



Client Confidentiality

I. PURPOSE:

The Department of Health and Social Services (DHSS) seeks to maintain the ethical, professional, and legal obligation to protect clients from undue intrusion of privacy while permitting the exchange of information required to provide and monitor quality services.

II. SCOPE:

This policy applies to all permanent full-time, permanent part-time, contractual, temporary, limited term, volunteer, and casual/seasonal employees of DHSS. This policy also applies to Department agents including but not limited to students/interns, providers, or auditors, who may encounter client information. If circumstances occur for which there is any doubt as to our authority to release confidential information and for which this policy does not offer guidance, DHSS employees will obtain the advice of legal counsel prior to releasing the information.

III. DEFINITIONS:

Client: any individual named in any record maintained by DHSS except employee-related records

Confidential Information: any item, collection or grouping of information which contains the name of an individual or any identifying number, symbol, other identifying characteristics, or any unique grouping of information which makes the individual as recognizable as if a name had been affixed. This includes Personal Identifiable Information (PII) and/or Protected Health Information (PHI) that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the HIPAA Rules) issued pursuant to the [Health Insurance Portability and Accountability Act of 1996](#) (the Act including the HIPAA Rules shall be referred to as HIPAA) and the [Health Information Technology for Economic and Clinical Health Act of 2009](#) (HITECH), as each is amended from time to time.

Disclosure: to communicate, transmit, permit an unauthorized person to access, or otherwise convey any data to any individual or organization in any form, either written, verbal or otherwise. This includes the affirmative verification of another person's communication of PII.

Need to Know: when it is essential to have information regarding a client to provide necessary service linkage and treatment planning. Information obtained for one purpose may not be used for any other unrelated purpose.

IV. POLICY:

It is the policy of DHSS to recognize that when a client provides information about themselves to the Department, that individual is placing trust in every DHSS employee or agent thereof, and DHSS employees and agents will respect that privacy.

DHSS employees or agents must only have access to individual client information that he or she needs to know. Employees will ensure the appropriate use and maintenance of essential oral, written, and electronic information.

The handling of client information is to remain in compliance with applicable laws, privacy standards, confidentiality guidelines, the [HIPAA Privacy Rule](#), [42 CFR Part 2](#), and [16 Del. C. Ch 12](#).

DHSS employees shall ensure accuracy, completeness, relevancy, and timely entry for all client records. DHSS will maintain in its records only such information as is necessary and required. All record entries shall be pertinent to the nature of the service and the needs of the client.

Client records are the property of DHSS. Each Division shall establish procedures for safeguarding records. DHSS employees and agents shall only access confidential information that they have a legitimate need to know. Since any DHSS employee or agent may encounter confidential information, all such individuals shall review and sign an acknowledgment of this policy. Written and electronically recorded confidential information shall be stored securely to ensure the security and confidentiality of records and to protect against potential threats to their security or integrity.

Individuals or their legally authorized representatives shall be the primary source of client information about themselves as pertinent to the client record. When requesting information from sources outside of the Department, written informed consent must be secured from the individual adult to whom the records refer, a minor's parent/guardian, or the legally authorized representative for the individual to whom the records refer except as provided by federal or state law or regulation.

Clients shall be invited to be involved in meetings where they are the main subject. Client interviews shall be conducted in a manner which provides privacy. Clients shall not be filmed, taped, photographed, or observed without their knowledge and written consent, except when permitted by statute or for the purpose of civil and/or criminal law enforcement. Every client, patient, and resident shall be treated with respect and provided privacy when receiving health or social services. Case discussion, consultation, examination, and treatment shall be confidential and conducted discreetly. Persons not directly involved in the service delivery shall not be permitted to be present during discussion, consultation, examination, or treatment unless the client has given prior informed consent for such person(s) to be present.

Indiscriminate disclosure of information is unethical. Client privacy is to be maintained even when the client is not present, but when discussion is required (i.e., team discussion for service needs, shift change, etc.) and discussions shall be held where others not privy to the information cannot overhear. DHSS employees or agents will ensure the appropriate use and disclosure of oral, written, and electronic information when such sharing is professionally determined to be in the best interest of the client, when there is a legitimate need for employees or agents to know, and with appropriate client consent. DHSS shall only release information that is in compliance with applicable laws, privacy standards, confidentiality guidelines, the [HIPAA Privacy Rule](#), [42 CFR Part 2](#), and [16 Del. C. Ch 12](#) and as required by law. DHSS will not tolerate the unnecessary release of confidential information by anyone in the Department.

DHSS employees or agents shall not disclose or knowingly permit the disclosure of any information, by any means of communication, to any person or other organization except with written informed consent of the client or pursuant to federal or state statute or regulation or as required by law. A consent form, at a minimum, must provide the identity of the person about whom the information is being released; the identity of the Division/program, the unit or facility releasing the information; the type of information being requested and the purpose for its use; the identity and title of the person requesting the information; the signature of the person requesting the information or their parent or guardian, if appropriate, and the date of request; and the signature of the person about whom the information pertains or their parent/legal guardian, or their legally authorized representative, and date signed. The consent must be given voluntarily, and the client can revoke consent at any time. Individual(s) must be informed if their decision concerning the release of information will result in denial, change, or termination of services. A signed consent for release of information does not require DHSS to release information. Employees and agents shall carefully consider the best interests of the client before complying with a request for information in coordination with legal counsel.

Whenever a written disclosure of confidential information is made, the disclosure shall be accompanied by a written statement as follows: *“This information has been disclosed to you from records whose confidentiality is protected by federal and state laws. You are prohibited from making any further disclosure of this information.”* When a facsimile of confidential information is transmitted electronically, it shall be accompanied by a cover sheet with the agency’s name, address and telephone number and a confidentiality notice reading as follows: *“This facsimile (this page and accompanying page[s]) is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or the taking of any action in reliance on the contents of this information, may be strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original to us at the above address.”* Whenever confidential information is sent electronically, it must be sent via encrypted email. Any email containing confidential information that is sent securely must also contain the following language: *“This email is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution, or copying of this communication, or the taking of any action in reliance on the contents of this information, may be strictly prohibited. If you have received this email in error, please notify us immediately.”*

Any part of this policy which is found to conflict with federal or state law shall become null and void; all other parts shall remain operative.

Appropriate disciplinary action may be taken against any employee who violates or misuses this policy. Based on the seriousness of the offense, disciplinary action may include, but not be limited to, verbal reprimand, written reprimand, suspension, or termination of employment. Failure to comply with any of the provisions of this policy and its procedures in any form could result in specific civil, criminal, and/or Department penalties. This policy remains binding even after separation of employment from DHSS.

V. IMPLEMENTATION

This Policy Memorandum replaces previous versions of DHSS PM #5 and is effective upon signature of the Cabinet Secretary.

The Office of the Secretary will be responsible for maintaining this policy and any revisions.

Josette D. Manning, Esq.
Cabinet Secretary

Date

The Department of Health and Social Services is committed to improving the quality of life of Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations.