclosure **NOT** requiring entry in the Database: When cross reporting Child Abuse/ Neglect containing PHI to Law Enforcement during an investigation, the disclosure is not entered into the Database.

Montana Code Annotated: 44-5-102, 41-3-502 (8), and 44-5-303 prohibit the impending of criminal investigations. In addition, CFSD becomes the "reporter" and the identity of "reporter" is held confidential. The distinction between "investigative purposes verse an attempt to obtain services or gain/ utilize health information" for the individual's case records need to align with the statutes.

Under Federal HIPAA Regulation: 45 CFR 164.512, during an investigation, abuse and neglect PHI may be used or disclosed without written authorization by the individual and without providing the individual the opportunity to agree or object as the information is being collected as part of the "investigation" as pertinent to the investigation and as mandated to "report." HIPAA is not intended to impede the routine activities of an organization and safety clauses that provide protection for individuals who report child abuse or

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

neglect and criminal activities.

Risk Assessment	The division liaison and Privacy Officer, along with field staff associated with a disclosure cooperatively work together to assess, mitigate, and document facts surrounding the disclosure utilizing the Risk Assessment Tool. The Risk Assessment Tool applies Federal Regulations regarding PHI disclosures, the steps taken to mitigate a breach, and assesses damage to individuals who are the subject of the PHI. It is located on (DPHHS OURS website: front page, and click the HIPAA link, and then click the Risk Assessment link).
Authorized Personal Representative for Health Information	<p>When an adult requests another adult individual to be his/her personal representative for the purposes of accessing and disclosing PHI, the DPHHS form HPS-401 must be completed. The HPS-401 is located in (OURS under HIPAA).</p> <ul style="list-style-type: none"> • When the HPS-401 is completed with a dated signature it will become part of the individual's case record and noted in CAPS on the ACTD screen by the field staff under Activity Type: <u>AHP</u> (Authorized HIPAA Personal). <p>CFSD is to treat a personal representative of an individual, as the individual, for purposes of access to PHI. The personal representative is not entitled to more information than the individual would receive. The division can refuse to provide PHI to an individual designated as a personal representative if the information is considered to be detrimental to an individual or harmful to another person who is the subject of the PHI and/or the CPS case record (e.g., the personal representative has been physically abusive to the individual).</p> <p>.</p>
Requests to Restrict the Use of PHI	<p>Individuals and their personal representatives have a right to restrict the uses and disclosures of PHI, as permitted by federal and state law and rule. The division may not be able to grant the request per statute, rule or court order.</p> <ul style="list-style-type: none"> • The Request to Restrict the Use of PHI will be provided to the administrative support to upload in Doc Gen. The Request to Restrict the Use of PHI will become part of the individual's case record and noted in CAPS on the ACTD

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

screen by the field staff under Activity Type: AHR
(Authorized HIPAA Restrict)

Individuals or personal representatives must submit restriction requests in writing with a dated signature. The request will include:

- 1) Start and end date;
- 2) What is to be restricted;
- 3) From whom the information is to be restricted; and the purpose/reason for the restriction.

Requests to Amend PHI

Individuals and their personal representatives have a right to request amendments (corrections) to the individual's PHI.

- The Request to Amend the Use of PHI will be provided to the administrative support to upload in Doc Gen. The Request to Amend the Use of PHI will become part of the individual's case record and noted in CAPS on the ACTD screen by the field staff under Activity Type: AHA (Authorized HIPAA Amend)
- The division shall deny the request if:
 - CFSD did not create the PHI; or
 - The amendment is not accurate per written verification from the health care provider who did create the PHI.

If the health care provider submits a written statement to CFSD that an error has been made to an individual's PHI, CFSD will note this error in the case record.

An individual or personal representative must submit amendment requests in writing with a dated signature. The request will include:

- The error that is to be amended;
- A statement from the health care provider who created the PHI that the PHI has been amended.

CFSD shall recommend the individual contact the health care provider who generated the PHI to review it, explain the content and to determine if an amendment to the PHI is necessary.

Child and Family Services Policy Manual: Confidentiality, HIPAA and Case Records DPHHS HIPAA Database and CFSD Liaisons

Division staff shall NOT amend PHI that was created outside the division.

The individual may request further review of the request for amendment of case record information after the division has denied the request. If the division provides a rebuttal letter to the individual's further inquiry, a copy of the rebuttal letter will be submitted to the administrative support.

- The administrative support will upload the letter in Doc Gen. The rebuttal letter shall be noted in CAPS on the ACTD screen by the field staff under Activity Type: AHA (Authorized HIPAA Amend)

SEE policy 504-1 (Information Correction and Appeal Process) for more details.

References

Mont. Code Ann. § 41-3-205
Mont. Code Ann. 44-5-102
Mont. Code Ann. 44-5-103
Mont. Code Ann. 44-5-303
42 CFR Part 2
45 CFR Parts 160 and 164
45 CFR 164.512
45 CFR 1340.14 (I)
45 CFR 1340.20
DPHHS HIPAA Policies 001 – 016

New 10/06
Rev. 10/07
Rev. 08/13
Rev. 11/14
Rev. 05/15