

**Interpretive Guidance on
Laws Pertaining to Privacy of
Mental Health and Mental Retardation Records
for the TDMHMR Service Delivery System**

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§1 Purpose

The purpose of this document is to provide interpretive guidance on the numerous laws pertaining to privacy of mental health and mental retardation records for TDMHMR facilities, TDMHMR Central Office, their contractors, community centers, and consumers.

§2 Definitions

The following words and terms, when used in this document, have the following meanings, unless the context clearly indicates otherwise:

- (1) **Adult** – A person:
 - (A) who is 18 years of age or older; or
 - (B) who is under 18 years of age and:
 - (i) is or has been legally married; or
 - (ii) whose disabilities of minority have been legally removed pursuant to the Texas Family Code, Chapter 31.
- (2) **Alcohol or drug abuse treatment** — All services concerned with prevention, detection, and treatment of substance use disorders.
- (3) **Authorization** –
 - (A) For protected health information that relates to MHMR services. The permission to use or disclose protected health information that relates to MHMR services for purposes other than treatment, payment, or health care operations or other purposes allowed by law (e.g., reporting of vital statistics) given by a person with such authority as described in §13 (Who Can Authorize Use or Disclosure of Protected Health Information that Relates to MHMR Services and HIV/AIDS).
 - (B) For protected health information that relates to alcohol or drug abuse treatment. The permission to disclose protected health information that relates to alcohol or drug abuse treatment for any purpose given by a person with such authority as described in §14 (Who Can Authorize Disclosure of Protected Health Information that Relates to Alcohol or Drug Abuse Treatment).
- (4) **Business associate** – A person, other than a member of the component's workforce, who:
 - (A) on behalf of the component, performs or assists in the performance of a function or activity involving the use or disclosure of protected health information, including claims processing or administration, data analysis processing or administration, utilization review, quality assurance, billing, benefits management, practice management, or any other function or activity regulated by the Federal Privacy Rule; or
 - (B) provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services for the component, and the provision of such services involves disclosure of protected health information to the person.
- (5) **Capacity** – The ability to understand and appreciate the nature and consequences of a decision regarding authorization to use or disclose protected health information and the ability to reach an informed decision in the matter.

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(6) **Community center** — A center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(7) **Component** – A facility, local authority, community center, contract provider, TDMHMR Central Office, or TDMHMR Medicaid Administration.

(8) **Consent** – The permission to disclose protected health information that relates to MHMR services for purposes of treatment, payment, or health care operations given by a person with such authority as described in §13 (Who Can Authorize Use or Disclosure of Protected Health Information that Relates to MHMR Services and HIV/AIDS).

(9) **Contract provider** – A person, entity, or organization that contracts with TDMHMR Central Office, a facility, local authority, or community center to provide MHMR services or alcohol or drug abuse treatment.

(10) **Designated record set** – Any item, collection, or grouping of information, as determined by a component, that includes protected health information that is maintained, collected, used, or disseminated by or for a component, which is:

(A) the medical records and billing records about an individual;

(B) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the TDMHMR Medicaid Administration; or

(C) used, in whole or in part, by or for the component to make decisions about an individual.

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

(12) **Facility** – A state mental health facility or a state mental retardation facility.

(13) **Federal Privacy Rule** – Federal Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164).

(14) **Health care** – Care, services, or supplies related to the health of an individual, including:

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(B) sale or dispensing of a drug, device, equipment or other item in accordance with a prescription.

(15) **Health care operations** — Any of the following activities:

(A) conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities;

(B) population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and individuals with information about treatment alternatives, and related functions that do not include treatment;

(C) reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, accreditation, certification, licensing, or credentialing activities;

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(D) conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers;

(E) conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(F) business management, planning and development, and general administrative activities;

(G) resolution of internal grievances; and

(H) creating de-identified health information.

(16) **Health care provider** – A provider of health care or any person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(17) **Incidental use or disclosure** — A secondary use or disclosure of protected health information that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure.

(18) **Incompetent** – A term used to describe a person who has been adjudicated incompetent by a court and for whom no subsequent order of restoration has been executed or recorded.

(19) **Individual** – A person who, voluntarily or involuntarily, is seeking, receiving, or has sought or received MHMR services, or alcohol or drug abuse treatment from or through a component.

(20) **LAR or legally authorized representative** – A person authorized by law to act on behalf of an individual and who is:

(A) with regard to a minor:

(i) a parent;

(ii) a legal guardian;

(iii) a person with the right to consent to treatment of a minor in accordance with Texas Family Code, §32.001; or

(iv) a managing or possessory conservator, to the extent ordered by a court;

(B) the legal guardian of an individual who is incompetent (as defined);

(C) the agent of a patient as authorized under the Advance Directives Act, Texas Health and Safety Code, Chapter 166;

(D) an attorney representing the individual, to the extent ordered by a court;

(E) the surrogate decision-making committee or surrogate decision-maker authorized pursuant to the Texas Health and Safety Code, Chapter 597, Subchapter C, and 25 TAC Chapter 405, Subchapter J (relating to Surrogate Decision-Making for Community-Based ICF/MR and ICF/MR/RC Facilities); or

(F) if the individual is deceased, the executor or administrator of the individual's estate.

NOTE: A copy of Texas Family Code, §32.001, is referenced as Attachment AA in §22 (Attachments).

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(21) **Limited data set** — Protected health information that does not include direct identifiers but in which certain potentially identifying information remains, to be used only for the purposes and in the manner described in 45 CFR §164.514(c).

(22) **Local authority** – An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(23) **MHMR services** —

(A) All services concerned with research, prevention, and detection of:

(i) mental disorders and disabilities, and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability; or
(ii) mental retardation or related conditions, and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation.

(B) For the purposes of this document, the term does not include any services for alcohol or drug abuse, substance abuse, or chemical dependency.

(24) **Minor** – A person under 18 years of age:

(A) who is not and never has been legally married; and

(B) whose disabilities of minority have not been removed pursuant to the Texas Family Code, Chapter 31.

(25) **Notice of Privacy Practices** — A written notice describing:

(A) the uses and disclosures of protected health information that may be made by a component; and

(B) individuals' rights and the component's legal duties with respect to protected health information.

(26) **Payment** — The activities undertaken by a component to obtain or provide reimbursement for the provision of health care to an individual or the activities undertaken by the TDMHMR Medicaid Administration to determine or fulfill its responsibility for coverage and provision of benefits under Medicaid, including:

(A) determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;

(B) billing, claims management, collection activities, and related health care data processing;

(C) review of health care services with respect to:

(i) medical necessity;

(ii) coverage under a health insurance plan, including Medicaid;

(iii) appropriateness of care; or

(iv) justification of charges; and

(D) utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services.

(27) **Professional** – Pursuant to the Texas Health and Safety Code, §611.001, a person authorized to practice medicine in any state or nation, or a person licensed or certified by the State of Texas in the determination, diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or a person reasonably believed by the individual to so be.

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(28) **PHI or protected health information** –

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, that relates to:

(i) the past, present, or future physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) the payment for the provision of health care to the individual.

(B) The term includes, but is not limited to:

(i) an individual's name, address, date of birth, or Social Security number;

(ii) an individual's medical record or case number;

(iii) a photograph or recording of an individual;

(iv) statements made by an individual, either orally or in writing, while seeking or receiving services from or through a component;

(v) any acknowledgment that an individual is seeking or receiving or has sought or received services from or through a component;

(vi) direct identifiers of relatives, employers, or household members of the individual; and

(vii) any information by which the identity of an individual can be determined either directly or by reference to other publicly available information.

(C) The term does not include:

(i) health information that has been de-identified in accordance with 45 CFR §164.514(b); and

(ii) employment records held by a component as an employer.

(29) **Psychotherapy notes** — Notes recorded in any form by a mental health professional documenting or analyzing the contents of conversation during a counseling session that are kept separate from the rest of the individual's medical record. The term does not include medication prescription and monitoring, counseling session start and stop times, modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plans, symptoms, prognosis, and progress to date.

(30) **Public health disaster** — A determination by the commissioner of public health, resulting in a declaration by the governor of a state of disaster, that there exists an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability to a large number of people and creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(31) **Qualified service organization** – Pursuant to 42 CFR §2.11, a person, partnership, corporation, governmental agency, or any other legal entity that:

(A) provides services for an alcohol or drug abuse treatment program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

(B) has entered into a written agreement with such a program under which that entity:

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(i) acknowledges that in receiving, storing, processing, or otherwise dealing with protected health information from the program, it is fully bound by the provisions of 42 CFR Part 2; and

(ii) if necessary, will resist in judicial proceedings any efforts to obtain access to protected health information from the program except as permitted by 42 CFR Part 2.

(32) **Special needs offender** — An individual with mental illness or mental retardation for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(33) **State mental health facility** — A state hospital or a state center with an inpatient component that is operated by TDMHMR.

(34) **State mental retardation facility** — A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

(35) **TDMHMR Central Office** — The administrative offices of the Texas Department of Mental Health and Mental Retardation. For the purposes of this document, the term does not include TDMHMR Medicaid Administration.

(36) **Treatment** — The provision, coordination, or management of health care and related services by one or more health care providers or components, including:

(A) the coordination or management of health care between a component and a health care provider;

(B) consultation among health care providers or components relating to an individual; or

(C) the referral of an individual for health care from a component to a health care provider or another component or from one health care provider to another.

(37) **Use** – The sharing, employment, application, utilization, examination, or analysis of health information within an entity that maintains the information.

(38) **Workforce** – Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a component, is under the direct control of such component, whether or not they are paid by the component.

§3 Regulations and Statutes Governing Confidentiality of Protected Health Information

(a) Federal regulations. The following federal regulations pertain to privacy of protected health information (PHI):

(1) Code of Federal Regulations, Title 45, Part 160, and Part 164, Subparts A and E, Federal Standards for Privacy of Individually Identifiable Health Information (i.e., Federal Privacy Rule), promulgated by the Secretary of the United States Department of Health and Human Services;

(2) Code of Federal Regulations, Title 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, promulgated by the Secretary of the United States Department of Health and Human Services;

(3) Code of Federal Regulations, Title 34, Part 99, governing the disclosure of educational records of school-age children, promulgated by the Secretary of the United States Department of Education; and

(4) Code of Federal Regulations, Title 42, Part 51, Subpart D, and Code of Federal Regulations, Title 45, §1386.22, governing access to PHI by advocates for individuals with mental illness and mental retardation, promulgated by the Secretary of the United States Department of Health and Human Services.

(b) Federal statutes.

(1) The Health Insurance Portability and Accountability Act (HIPAA), 42 USC §1320d *et seq.*, provides the statutory authority for the United States Department of Health and Human Services to promulgate the Federal Privacy Rule.

(2) 42 USC §10805(a)(4) (Protection and Advocacy for Mentally Ill Individuals) and 42 USC §15043(a)(2)(I) (Protection and Advocacy of Individual Rights) provide the authority for access of PHI by Advocacy, Inc.

(3) 42 USC §290dd-2 provides the statutory authority to promulgate the federal regulations on confidentiality of alcohol and drug abuse patient records, referenced in subsection (a)(2) of this section.

(c) State statutes.

(1) Texas Health and Safety Code, Chapter 181, pertains to privacy of medical records, particularly with regard to marketing.

(2) Texas Open Records Act, Texas Government Code, Chapter 552, provides that all information collected, assembled, or maintained in any form by governmental bodies, and agencies operating in part or whole with state funds, in connection with the transaction of official business is public information; however, the act does set out certain exceptions. One such exception is information deemed confidential by law, such as PHI.

(3) Texas Health and Safety Code, §576.005, §576.0055, and Chapter 611, pertain to the confidentiality of PHI that relates to MHMR services.

(4) Texas Health and Safety Code, Chapter 81, governs the reporting and confidentiality of and access to information related to communicable diseases.

§3 Regulations and Statutes Governing Confidentiality of Protected Health Information

(5) The provisions for disclosure of PHI that relates to mental retardation services are contained in the Persons with Mental Retardation Act, Texas Health and Safety Code, Chapter 595. The provisions described in §576.005, §576.0055, and Chapters 595 and 611 of Texas Health and Safety Code should be interpreted together in reaching a determination regarding the use or disclosure of PHI that relates to mental retardation services.

(6) Texas Human Resources Code, Chapter 48, establishes authority for the Texas Department of Protective and Regulatory Services (TDPRS) to have access to PHI necessary to conduct investigations into allegations of abuse, neglect, and exploitation of individuals.

(7) Texas Medical Practice Act, Texas Occupations Code, Chapter 159, governs physician-patient communication.

(8) Texas Health and Safety Code, §533.009, governs the exchange of PHI between facilities, local authorities, community centers, and their respective contract providers.

(9) Texas Health and Safety Code, §595.005(c), governs the disclosure of educational records of individuals receiving mental retardation services.

(10) Texas Government Code, Chapter 559, provides that persons have a right to be informed about information that a state governmental body collects about them, and to have incorrect information that is possessed about them by a state governmental body corrected.

(11) Texas Family Code, Chapter 32, governs consent to treatment of a child by a non-parent or the child.

(12) Texas Health and Safety Code, Chapter 241, Subchapter G, governs the disclosure of PHI in hospitals licensed under the chapter.

(13) Texas Health and Safety Code, §614.017, governs the exchange of information relating to a special needs offender.

(14) Texas Government Code, §531.042, requires information regarding care and support options be given to at least one family member of a patient or client, if possible.

(15) Texas Health and Safety Code, §572.004, provides for notification of a minor individual's parent, managing conservator, or guardian when the minor requests discharge from a state mental health facility.

(16) Texas Health and Safety Code, §576.007, provides for notification of an adult individual's family before the individual is discharged or released from a state mental health facility.

§4 General Provisions

(a) Each component must implement written policies and procedures with respect to protected health information (PHI) that are designed to comply with all applicable federal and state statutes, rules, and regulations pertaining to privacy of PHI, including TDMHMR rules governing PHI (25 TAC Chapter 414, Subchapter A).

(b) Each component must document its designated record sets (as defined) and retain the documentation for a minimum of six years.

(c) If under applicable law a person has authority to act on behalf of an individual (i.e., an LAR) in making decisions related to health care, a component must treat such person as the individual with respect to PHI relevant to such authority, except:

(1) when the individual is a minor and the LAR has assented to an agreement of confidentiality between a health care provider and the minor individual with respect to the health care;

(2) when the individual is a minor age 16 or 17 years who is receiving alcohol or drug abuse treatment;

(3) when a professional has a reasonable belief that the LAR has subjected the individual to domestic violence, abuse, or neglect, and the professional decides that it is not in the best interest of the individual to treat the LAR as the individual;

(4) when a professional has a reasonable belief that treating the LAR as the individual could endanger the individual and the professional decides that it is not in the best interest of the individual to treat the LAR as the individual;

(5) when an individual's LAR has requested access to the individual's PHI and a professional has determined that the provision of access to the LAR is reasonably likely to cause substantial harm to the individual or another person; or

(6) as otherwise provided by law.

(d) Safeguarding PHI.

(1) A component must reasonably safeguard PHI:

(A) from any intentional or unintentional use or disclosure that is in violation of state or federal medical privacy laws; and

(B) to limit incidental uses or disclosures of PHI made pursuant to an otherwise permitted or required use or disclosure.

(2) PHI that relates to alcohol or drug abuse treatment must be maintained in a secure room, locked file cabinet, safe, or similar container when not in use.

(3) A component must mitigate, to the extent practicable, any harmful effect that is known to the component of a use or disclosure of PHI in violation of state or federal medical privacy laws.

(4) A component must identify and impose appropriate sanctions against members of its workforce who fail to comply with the requirements of state or federal medical privacy laws, and must document the sanctions that are imposed.

(e) Disclosing PHI.

(1) Except in emergency situations, a component must verify the identity of a person requesting PHI and the authority of the person to have access to PHI, if the identity or authority of the person is not known to the component. The component must also obtain any documentation,

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statements, or representations from the person requesting the PHI when such documentation, statement, or representation is a condition of the disclosure.

(2) PHI that relates to MHMR services may not be used or disclosed for any purpose without a prior valid authorization, unless the information is disclosed in accordance with §9 (When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services).

(3) PHI that relates to alcohol or drug abuse treatment.

(A) PHI that relates to alcohol or drug abuse treatment may not be disclosed for any purpose without a prior valid authorization, unless the information is disclosed in accordance with §10 (When Authorization is not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment).

(B) The requirements for the disclosure of PHI that relates to alcohol or drug abuse treatment apply to all individuals who are receiving or have received alcohol or drug abuse treatment, even if they are also receiving or have received MHMR services.

(C) Records of individuals who are receiving or have received both MHMR services and alcohol or drug abuse treatment must be protected under the more stringent provisions of 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records) where the record contains both PHI that relates to MHMR services and PHI that relates to alcohol or drug abuse treatment.

(4) PHI that relates to HIV/AIDS may not be used or disclosed for any purpose without a prior valid authorization, unless the information is disclosed in accordance with §11(c) or (d) (When Authorization is not Required to Use or Disclose Protected Health Information That Relates to HIV/AIDS).

(5) Any PHI that a component receives from an outside source that becomes a part of the component's records may be used or disclosed only in accordance with state and federal medical privacy laws.

(6) PHI about an individual that is disclosed by a component may not contain PHI about any other individual unless that individual has authorized the disclosure. PHI about other individuals who have not authorized disclosure must be deleted before the PHI is disclosed.

(7) A person, other than an individual or LAR, who receives PHI that relates to MHMR services about the individual may not disclose the PHI except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the PHI.

(8) A person, other than an individual or LAR, who receives PHI that relates to alcohol or drug abuse treatment about the individual may not re-disclose the PHI unless the individual authorizes the re-disclosure or re-disclosure is otherwise permitted by 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records).

(9) Authorization to disclose PHI must be in writing. Verbal authorization is not adequate. The requirement for authorization includes, but is not limited to:

(A) disclosing any information regarding an individual to the news media or to friends and family of the individual;

(B) affirming or denying that an individual is receiving or has received services or treatment from or through a component; and

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(C) interviewing, photographing, filming, or recording the individual while the individual is receiving services or treatment.

(f) Although not required by law, a component may choose to obtain consent of the individual to use or disclosure PHI to carry out treatment, payment, or health care operations. However, consent is not effective to permit a use or disclosure of PHI when an authorization is required (i.e., for a purpose other than one listed in §9 (When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services), §10 (When Authorization is not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment), or §11(c) or (d) (When Authorization is not Required to Use or Disclose Protected Health Information That Relates to HIV/AIDS)).

§5 Notice of Privacy Practices

(a) Each facility, local authority, community center, and contract provider must have a Notice of Privacy Practices that complies with the requirements in 45 CFR §164.520(b) and that contains:

(1) a header stating, "This Notice Describes How Medical Information About You May Be Used and Disclosed And How You Can Get Access To This Information. Please Review It Carefully.";

(2) a description, including at least one example, of the types of uses and disclosures that the component is permitted by law to make for the purposes of treatment, payment, and health care operations;

(3) a description of each of the other purposes for which the component is permitted or required to use or disclose protected health information (PHI) without the individual's authorization;

(4) a statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization, and a description of how an authorization may be revoked;

(5) a statement of the individual's right:

(A) to inspect, copy, and amend PHI;

(B) to receive an accounting of disclosures;

(C) to obtain a copy of the notice upon request;

(D) to request restrictions on certain uses and disclosures of PHI, including a statement that the component is not required to agree to any restriction; and

(E) to receive confidential communications of PHI;

(6) a statement that the component is required by law to maintain the privacy of PHI and to provide individuals with notice of its legal duties and privacy practices with respect to PHI;

(7) a statement that the component is required to abide by the terms of the notice;

(8) a statement that the component reserves the right to change the terms of its notice and to make the new notice effective for all PHI that it maintains;

(9) a description of how the component will provide individuals with a revised notice if the component changes the terms of its notice;

(10) a description of how individuals may file complaints, including the information described in §7(b) (Complaints);

(11) a statement that an individual will not be retaliated against for filing a complaint;

(12) the name or title and telephone number of a person or office to contact for further information; and

(13) the effective date of the notice.

(b) Pursuant to 42 CFR §2.22, each component that provides alcohol or drug abuse treatment must provide to the individual receiving such treatment a written summary of the federal law and regulations regarding the confidentiality of PHI that relates to alcohol and drug abuse treatment that includes:

(1) a general description of the limited circumstances under which an alcohol or drug abuse treatment program may acknowledge to a person outside the program that the individual attends the program or disclose outside the program any PHI;

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(2) a statement that violation of the federal law and regulations by a component is a crime and that suspected violations may be reported to appropriate authorities in accordance with 42 CFR Part 2;

(3) a statement that information related to an individual's commission of a crime, or threat to commit a crime, on the premises of the program or against the program's staff is not protected by federal law;

(4) a statement that reports of suspected child abuse and neglect made under state law to appropriate state or local authorities are not protected by law; and

(5) a citation to the federal law and regulations.

(c) A sample Notice of Privacy Practices that addresses the information described in subsections (a) and (b) of this section is referenced as Attachment BB in §22 (Attachments).

Facilities: The TDMHMR Notice of Privacy Practices, which is required for use by facilities, is referenced as Attachment CC in §22 (Attachments). The notice also may be accessed at www.mhmr.state.tx.us/hipaa.html.

(d) Each facility, local authority, community center, and contract provider must give a copy of its Notice of Privacy Practices, referenced in subsection (a) of this section, to every individual at the time of admission into services or as soon thereafter as the individual is capable of rational communication.

(e) In addition to the requirement described in subsection (d) of this section, each component that provides alcohol or drug abuse treatment must give a written summary that complies with subsection (b) of this section to every individual to whom it provides alcohol or drug abuse treatment at the time of the individual's admission or as soon thereafter as the individual is capable of rational communication. Pursuant to 42 CFR §2.22(a)(1), staff must communicate to the individual receiving alcohol or drug abuse treatment that federal law and regulations require confidentiality of PHI that relates to that treatment.

(f) Each facility, local authority, community center, and contract provider must:

(1) make its Notice of Privacy Practices available at its premises for individuals to take with them;

(2) post the notice in a clear and prominent location at its premises; and

(3) if it has a website, post the notice in a prominent location on the website and make the notice available through the website.

(g) If a component revises its Notice of Privacy Practices, then the revised notice must be made available in accordance with subsection (f) of this section on or after the effective date of the revision.

(h) Each facility, local authority, community center, and contract provider is responsible for documenting that the individual received the notice. Acknowledgement of receipt of the notice is documented by the signature of the individual. If the individual is unable or unwilling to sign an acknowledgement, staff must attempt to obtain the signature of the individual's LAR, if any. If the individual does not have an LAR or the LAR is unable or unwilling to sign the acknowledgement, staff must document their efforts to obtain the individual's or LAR's signature and the reason(s) why a signature was not obtained.

§6 Limiting Use and Disclosure of Protected Health Information to the Minimum Necessary

(a) Minimum necessary.

(1) When using or disclosing protected health information (PHI) or when requesting PHI, a component must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) A component may not use, disclose, or request an entire medical record, unless the entire medical record of the particular individual is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

(3) The requirements in paragraphs (1) and (2) of this subsection do not apply to disclosures:

(A) to or requests by a health care provider for treatment;

(B) made to the individual;

(C) made pursuant to a valid authorization; or

(D) made pursuant to a request for information by the Secretary of the U.S. Department of Health and Human Services.

(b) Minimum necessary for use of protected health information (PHI).

(1) A component must identify:

(A) those persons, or classes of persons, as appropriate, in its workforce (including volunteers) who need access to PHI to carry out their duties; and

(B) for each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to access.

(2) A component must make reasonable efforts to limit the access of such persons or classes of persons identified in paragraph (1)(A) of this subsection to the PHI consistent with paragraph (1)(B) of this subsection.

(c) Minimum necessary for disclosure of PHI.

(1) For any type of disclosure that it makes on a routine and recurring basis, a component must implement policies and procedures that limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure.

(2) For all other disclosures, a component must:

(A) develop criteria designed to limit the PHI disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought; and

(B) review requests for disclosure on an individual basis in accordance with such criteria.

(3) A component may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

(A) making disclosures to public officials that are permitted under §9 (When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services), §10 (When Authorization is not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment), or §11(c) and (d) (When Authorization is not Required to Use or Disclose Protected Health Information That Relates to HIV/AIDS), if the public official represents that the information requested is the minimum necessary for the stated purpose(s);

(B) the information is requested by another component or a health care provider;

**§6 Limiting Use and Disclosure of Protected Health Information to the
Minimum Necessary**

(C) the information is requested by a professional who is a business associate of the component for the purpose of providing professional services to the component, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or

(D) documentation or representations that comply with the applicable requirements of 45 CFR §164.512(i) have been provided by the person requesting the information for research purposes.

(d) Minimum necessary for requests for PHI.

(1) A component must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made.

(2) For a request that is made on a routine and recurring basis, a component must implement policies and procedures that limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(3) For all other requests, a component must:

(A) develop criteria designed to limit the request for PHI to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) review requests for disclosure on an individual basis in accordance with such criteria.

§7 Complaints

(a) A component must provide a process for individuals to make complaints concerning the component's compliance with state and federal medical privacy laws. The component must inform individuals of the complaint process as described in §5(a)(10) (Notice of Privacy Practices).

(b) Filing a complaint.

(1) An individual, LAR, or other person may file a complaint with:

(A) the component;

(B) TDMHMR Consumer Services and Rights Protection/Ombudsman Office at P.O. Box 12668, Austin, Texas 78711, or by calling (512) 206-5670 in Austin or (800) 252-8154 (toll free); or

(C) Region VI, Office for Civil Rights, U.S. Department of Health and Human Services, 1301 Young Street, Suite 1169, Dallas, Texas 75202, or 214-767-4056, 214-767-8940 (TDD), or 800-368-1019 (toll free OCR Hotline).

(2) A complaint must be filed within 180 calendar days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived for good cause.

(3) An individual, LAR, or other person may file a complaint against alcohol or drug abuse treatment programs by contacting the United States Attorney's Office for the judicial district in which the violation occurred.

(c) A component must document all complaints received and their disposition, and maintain such documentation for six years.

(d) A component may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:

(1) any individual or LAR for the exercise by the individual or LAR of any right under, or for participation by the individual or LAR in any process established by state or federal medical privacy laws, including the filing of a complaint; or

(2) any individual, LAR, or other person for:

(A) filing a complaint;

(B) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or

(C) opposing any act or practice prohibited by state or federal medical privacy laws, provided that the individual, LAR, or other person has a good faith belief that the practice opposed violates such laws, and the manner of the opposition is reasonable and does not involve a disclosure of PHI in violation of state or federal medical privacy laws.

(e) A component may not require an individual to waive the individual's right to file a complaint under state or federal medical privacy laws as a condition of the provision of treatment, payment, enrollment in Medicaid, or eligibility for benefits.

§8 Designation of Privacy Official and Workforce Training

(a) Designation of privacy official. Except for facilities, each component must designate a privacy official who is responsible for the development and implementation of the component's policies and procedures relating to state and federal medical privacy laws. The privacy official may be a current member of the component's workforce who performs other types of duties.

Facilities: Each facility must designate a privacy coordinator who will work with the TDMHMR Central Office Privacy Official in developing and implementing the facility's policies and procedures relating to state and federal medical privacy laws.

(b) Workforce training.

(1) Each component must ensure that all members of its workforce receive training on the policies and procedures with respect to protected health information (PHI) required by state and federal medical privacy laws, as necessary and appropriate for the members of its workforce to carry out their functions for the component.

(2) Training must be provided:

(A) to each member of the component's workforce by April 14, 2003;

(B) after April 14, 2003, to each new member of the workforce within a reasonable period of time after the person joins the component's workforce, but before the member has access to PHI; and

(C) to each member of the component's workforce whose functions are affected by a material change in the policies or procedures required by state and federal medical privacy laws or regulations, within a reasonable period of time after the material change becomes effective.

(3) A component must document that the training as required by this subsection has been provided, and must maintain the documentation for six years.

§9 When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services

(a) When necessary for treatment, payment, and health care operations.

(1) Protected health information (PHI) may be *used* by a component without authorization:

- (A) to provide treatment or ensure the provision of treatment to the individual;
- (B) to obtain payment for treatment provided or ensured by the component; and
- (C) for the component's own health care operations.

(2) PHI may be *disclosed* without authorization among components:

- (A) to provide treatment and to ensure continuity of care to the individual;
- (B) to obtain or provide payment for treatment provided;
- (C) for the health care operations described in §2(15)(A)-(D) (Definitions); and
- (D) for the purpose of health care fraud and abuse detection or compliance.

(3) A component may disclose PHI without authorization to a health care provider for the purpose of treatment.

(4) A component may disclose PHI without authorization for the payment activities of a professional for fees for mental or emotional health services provided by the professional.

(5) A component may use PHI for its own management audits, financial audits, or program evaluations, but may not directly or indirectly or otherwise disclose the identity of an individual in any report associated with an audit or evaluation.

(b) When required or authorized by law.

(1) A component shall use and disclose PHI to the extent that such use or disclosure is required by state or federal law, including disclosures to state or federal government agencies, provided the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A component shall disclose PHI to a public health authority that is authorized by law to collect or receive such information:

- (A) for the purpose of reporting vital statistics;
- (B) to prevent or control disease, injury or disability; and
- (C) to conduct public health surveillance, public health investigations, and public health interventions.

(3) A component shall disclose PHI to the Texas Department of Protective and Regulatory Services when necessary to report or cooperate in the investigation of suspected child abuse or neglect. However, PHI of a parent or other person responsible for the care of the child who is the subject of the report or investigation may only be disclosed pursuant to a court order.

(4) A component shall disclose PHI to personnel legally authorized to conduct investigations concerning allegations of abuse, neglect, exploitation, or denial of rights of individuals, provided that the component promptly informs the individual that such a disclosure has been made unless:

(A) the component, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or

(B) the component would be informing an LAR, and the component reasonably believes that the LAR is responsible for the abuse, neglect, exploitation, or denial of rights, and that

§9 When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services

informing the LAR would not be in the best interests of the individual as determined by the component, in the exercise of professional judgment.

(5) A component shall disclose PHI to Advocacy, Incorporated for investigation of a complaint by or on behalf of an individual in accordance with 42 USC §10806 (Protection and Advocacy for Mentally Ill Individuals) or 42 USC §15043 (Protection and Advocacy of Individual Rights), except for records subject to attorney/client privilege (e.g., records of an investigation conducted at the request of a TDMHMR attorney in preparation for potential litigation).

(6) When requested, a component shall disclose PHI to the Secretary of the United States Department of Health and Human Services to investigate or determine the component's compliance with the Federal Privacy Rule.

(7) In a public health disaster (as defined), a component shall use and disclose PHI as permitted or required by Texas Health and Safety Code, Chapter 81.

(8) A component may disclose PHI to medical or law enforcement personnel if a professional determines that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of the individual or another person.

(9) A component may use or disclose PHI for research, in accordance with 45 CFR §164.512(i), except that the recipient of the PHI may not disclose the identity of an individual in a report or in any other manner.

(10) A component may disclose PHI to designated persons or personnel of a correctional institution in which the individual is detained if the disclosure is for the sole purpose of providing treatment to the individual.

(11) The administrator of a mental health facility (as defined in the Texas Health and Safety Code, §571.003) or the superintendent of a residential care facility (as defined in the Texas Health and Safety Code, §591.003) may disclose to law enforcement any of the following information about a court-committed individual who is absent from the facility if the administrator or superintendent determines that it is needed to facilitate the return of the individual to the facility:

- (A) name and address;
- (B) date and place of birth;
- (C) social security number;
- (D) blood type;
- (E) type of injury, if any;
- (F) date and time of treatment; and
- (G) description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

(12) A component may disclose PHI to persons, corporations, or governmental agencies involved in the paying or collecting of fees for mental or emotional health services provided by a professional.

(13) A component may disclose PHI to the executor or administrator of an individual's estate if the individual is deceased. However, if the deceased individual had mental retardation and an executor or administrator has not been appointed, PHI may be disclosed to the individual's spouse, or if the individual was not married, to an adult related to the individual within the first degree of consanguinity (i.e., parent or child).

§9 When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services

(14) If an individual dies while a patient or resident of a facility, the facility administrator may disclose on request by a representative of a cemetery organization or funeral establishment the name, date of birth, and date of death of the individual for the purpose of including such information on the individual's grave marker, unless the individual had objected to such a disclosure.

(15) For an individual with mental retardation, a component may disclose PHI to the individual's parent, guardian, relative, friend, or to a person identified by the individual, to the extent that the PHI is relevant to such person's involvement in the individual's care or payment related to the individual's care, unless the individual objects to the disclosure.

(16) A state mental health facility shall make a reasonable effort to notify an adult individual's family before the individual is discharged or released from the facility, if the individual grants permission for the notification.

(17) A state mental health facility shall notify a minor individual's parent, managing conservator, or guardian that the minor individual has submitted a written request for discharge from the facility if the minor individual was voluntarily admitted to the facility by the parent, managing conservator, or guardian.

(c) When required by judicial and administrative proceedings. PHI shall be disclosed without authorization in:

(1) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the individual;

(2) a judicial proceeding with regard to a court-ordered examination relating to an individual's mental or emotional condition or disorder, if:

(A) the judge finds that the individual, after having been informed that communications would not be confidential, has made communications to a professional in the course of the court-ordered examination;

(B) disclosure is only with respect to issues involving the individual's mental or emotional health; and

(C) the judge, in determining the extent to which disclosure of all or any part of a communication is necessary, imposes appropriate safeguards against unauthorized disclosure;

(3) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as defined by the Texas Health and Safety Code, §242.002(6);

(4) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under Chapter 462, 574, or 593 of the Texas Health and Safety Code;

(5) a judicial or administrative proceeding in which a court or administrative tribunal has issued an order for the information;

(6) a grand jury proceeding pursuant to a grand jury subpoena; or

(7) a guardianship proceeding under Texas Probate Code, Chapter XIII, Part 3.

(d) When PHI of a special needs offender shall be accepted or disclosed. A component shall accept from and disclose to any of the entities or persons described in Texas Health and Safety Code, §614.017(c)(1), PHI of a special needs offender, if the acceptance or disclosure serves the

§9 When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services

purpose of Chapter 614 of Texas Health and Safety Code (Texas Correctional Office on Offenders with Medical or Mental Impairments).

NOTE: A copy of Texas Health and Safety Code, §614.017, is referenced as Attachment DD in §22 (Attachments).

(e) When psychotherapy notes may be used or disclosed. Psychotherapy notes (as defined) may be used or disclosed without authorization only for the following purposes:

- (1) use by the originator of the psychotherapy notes for treatment;
- (2) use or disclosure by the component for its own 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;
- (3) use or disclosure by the component to defend itself in a legal action or other proceeding brought by the individual;
- (4) use or disclosure required by law;
- (5) health oversight activities with regard to the originator of the notes;
- (6) disclosure to coroners and medical examiners; and
- (7) disclosure necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

§10 When Authorization is not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment

(a) When required by specific court order. A component may disclose PHI without authorization pursuant to a specific court order that meets the requirements of federal regulations as described in 42 CFR Part 2, Subpart E.

(b) When required or authorized by law. A component may disclose PHI without authorization:

(1) to medical personnel to meet a medical emergency in accordance with 42 CFR §2.51 or to the United States Food and Drug Administration (FDA) when it is necessary to notify an individual of potential dangers in accordance with 42 CFR §2.51, provided that, immediately following the disclosure, the component documents the following information in the individual's record:

(A) the name of the medical personnel to whom disclosure was made and the personnel's affiliation with any health care entity;

(B) the name of the person making the disclosure;

(C) the date and time of the disclosure; and

(D) the nature of the emergency (or error, if the disclosure was to the FDA);

(2) for research in accordance with 42 CFR §2.52 and 45 CFR §164.512(i);

(3) for audit and evaluation activities performed on behalf of any federal, state, or local governmental agency in accordance with 42 CFR §2.53;

(4) to Advocacy, Incorporated, investigating a complaint by or on behalf of an individual in accordance with 42 USC §10805(a)(4) (Protection and Advocacy for Mentally Ill Individuals) and 42 USC §15043(a)(2)(I) (Protection and Advocacy of Individual Rights), except for records subject to attorney/client privilege (e.g., records of an investigation conducted at the request of a TDMHMR attorney in preparation for potential litigation);

(5) to state or local authorities to report information about suspected child abuse or neglect; and

(6) to a member of a child fatality review team investigating the death of a child in accordance with the Texas Family Code, Chapter 264, Subchapter F.

(c) When used by members of TDMHMR's workforce. PHI may be used without authorization by members of TDMHMR's workforce having a need for the information in connection with their duties related to treatment, payment, or health care operations of facilities. This subsection does not permit disclosure of PHI by members of TDMHMR's workforce to members of a local authority's workforce, a community center's workforce, or a contract provider's workforce, unless the local authority, community center, or contract provider is also a "qualified service organization" (as defined).

(d) When informing a minor individual's LAR.

(1) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a minor individual is suffering from alcohol or drug addiction or dependency may disclose PHI about a minor individual without authorization when informing the minor individual's LAR of the treatment needed by the minor individual.

(2) A professional may disclose to the LAR of a minor individual who is an applicant for alcohol or drug abuse treatment facts relevant to reducing a threat to the life or physical well being of the minor individual or of any other person if the professional judges that:

**§10 When Authorization is not Required to Disclose Protected Health
Information that Relates to Alcohol or Drug Abuse Treatment**

(A) the minor individual lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to authorize disclosure of PHI to his or her LAR; and

(B) the minor individual's situation poses a substantial threat to the life or physical well being of the minor individual or another person which may be reduced by communicating the relevant facts to the minor individual's LAR.

§11 When Authorization is not Required to Use or Disclose Protected Health Information that Relates to HIV/AIDS

(a) PHI that relates to HIV/AIDS is information that indicates that an individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

(b) A component that possesses or has knowledge of PHI that relates to HIV/AIDS may not disclose the information or allow it to become known without authorization except as provided by subsection (c) or (d) of this section.

(c) A component shall disclose PHI without authorization to:

(1) the Texas Department of Health;

(2) a local health authority if disclosure is required by law;

(3) the Centers for Disease Control of the United States Public Health Service if disclosure is required by federal law or regulations;

(4) the physician or other person authorized by law who ordered that the individual be tested for HIV/AIDS;

(5) a physician, nurse, or other health care personnel who has a legitimate need to know the information to provide for his or her protection and to provide for the individual's health and welfare;

(6) the spouse of an individual who tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;

(7) the LAR of a minor individual unless one or more of the exceptions in §4(c) (General Provisions) applies;

(8) a person authorized to receive HIV/AIDS test results under Texas Code of Criminal Procedure, Article 21.31, concerning an individual who is tested as required or authorized under that article;

(9) a person possibly exposed to HIV infection by the individual whose occupation or volunteer service is included in one or more of the following categories:

(A) a law enforcement officer;

(B) a fire fighter;

(C) an emergency medical service employee or paramedic; or

(D) a correctional officer; and

(10) a person or entity as permitted or required by Texas Health and Safety Code, Chapter 81, in a public health disaster (as defined).

(d) A component shall accept from and disclose to any of the entities or persons described in Texas Health and Safety Code, §614.017(c)(1), PHI of a special needs offender if the disclosure serves the purpose of Chapter 614 of Texas Health and Safety Code (Texas Correctional Office on Offenders with Medical or Mental Impairments).

NOTE: A copy of Texas Health and Safety Code, §614.017, is referenced as Attachment DD in §22 (Attachments).

§12 Valid Authorization to Use or Disclose Protected Health Information

(a) A component must obtain a valid authorization before using or disclosing protected health information (PHI) that relates to MHMR services for any purpose except those listed in §9 (When Authorization is not Required to Use or Disclose Protected Health Information that Relates to MHMR Services).

(b) A component must obtain a valid authorization before disclosing PHI that relates to alcohol or drug abuse treatment for any purpose except those listed in §10 (When Authorization is not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment).

(c) A component must obtain a valid authorization before disclosing PHI that relates to HIV/AIDS for any purpose except those listed in §11(c) and (d) (When Authorization is not Required to Use or Disclose Protected Health Information That Relates to HIV/AIDS).

(d) A valid authorization to use and disclose PHI that relates to MHMR services in accordance with 45 CFR §164.508, a valid authorization to disclose PHI that relates to alcohol or drug abuse treatment in accordance with 42 CFR §2.31, and a valid authorization to disclose PHI that relates to HIV/AIDS in accordance with Texas Health and Safety Code, §81.103(d), is written in plain language and contains the following:

- (1) the name of the individual;
- (2) a description of the information to be used or disclosed that is specific and meaningful;
- (3) a description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when the individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;
- (4) the name or other specific identification of the person(s), or class of persons, permitted to make the disclosure;
- (5) the name or other specific identification of the person(s), or class of persons, to whom the disclosure may be made;
- (6) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
- (7) a statement that:
 - (A) the individual may revoke the authorization in writing at any time and a description of how authorization may be revoked; and
 - (B) as described in its Notice of Privacy Practices, the component will comply with the revocation except to the extent that it has acted in reliance on it;
- (8) a statement that the component may not withhold treatment, Medicaid benefits, or payment processing if the individual does not to sign the authorization;

NOTE: A component may require the individual to sign the authorization before providing treatment if:

- the treatment is alcohol or drug abuse treatment and the purpose of the authorization is to obtain payment for the alcohol and drug abuse treatment; or
- the treatment is research-related and the purpose of the authorization is to obtain permission to use and disclose PHI for such research.

§12 Valid Authorization to Use or Disclose Protected Health Information

(9) a statement that, except for PHI related to alcohol or drug abuse treatment, the potential exists for the PHI described in the authorization to be re-disclosed by the recipient and, therefore, no longer protected by medical privacy laws;

(10) the signature of the person who can authorize the use or disclosure (i.e., individual, LAR, or other representative), as described in:

(A) §13 (Who Can Authorize Use or Disclosure of Protected Health Information that Relates to MHMR Services and HIV/AIDS); or

(B) §14 (Who Can Authorize Disclosure of Protected Health Information that Relates to Alcohol or Drug Abuse Treatment);

(11) if the authorization form is signed by the individual's LAR or other representative, a description of the LAR's or other representative's authority to act for the individual; and

(12) the date the authorization form was signed.

(e) A copy of the signed authorization form must be provided to the individual.

(f) An authorization form that contains the information described in subsection (d) of this section is referenced as Attachment EE in §22 (Attachments).

(g) PHI may not be used or disclosed on the basis of an authorization that:

(1) does not comply with subsection (d) of this section;

(2) is known to have been revoked; or

(3) is known, or through a reasonable effort could be known, by the person holding the PHI to be materially false.

(h) An authorization may not be combined with any other document to create a compound authorization, except that an authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same research study.

(i) A component may not condition the provision of MHMR services upon an individual's signing an authorization, except that the component may condition the provision of research-related treatment upon an individual's signing an authorization for the use and disclosure of PHI for such research.

§13 Who Can Authorize Use or Disclosure of Protected Health Information that Relates to MHMR Services and HIV/AIDS

(a) Adult individuals. An adult individual is the only person who can authorize the use or disclosure of protected health information (PHI), except that if the adult individual is incompetent (as defined) or lacks capacity, then the LAR is the only person who can authorize the use or disclosure of PHI.

(b) Minor individuals.

(1) Mental retardation services. If the minor individual is receiving mental retardation services, then only the LAR can authorize a use or disclosure of PHI unless one or more of the exceptions in §4(c) (General Provisions) applies.

(2) Mental health services.

(A) 15 years of age or younger. If the minor individual is 15 years of age or younger and receiving mental health services, then only the LAR can authorize a use or disclosure of PHI unless one or more of the exceptions in §4(c) (General Provisions) applies.

(B) 16 or 17 years of age.

(i) If the minor individual is 16 or 17 years of age and receiving mental health services at his or her own request, then only the minor individual can authorize a use or disclosure of PHI, unless the minor individual has requested that his or her LAR be permitted to authorize the use or disclosure of PHI on the minor individual's behalf.

(ii) If the minor individual is 16 or 17 years of age and receiving mental health services at the request of his or her LAR or was committed to a state mental health facility by a court, then only the LAR can authorize a use or disclosure of PHI unless one or more of the exceptions in §4(c) (General Provisions) applies.

(c) Deceased individuals. If the individual is deceased, then only the LAR can authorize the use or disclosure of PHI. For deceased individuals who had mental retardation, if an executor or administrator has not been appointed, then authorization can be given by the individual's spouse, or if the individual was not married, by an adult related to the individual within the first degree of consanguinity (i.e., parent or child).

§14 Who Can Authorize Disclosure of Protected Health Information that Relates to Alcohol or Drug Abuse Treatment

(a) Adult individuals.

(1) An adult individual is the only person who can authorize a disclosure of protected health information (PHI), except that if the adult individual is incompetent (as defined), then the LAR is the only person who can authorize a disclosure of PHI.

(2) For any period in which the component administrator determines that an adult individual suffers from a medical condition that prevents the individual from knowing or effecting action on his or her behalf, the administrator may exercise the right of the individual to authorize disclosure of PHI for the sole purpose of obtaining payment for services from a third-party payor.

(b) Minor individuals.

(1) 15 years of age or younger. If the minor individual is 15 years of age or younger and receiving alcohol or drug abuse treatment, then both the minor individual and the LAR must authorize a use or disclosure of PHI.

(2) 16 or 17 years of age. If the minor individual is at least 16 years of age and receiving alcohol or drug abuse treatment, then only the minor individual can authorize a use or disclosure of PHI.

(c) Deceased individuals. If the individual is deceased, then only the LAR can authorize the use or disclosure of PHI.

§15 Notice with Disclosure of Protected Health Information that Relates to Alcohol or Drug Abuse Treatment

Except for disclosure of PHI to a component's workforce who need the information to carry out their official duties, the following written statement must accompany any PHI that relates to alcohol or drug abuse treatment that is disclosed pursuant to an individual's authorization: "This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

§16 Access to Protected Health Information by Individuals and LARs

(a) Access to protected health information (PHI).

(1) Except as otherwise provided in subsection (d) of this section, an individual has a right of access to inspect and obtain a copy of PHI about the individual in a designated record set, except for:

(A) information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

(B) information to which access is prohibited by the Clinical Laboratory Improvements Amendments of 1988, 42 USC §263a.

(2) An individual's LAR who is acting on behalf of the individual has a right of access to inspect and obtain a copy of PHI about the individual described in paragraph (1) of this subsection unless one or more of the exceptions in §4(c) (General Provisions) applies.

(3) If the component does not maintain the PHI to which access is requested, and the component knows where the PHI is maintained, the component must inform the requestor where to direct the request for access.

(b) Requests for access and timely action.

(1) Requesting access. The component may require requests for access to be in writing only if the component informs individuals of such a requirement.

Facilities: Each facility must document requests for access using the "Request for Action Concerning Protected Health Information" form, referenced as Attachment FF in §22 (Attachments).

(2) Timely action by the component. The component must act on a request for access no later than 15 calendar days after receipt of such a request.

Facilities: If the individual about whom the PHI relates is currently receiving services in a facility, then the facility must act on the request for access no later than 3 business days after receipt of such request.

(c) Provision of access. If the component provides access, in whole or in part, the component must comply with the following requirements.

(1) Providing the access requested. The component must provide the access requested, including inspection or obtaining a copy, or both.

(A) PHI or other confidential information about other individuals or persons who have not authorized disclosure must be deleted before access is provided.

(B) Information relating to the individual that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the individual's commitment may not be deleted before access is provided.

(C) All references to the place of residence of a minor individual's managing conservator or joint managing conservator in the minor individual's PHI must be deleted before providing access to the minor individual's possessory conservator or other joint managing conservator.

§16 Access to Protected Health Information by Individuals and LARs

(2) Form of access requested.

(A) The component must provide access to the PHI in the form or format requested, if it is readily producible in such form or format, or in another form or format as agreed upon by the component and the requestor.

(B) The component may provide a summary of the PHI requested, in lieu of providing access to the PHI or may provide an explanation of the PHI to which access has been provided, if the requestor agrees in advance to such a summary or explanation and to the fees imposed, if any.

(3) Manner of access. The component must arrange with the requestor a convenient time and place to inspect or obtain a copy of the PHI, or mail the copy of the PHI if requested. The component may discuss the scope, format, and other aspects of the request for access with the requestor as necessary to facilitate the timely provision of access.

(4) Fees. If the requestor requests a copy of the PHI or agrees to a summary or explanation of such information, the component may impose a reasonable, cost-based fee. The fee may include only the cost of:

(A) copying, including the cost of supplies for and labor of copying;

(B) postage, when the requestor has requested that the copy, or the summary, or explanation be mailed; and

(C) preparing an explanation or summary of the PHI, if agreed to by the requestor.

Facilities: Facilities may not exceed the following charges if electing to impose fees for individuals requesting copies of their own medical records:

\$1.18 per page — pages 1 through 60

\$.59 per page — pages 61 through 400

\$.30 per page — pages over 400

\$90.00 per hour — preparing an explanation or summary

Note: Charges for processing, retrieval, overhead, etc. are not allowed.

(d) Denial of access.

(1) Unreviewable grounds for denial.

(A) A component may deny a requestor's access to PHI that is excepted from the right of access by subsection (a)(1) of this section.

(B) Access to PHI created or obtained by a component in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, if the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the component has informed the individual that the right of access will be reinstated upon completion of the research.

(C) A component may deny an LAR access if an exception in §4(c)(1) or (c)(2) (General Provisions) applies.

(2) Reviewable grounds for denial.

§16 Access to Protected Health Information by Individuals and LARs

(A) Individual's access. Except as provided by subsection (c)(1)(B) of this section, a component may deny an individual access:

(i) if a professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.

(ii) if the PHI makes reference to another person (other than a health care provider) and a professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person.

(B) LAR's access. A component may deny an LAR access if one or more of the exceptions in §4(c)(3)-(6) (General Provisions) applies.

(3) Denial. If the component denies access, in whole or in part, the component must:

(A) provide a written denial to the requestor that uses plain language and contains:

(i) the basis for the denial;

(ii) the duration of the denial;

(iii) if access is denied for a reviewable ground under paragraph (2) of this subsection, a statement of the requestor's right to request a review of the denial of access and the procedures for requesting a review; and

(iv) a description of how the requestor may complain to the component pursuant to the component's complaint procedures (as required in §7 (Complaints)), to TDMHMR, or to the Office for Civil Rights, U.S. Department of Health and Human Services, including the contact information;

(B) file a copy of the written denial in the individual's record;

(C) to the extent possible, provide access, in accordance with subsection (c) of this section, to any other PHI requested, after excluding the PHI to which the component has reason to deny access; and

(D) allow examination and copying of the PHI by another professional if the individual selects the other professional to treat the individual for the same or a related condition as the professional denying access.

(4) Review of denial requested.

(A) If access is denied on a reviewable ground under paragraph (2) of this subsection, the requestor has the right to have the denial reviewed by a professional who is designated by the component to act as a reviewing official and who did not participate in the original decision to deny.

(B) The designated professional must determine, within a reasonable period of time, whether or not to deny the access requested based on the provisions in paragraph (2) of this subsection.

Facilities: *The professional who is designated by a facility to act as the reviewing official must determine, within 15 calendar days, whether or not to deny the access requested based on the provisions in paragraph (2) of this subsection.*

§16 Access to Protected Health Information by Individuals and LARs

(C) The component must promptly provide written notice to the requestor of the determination of the designated professional and must provide or deny access in accordance with the determination of the designated professional.

Facilities: Within 5 business days, the facility must provide written notice to the requestor of the determination of the designated professional and must provide or deny access in accordance with the determination of the designated professional.

(e) Documentation. A component must document the titles of the persons or offices responsible for receiving and processing requests for access and retain the documentation for a minimum of six years.

§17 Amendment of Protected Health Information

(a) Right to request amendment. An individual has the right to request that a component amend protected health information (PHI) about the individual contained in a designated record set for as long as the information is maintained by the component.

(b) Denial of request for amendment. A component may deny an individual's request for amendment if it determines that the PHI that is the subject of the request:

(1) was not created by the component, unless the individual provides a reasonable basis to believe that the originator of information is no longer available to act on the requested amendment;

(2) would not be available to the individual under §16 (Access to Protected Health Information by Individuals and LARs); or

(3) is accurate and complete.

(c) Requests for amendment and timely action.

(1) Requesting amendment. A component may require individuals to make requests for amendment in writing and to provide a reason to support a requested amendment only if the component informs individuals of such a requirement.

Facilities: Each facility must document requests for amendment using the "Request for Action Concerning Protected Health Information" form, referenced as Attachment FF in §22 (Attachments).

(2) Timely action by the component.

(A) A component must act on a request for amendment no later than 60 calendar days after receipt of such a request.

(B) If the component is unable to act on the request within 60 calendar days, the deadline may be extended an additional 30 calendar days on a one-time basis only if, within the original 60-day period, the component provides the individual with a written statement of the reasons for the delay and the date by which the component will complete its action on the request.

Facilities: If the facility is unable to act on the request within 60 calendar days, the deadline may be extended an additional 30 calendar days on a one-time basis only if:

- within the original 60-day period, the facility provides the individual with a written statement of the reasons for the delay and the date by which the facility will complete its action on the request; and
- the facility's privacy coordinator approves the extension.

(d) Accepting the amendment. If the component accepts the requested amendment, in whole or in part, the component must comply with the following requirements.

(1) Making the amendment. The component must make the appropriate amendment to the PHI by, at a minimum, identifying the elements in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(2) Informing the individual. The component must timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the

§17 Amendment of Protected Health Information

component notify the relevant persons with whom the amendment needs to be shared in accordance with paragraph (3) of this subsection.

(3) Informing others. The component must make reasonable efforts to inform and provide the amendment within a reasonable time to:

(A) persons identified by the individual as having received PHI about the individual and needing the amendment; and

(B) persons or entities (e.g., components, health care providers) that the component knows have the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

(e) Denying the amendment. If the component denies the requested amendment, in whole or in part, the component must comply with the following requirements.

(1) Denial. The component must provide the individual with a written denial that uses plain language and contains:

(A) the basis for the denial, based on the provisions in subsection (b) of this section;

(B) a statement that the individual has a right to submit a written statement of disagreement with the denial and instructions on how the individual may file such a statement of disagreement;

(C) a statement that, if the individual does not submit a statement of disagreement, the individual may request that the component provide a copy of the request for amendment and a copy of the denial with any future disclosures of the PHI that is the subject of the requested amendment; and

(D) a description of how the requestor may complain to the component pursuant to the component's complaint procedures (as required in §7 (Complaints)), to TDMHMR, or to the Office for Civil Rights, U.S. Department of Health and Human Services, including the contact information.

(2) Statement of disagreement. The component must permit the individual to submit to the component a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The component may reasonably limit the length of a statement of disagreement.

(3) Rebuttal statement. The component may prepare a written rebuttal to the individual's statement of disagreement. If such a rebuttal is prepared, the component must provide a copy of the rebuttal to the individual.

(4) Recordkeeping. The component must identify the elements in the designated record set that are the subject of the disputed amendment and append or otherwise link a copy of the following items to the designated record set:

(A) the request for an amendment;

(B) the component's denial of the request;

(C) the individual's statement of disagreement, if any; and

(D) the component's rebuttal, if any.

(5) Subsequent disclosures.

(A) If the individual has submitted a written statement of disagreement, the component must include a copy of the items appended or linked in accordance with paragraph

§17 Amendment of Protected Health Information

(4)(A)-(D) of this subsection, or an accurate summary of the items, with any subsequent disclosure of the PHI that is the subject of the requested amendment.

(B) If the individual has not submitted a written statement of disagreement, the component must include a copy of the items appended or linked in accordance with paragraph (4)(A)-(B) of this subsection, or an accurate summary of the items, with any subsequent disclosure of the PHI that is the subject of the requested amendment only if the individual has requested such action in accordance with paragraph (1)(C) of this subsection.

(C) If a subsequent disclosure is made electronically and it is not possible to include the items as required in subparagraph (A) or (B) of this paragraph, then the component may separately transmit the items to the recipient of the electronic disclosure.

(f) Action on notice of amendment. A component that is informed by another component, health care provider, or health plan (as defined in 45 CFR §160.103) of an amendment to an individual's PHI, as provided by subsection (d)(3) of this section, must amend the PHI maintained by the component in accordance with subsection (d)(1) of this section.

(g) Documentation. A component must document the titles of the persons or offices responsible for receiving and processing requests for amendments as provided by this document and retain the documentation for a minimum of six years.

§18 Accounting of Disclosures of Protected Health Information

(a) Right to an accounting of disclosures. An individual has a right to receive an accounting of disclosures of the individual's protected health information (PHI) made by a component in the six years prior to the date on which the accounting is requested, except for disclosures made:

- (1) for treatment, payment, and health care operations;
- (2) to individuals or LARs;
- (3) for national security or intelligence purposes;
- (4) to correctional institutions or law enforcement officials;
- (5) pursuant to the individual's authorization;
- (6) incidental to an otherwise permitted use or disclosure (i.e., incidental disclosure, as defined);
- (7) as part of a limited data set in accordance with 45 CFR §164.514(e); and
- (8) prior to April 14, 2003.

(b) Requests for accounting, timely action, and fee.

- (1) Requests for accounting. The component may ask the individual to identify the period of time to be covered by the accounting. The period of time to be covered by the accounting:
 - (A) may not exceed six years prior to the date of request; and
 - (B) may not be prior to April 14, 2003.

Facilities: Each facility must document requests for accounting using the "Request for Action Concerning Protected Health Information" form, referenced as Attachment FF in §22 (Attachments).

(2) Timely action by the component.

(A) A component must act on a request for accounting no later than 60 calendar days after receipt of such a request. If the component is unable to act on the request within 60 calendar days, the deadline may be extended an additional 30 calendar days on a one-time basis only if, within the original 60-day period, the component provides the individual with a written statement of the reasons for the delay and the date by which the component will complete its action on the request.

Facilities: If the facility is unable to act on the request within 60 calendar days, the deadline may be extended an additional 30 calendar days on a one-time basis only if:

- within the original 60-day period, the facility provides the individual with a written statement of the reasons for the delay and the date by which the facility will complete its action on the request; and
- the facility's privacy coordinator approves the extension.

(B) A component shall temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official if the agency or official provides the component with a statement that such an accounting to the individual would be reasonably likely to impede the agency's or official's activities and specifying the time period that a suspension is required.

§18 Accounting of Disclosures of Protected Health Information

(i) If the statement is provided in writing, the component shall suspend the right to an accounting for the time specified in the statement.

(ii) If the statement is provided orally, the component must document the statement, including the identity of the person or official making the statement, and limit the suspension to 30 calendar days, unless a written statement is submitted within the 30 calendar days that specifies a different time period for suspension.

(3) Fee. The component must provide the first accounting to an individual in any 12-month period without charge. The component may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12-month period, if the component informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

***Facilities:** Facilities may not exceed the following charges if electing to impose a fee for individuals requesting more than one accounting in a 12 month period:*

\$15.00 per hour — personnel time to prepare the accounting

\$1.18 per page — pages 1 through 60

\$.59 per page — pages 61 through 400

\$.30 per page — pages over 400

(c) Content of the accounting. The component must provide the individual with a written accounting that meets the following requirements.

(1) Except for disclosures listed under subsection (a), the accounting must include all disclosures of PHI that occurred within the period identified in the request.

(2) The accounting must include for each disclosure:

(A) the date of the disclosure;

(B) the name of the recipient of the PHI and, if known, the address of the recipient;

(C) a brief description of the PHI disclosed; and

(D) a brief statement of the purpose of the disclosure or a copy of the written request for the disclosure.

(3) If, during the period covered by the accounting, the component has made multiple disclosures of PHI to the same recipient for a single purpose, the accounting may provide:

(A) the information required by paragraph (2) of this subsection for the first disclosure during the accounting period;

(B) the frequency or number of the disclosures made during the accounting period; and

(C) the date of the last such disclosure during the accounting period.

(4) For accountings related to inspections, surveys, investigations, research, and similar activities during which PHI of a large number of individuals has been disclosed, a facility may, in an accounting requested by an individual about whom PHI may have been disclosed, provide:

§18 Accounting of Disclosures of Protected Health Information

(A) the name, address, and telephone number of the entity to whom the PHI may have been disclosed;

(B) a brief description of the purpose of disclosure;

(C) a brief description of the type of PHI that may have been disclosed;

(D) the period of time during which disclosure occurred;

(E) a statement that the individual's PHI may or may not have been disclosed;

and

(F) a statement that the facility will, at the request of the individual, assist in contacting the entity if it is reasonably likely that the individual's PHI was disclosed.

(d) Documentation. A component must document the following and retain the documentation for six years:

(1) the titles of the persons or offices responsible for receiving and processing requests for accounting;

(2) the information required to be included in an accounting described in subsection (c)(2) of this section; and

(3) a copy of all written accountings that are provided in accordance with this section.

§19 Restricting Uses and Disclosures of Protected Health Information

(a) Requesting restriction of uses and disclosures.

(1) An individual has the right to request that a component restrict uses or disclosures of protected health information (PHI) about the individual for treatment, payment, or health care operations.

(2) A component is not required to agree to a restriction.

(3) A component that agrees to a restriction as requested under paragraph (1) of this subsection may not use or disclose the PHI in violation of such restriction unless the PHI is needed to provide emergency treatment to the individual, in which case the component must request that the recipient of the PHI not further use or disclose the information.

(4) A restriction agreed to by a component under this subsection is not effective to prevent uses or disclosures of PHI described in:

(A) §9(b)(1)-(4), (b)(6)-(11), (b)(17), (c), and (d) (When Authorization is Not Required to Use or Disclose PHI that Relates to MHMR Services);

(B) §10(a), (b)(1)-(3), (b)(5)-(6) (When Authorization is Not Required to Disclose Protected Health Information that Relates to Alcohol or Drug Abuse Treatment); and

(C) §11(c) and (d) (When Authorization is not Required to Use or Disclose Protected Health Information That Relates to HIV/AIDS).

Facilities: Each facility must document requests for restriction of uses and disclosures of PHI, and whether or not the facility has agreed to the restriction, using the "Request for Action Concerning Protected Health Information" form, referenced as Attachment FF in §22 (Attachments).

(b) Terminating a restriction. A component may terminate its agreement to a restriction, if:

(1) the individual agrees to or requests the termination in writing;

(2) the individual orally agrees to the termination and the oral agreement is documented; or

(3) the component informs the individual that it is terminating its agreement to a restriction, except that such termination is only effective with respect to PHI created or received after the component has so informed the individual.

(c) Documentation. A component that agrees to a restriction must document the restriction and maintain the documentation for the duration of the restriction or for six years, whichever is later.

§20 Confidential Communications

- (a) An individual has the right to request confidential communications of PHI from the component by alternative means or at alternative locations.
- (b) A component must accommodate a reasonable request by an individual to receive confidential communications.
- (c) A component may condition the provision of a reasonable accommodation on:
 - (1) the individual providing information as to how payment will be handled, if the communication relates to payment; and
 - (2) specification of an alternative address or other method of contact.
- (d) A component is prohibited from requiring an explanation from the individual as to the basis for the request as a condition of providing confidential communications.

Facilities: Each facility must document requests for confidential communications of PHI, and how the facility will accommodate the request, using the "Request for Action Concerning Protected Health Information" form, referenced as Attachment FF in §22 (Attachments).

§21 Business Associate Agreements

(a) A component may disclose protected health information (PHI) to a business associate (as defined) and may allow a business associate to create or receive PHI on its behalf, if the component has executed a business associate agreement or a business associate addendum to an existing contract with the business associate. This requirement does not apply:

(1) if disclosures by the component to a business associate concern the treatment of the individual; or

(2) to disclosures made to or by the TDMHMR Medicaid Administration for the purpose of determining eligibility for or enrollment in the Medicaid program, or for the purpose of payment for services.

(b) A business associate agreement or addendum must meet the requirements of 45 CFR §164.504(e). A sample business associate agreement may be accessed from the U.S. Department of Health and Human Services at www.hhs.gov/ocr/hipaa under "technical assistance."

(c) If a component knows that its business associate is engaging in a pattern or practice that violates the terms of the business associate agreement, the component must take reasonable steps to correct the violation, and if such steps are unsuccessful, the component must:

(1) terminate the association, if feasible; or

(2) if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services.

§22 Attachments and References

(a) The following attachments referenced in this document are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

- (1) Attachment AA — Texas Family Code, §32.001;
- (2) Attachment BB — sample Notice of Privacy Practices;
- (3) Attachment CC — TDMHMR Notice of Privacy Practice (required for use by facilities);
- (4) Attachment DD — Texas Health and Safety Code, §614.017;
- (5) Attachment EE — authorization form (MHRS 9-13 A) (required for use by facilities); and
- (6) Attachment FF — "Request for Action Concerning Protected Health Information" form (MHRS 9-13 R) (required for use by facilities).

(b) Reference is made to the following state and federal statutes, rules, and regulations:

- (1) Texas Health and Safety Code:
 - (A) Chapters 81; 166; 181; 241; 462; 574; 593; 595; 597; and 611; and
 - (B) §242.002(6); §533.009; §533.035(a); §571.003; §572.004; §576.005; §576.0055; §576.007; §591.003; and §614.017;
- (2) Texas Family Code, Chapters 31, 32, 264;
- (3) Texas Government Code, Chapters 552 and 559 and §531.042;
- (4) Texas Occupations Code, Chapter 159;
- (5) Texas Human Resources Code, Chapter 48;
- (6) Texas Insurance Code, Article 21.58A, §4(o) and §2;
- (7) Texas Probate Code, Chapter XIII, Part 3;
- (8) 34 CFR Part 99;
- (9) 42 CFR Part 2, and Part 51, Subpart D
- (10) 45 CFR Part 160, Part 164, Subparts A and E, and §1386.22
- (11) 42 USC §263a, §290dd-2, §1320d *et seq.*, §10805(a)(4), and §15043(a)(2)(I);
- (12) 25 TAC Chapter 405, Subchapter J (concerning Surrogate Decision-Making for Community-Based ICF/MR and ICF/MR/RC Facilities); and
- (13) 25 TAC Chapter 414, Subchapter A (concerning Protected Health Information).

Texas Family Code, §32.001

Language in underline and italics pertain to the situations within the TDMHMR service system in which a non-parent could consent to MHMR services for a minor.

§32.001. Consent by Non-Parent

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;

(5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;

(6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;

(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) The Texas Youth Commission may consent to the medical, dental, psychological, and surgical treatment of a child committed to it under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary.

(c) This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

NOTICE OF PRIVACY PRACTICES

Health Insurance Portability and
Accountability Act of 1996 (HIPAA) and
Drug Abuse Prevention, Treatment, and Rehabilitation Act

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

When you receive treatment or benefits (such as Medicaid) from _____, we will obtain and/or create health information about you. Health information includes any information that relates to (1) your past, present, or future physical or mental health or condition; (2) the health care provided to you; and (3) the past, present, or future payment for your health care.

The following notice tells you about our duty to protect your health information, your privacy rights, and how we may use or disclose your health information.

_____’s Duties:

- ★ The law requires us to protect the privacy of your health information. This means that we will not use or let other people see your health information without your permission except in the ways we tell you in this notice. We will safeguard your health information and keep it private. This protection applies to all health information we have about you, no matter when or where you received or sought services. We will not tell anyone if you sought, are receiving, or have ever received services from us, unless the law allows us to disclose that information.
- ★ We will ask you for your written permission (authorization) to use or disclose your health information. There are times when we are allowed to use or disclose your health information without your permission, as explained in this notice. If you give us your permission to use or disclose your health information, you may take it back (revoke it) at any time. If you revoke your permission, we will not be liable for using or disclosing your health information before we knew you revoked your permission. To revoke your permission, send a written statement, signed by you, to _____, providing the date and purpose of the permission and saying that you want to revoke it.
- ★ We are required to give you this notice of our legal duties and privacy practices, and we must do what this notice says. We will ask you to sign an acknowledgement that you have received this notice. We can change the contents of this notice and, if we do, we will have copies of the new notice at our facilities and on our website, _____. The new notice will apply to all health information we have, no matter when we got or created the information.
- ★ Our employees must protect the privacy of your health information as part of their jobs. We do not let our employees see your health information unless they need it as part of their jobs. We will punish employees who do not protect the privacy of your health information.
- ★ We will not disclose information about you related to testing for Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome without your specific written permission, unless the law allows us to disclose the information.
- ★ If you are being treated for alcohol or drug abuse, your records are protected by federal law and regulations found in the Code of Federal Regulations at Title 42, Part 2. Violation of these laws that protect alcohol or drug abuse treatment records is a crime, and suspected violations may be reported to appropriate authorities in accordance with federal regulations. Federal law will not protect any information about a crime committed by you either at _(name of treatment program)_ or against any person who works for _(name of treatment program)_ or about any threat to commit such a crime. Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Your Privacy Rights at _____

- ★ You can look at or get a copy of the health information that we have about you. There are some reasons why we will not let you see or get a copy of your health information, and if we deny your request we will tell you why. You can appeal our decision in some situations. You can choose to get a summary of your health information instead of a copy. If you want a summary or a copy of your health information, you may have to pay a reasonable fee for it.
- ★ You can ask us to correct information in your records if you think the information is wrong. We will not destroy or change our records, but we will add the correct information to your records and make a note in your records that you have provided the information.
- ★ You can get a list of the disclosures of your health information that we made to other people in the last six years. The list will not include disclosures for treatment, payment, health care operations, national security, law enforcement, or disclosures where you gave your permission. The list will not include disclosures made before April 14, 2003. There will be no charge for one list per year.
- ★ You can ask us to limit some of the ways we use or share your health information. We will consider your request, but the law does not require us to agree to it. If we do agree, we will put the agreement in writing and follow it, except in case of emergency. We cannot agree to limit the uses or sharing of information that are required by law.
- ★ You can ask us to contact you at a different place or in some other way. We will agree to your request as long as it is reasonable.
- ★ You can get a copy of this notice any time you ask for it.

Treatment, Payment, and Health Care Operations

We may use or disclose your health information to provide care to you, to obtain payment for that care, or for our own health care operations.

Health information about you may be exchanged between the Texas Department of Mental Health and Mental Retardation, local mental health or mental retardation authorities, community MHMR centers, and contractors of mental health and mental retardation services, for purposes of treatment, payment, or health care operations, without your permission.

Treatment: We can use or disclose your health information to provide, coordinate, or manage health care or related services. This includes providing care to you, consulting with another health care provider about you, and referring you to another health care provider. Example: _____.
Unless you ask us not to, we may also contact you to remind you of an appointment or to offer treatment alternatives or other health-related information that may interest you.

Payment: We can use or disclose your health information to obtain payment for providing health care to you or to provide benefits to you under a health plan such as the Medicaid program. Example: _____.

Health Care Operations: We can also use your health information for health care operations:

- activities to improve health care, evaluating programs, and developing procedures;
- case management and care coordination;
- reviewing the competence, qualifications, performance of health care professionals and others;
- conducting training programs and resolving internal grievances;
- conducting accreditation, certification, licensing, or credentialing activities;
- providing medical review, legal services, or auditing functions; and
- engaging in business planning and management or general administration.

Example: _____.

Unless you are receiving treatment for alcohol or drug abuse, _____ is permitted to use or disclose your health information without your permission for the following purposes.

- ★ **When required by law.** We may use or disclose your health information as required by state or federal law.
- ★ **To report suspected child abuse or neglect.** We may disclose your health information to a government authority if necessary to report abuse or neglect of a child.
- ★ **To address a serious threat to health or safety.** We may use or disclose your health information to medical or law enforcement personnel if you or others are in danger and the information is necessary to prevent physical harm.
- ★ **For research.** We may use or disclose your health information if a research board says it can be used for a research project, or if information identifying you is removed from the health information. Information that identifies you will be kept confidential.
- ★ **To a government authority if it is reported that you are a victim of abuse.** We may disclose your health information to a person legally authorized to investigate a report that you have been abused, neglected, or have been denied your rights.
- ★ **For public health and health oversight activities.** We will disclose your health information when we are required to collect information about disease or injury, for public health investigations, or to report vital statistics.
- ★ **To comply with legal requirements.** We may disclose your health information to an employee or agent of a doctor or other professional who is treating you, to comply with statutory, licensing, or accreditation requirements, as long as your information is protected and is not disclosed for any other reason.
- ★ **For purposes relating to death.** If you die, we may disclose health information about you to your personal representative and to coroners or medical examiners to identify you or determine the cause of death. We may also disclose information about you for burial purposes, including grave marker inscription, unless you tell us not to.
- ★ **To a correctional institution.** If you are in the custody of a correctional institution, we may disclose your health information to the institution in order to provide health care to you.
- ★ **If you are in the criminal justice system,** we may disclose your health information to other state agencies involved in your treatment, rehabilitation, or supervision.
- ★ **For government benefit programs.** We may use or disclose your health information as needed to operate a government benefit program, such as Medicaid.
- ★ **To your legally authorized representative (LAR).** We may share your health information with a person the law allows to represent your interests.
- ★ **If you are receiving services for mental retardation,** we may give health information about your current physical and mental condition to your parent, guardian, relative, or friend, in accordance with the Persons with Mental Retardation Act, unless you tell us not to.
- ★ **In judicial and administrative proceedings.** We may disclose your health information in any criminal or civil proceeding if a court or administrative judge has issued an order or subpoena that requires us to disclose it. Some types of court or administrative proceedings where we may disclose your health information are:
 - **Commitment proceedings** for involuntary commitment for court-ordered treatment or services.
 - **Court-ordered examinations** for a mental or emotional condition or disorder.
 - **Proceedings regarding abuse or neglect** of a resident of an institution.
 - **License revocation proceedings** against a doctor or other professional.
- ★ **For national security.** We will disclose your health information if necessary for national security and intelligence activities, and to protect the president of the United States.
- ★ **To the Secretary of Health and Human Services.** We must disclose your health information to the United States Department of Health and Human Services when requested in order to enforce the privacy laws.

If you are also being treated for alcohol or drug abuse, _____ will not tell any unauthorized person outside of _____ that you have been admitted to _____ or that you are being treated for alcohol or drug abuse, without your written permission. We will not disclose any information identifying you as an alcohol, drug, or substance user, except as allowed by law.

_____ may only disclose information about your treatment for alcohol or drug abuse without your permission in the following circumstances:

- ★ Pursuant to a special court order that complies with 42 Code of Federal Regulations Part 2 Subpart E;
- ★ To medical personnel in a medical emergency;
- ★ To qualified personnel for research, audit, or program evaluation;
- ★ To report suspected child abuse or neglect;
- ★ To Advocacy, Inc. and/or the Texas Department of Protective and Regulatory Services, as allowed by law, to investigate a report that you have been abused or have been denied your rights.

Federal and State laws prohibit re-disclosure of information about alcohol or drug abuse treatment without your permission.

Federal rules restrict any use of information about alcohol or drug abuse treatment to criminally investigate or prosecute any alcohol or drug abuse patient.

COMPLAINT PROCESS:

If you believe that _____ has violated your privacy rights, you have the right to file a complaint. You may complain by contacting:

You may also file a complaint with:

TDMHMR Consumer Services and
Rights Protection/Ombudsman Office
P.O. Box 12668
Austin, TX 78711
(512) 206-5670
(800) 252-8154 (toll free)

Region VI, Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
(214) 767-4056
(214) 767-8940 (TDD)
(800) 368-1019 (toll free OCR Hotline)

You must file your complaint within 180 days of when you knew or should have known about the event that you think violated your privacy rights.

For complaints against alcohol or drug abuse treatment programs, contact the United States Attorney's Office for the judicial district in which the violation occurred. To locate this office, consult the blue pages in your telephone book.

_____ will not retaliate against you if you file a complaint.

For further information:

Contact _____

NOTICE OF PRIVACY PRACTICES

**Health Insurance Portability and
Accountability Act of 1996 (HIPAA) and
Drug Abuse Prevention, Treatment, and Rehabilitation Act**



**THIS NOTICE DESCRIBES
HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND
DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION.
PLEASE REVIEW IT CAREFULLY.**

When you receive treatment or benefits (such as Medicaid) from the Texas Department of Mental Health and Mental Retardation (TDMHMR), we will obtain and/or create health information about you. Health information includes any information that relates to (1) your past, present, or future physical or mental health or condition; (2) the health care provided to you; and (3) the past, present, or future payment for your health care.

The following notice tells you about our duty to protect your health information, your privacy rights, and how we may use or disclose your health information.

TDMHMR's Duties:

- ★ The law requires us to protect the privacy of your health information. This means that we will not use or let other people see your health information without your permission except in the ways we tell you in this notice. We will safeguard your health information and keep it private. This protection applies to all health information we have about you, no matter when or where you received or sought services. When you are in a TDMHMR facility, we will not allow any unauthorized person to interview, photograph, film, or record you without your written permission. We will not tell anyone if you sought, are receiving, or have ever received services from TDMHMR, unless the law allows us to disclose that information.
- ★ We will ask you for your written permission (authorization or consent) to use or disclose your health information. There are times when we are allowed to use or disclose your health information without your permission, as explained in this notice. If you give us your permission to use or disclose your health information, you may take it back (revoke it) at any time. If you revoke your permission, we will not be liable for using or disclosing your health information before we knew you revoked your permission. To revoke your permission, send a written statement, signed by you, to the TDMHMR facility where you gave your permission, providing the date and purpose of the permission and saying that you want to revoke it.
- ★ We are required to give you this notice of our legal duties and privacy practices, and we must do what this notice says. We can change the contents of this notice and, if we do, we will have copies of the new notice at our facilities and on our website, www.mhmr.state.tx.us. The new notice will apply to all health information we have, no matter when we got or created the information.
- ★ Our employees must protect the privacy of your health information as part of their jobs. We do not let our employees see your health information unless they need it as part of their jobs. We will punish employees who do not protect the privacy of your health information.
- ★ We will not disclose information about you related to testing for Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome without your specific written permission, unless the law allows us to disclose the information.
- ★ If you are also being treated for alcohol or drug abuse, your records are protected by federal law and regulations found in the Code of Federal Regulations at Title 42, Part 2. Violation of these laws that protect alcohol or drug abuse treatment records is a crime, and suspected violations may be reported to appropriate authorities in accordance with federal regulations. Federal law will not protect any information about a crime committed by you either at TDMHMR or against any person who works for TDMHMR or about any threat to commit such a crime. Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Your Privacy Rights at TDMHMR

- ★ You can look at or get a copy of the health information that we have about you. There are some reasons why we will not let you see or get a copy of your health information, and if we deny your request we will tell you why. You can appeal our decision in some situations. You can choose to get a summary of your health information instead of a copy. If you want a summary or a copy of your health information, you may have to pay a reasonable fee for it.
- ★ You can ask us to correct information in your records if you think the information is wrong. We will not destroy or change our records, but we will add the correct information to your records and make a note in your records that you have provided the information.
- ★ You can get a list of the disclosures of your health information that we made to other people in the last six years. The list will not include disclosures for treatment, payment, health care operations, national security, law enforcement, or disclosures where you gave your permission. The list will not include disclosures made before April 14, 2003. There will be no charge for one list per year.
- ★ You can ask us to limit some of the ways we use or share your health information. We will consider your request, but the law does not require us to agree to it. If we do agree, we will put the agreement in writing and follow it, except in case of emergency. We cannot agree to limit the uses or sharing of information that are required by law.
- ★ You can ask us to contact you at a different place or in some other way. We will agree to your request as long as it is reasonable.
- ★ You can get a copy of this notice any time you ask for it.

Treatment, Payment, and Health Care Operations

We may use or disclose your health information to provide care to you, to obtain payment for that care, or for our own health care operations.

Health information about you may be exchanged between TDMHMR facilities, local mental health or mental retardation authorities, community MHMR centers, and contractors of mental health and mental retardation services, for purposes of treatment, payment, or health care operations, without your permission.

Treatment: We can use or disclose your health information to provide, coordinate, or manage health care or related services. This includes providing care to you, consulting with another health care provider about you, and referring you to another health care provider. For example, we can use your health information to prescribe medication for you. Unless you ask us not to, we may also contact you to remind you of an appointment or to offer treatment alternatives or other health-related information that may interest you.

Payment: We can use or disclose your health information to obtain payment for providing health care to you or to provide benefits to you under a health plan such as the Medicaid program. For example, we can use your health information to bill your insurance company for health care provided to you.

Notice to applicants and recipients of financial assistance or payments under federal benefit programs: any information provided by you may be subject to verification through matching programs.

Health Care Operations: We can also use your health information for health care operations:

- activities to improve health care, evaluating programs, and developing procedures;
- case management and care coordination;
- reviewing the competence, qualifications, performance of health care professionals and others;
- conducting training programs and resolving internal grievances;
- conducting accreditation, certification, licensing, or credentialing activities;
- providing medical review, legal services, or auditing functions; and
- engaging in business planning and management or general administration.

For example, we can use your health information to develop procedures for providing care to people in our facilities.

Unless you are receiving treatment for alcohol or drug abuse, TDMHMR is permitted to use or disclose your health information without your permission for the following purposes.

- ★ **When required by law.** We may use or disclose your health information as required by state or federal law.
- ★ **To report suspected child abuse or neglect.** We may disclose your health information to a government authority if necessary to report abuse or neglect of a child.
- ★ **To address a serious threat to health or safety.** We may use or disclose your health information to medical or law enforcement personnel if you or others are in danger and the information is necessary to prevent physical harm.
- ★ **For research.** We may use or disclose your health information if a research board says it can be used for a research project, or if information identifying you is removed from the health information. Information that identifies you will be kept confidential.
- ★ **To a government authority if it is reported that you are a victim of abuse.** We may disclose your health information to a person legally authorized to investigate a report that you have been abused, neglected, or have been denied your rights.
- ★ **For public health and health oversight activities.** We will disclose your health information when we are required to collect information about disease or injury, for public health investigations, or to report vital statistics.
- ★ **To comply with legal requirements.** We may disclose your health information to an employee or agent of a doctor or other professional who is treating you, to comply with statutory, licensing, or accreditation requirements, as long as your information is protected and is not disclosed for any other reason.
- ★ **For purposes relating to death.** If you die, we may disclose health information about you to your personal representative and to coroners or medical examiners to identify you or determine the cause of death. We may also disclose information about you for burial purposes, including grave marker inscription, unless you tell us not to.
- ★ **To a correctional institution.** If you are in the custody of a correctional institution, we may disclose your health information to the institution in order to provide health care to you.
- ★ **If you are in the criminal justice system,** we may disclose your health information to other state agencies involved in your treatment, rehabilitation, or supervision.
- ★ **To locate you if you are missing from a facility.** We may disclose some information about you to law enforcement personnel so that they can find you and return you to the facility if you are missing.
- ★ **For government benefit programs.** We may use or disclose your health information as needed to operate a government benefit program, such as Medicaid.
- ★ **To your legally authorized representative (LAR).** We may share your health information with a person the law allows to represent your interests.
- ★ **If you are receiving services for mental retardation,** we may give health information about your current physical and mental condition to your parent, guardian, relative, or friend, in accordance with the Persons with Mental Retardation Act, unless you tell us not to.
- ★ **In judicial and administrative proceedings.** We may disclose your health information in any criminal or civil proceeding if a court or administrative judge has issued an order or subpoena that requires us to disclose it. Some types of court or administrative proceedings where we may disclose your health information are:
 - **Commitment proceedings** for involuntary commitment for court-ordered treatment or services.
 - **Court-ordered examinations** for a mental or emotional condition or disorder.
 - **Proceedings regarding abuse or neglect** of a resident of an institution.
 - **License revocation proceedings** against a doctor or other professional.
- ★ **For national security.** We will disclose your health information if necessary for national security and intelligence activities, and to protect the president of the United States.
- ★ **To the Secretary of Health and Human Services.** We must disclose your health information to the United States Department of Health and Human Services when requested in order to enforce the privacy laws.

If you are also being treated for alcohol or drug abuse, TDMHMR will not tell any unauthorized person outside of TDMHMR that you have been admitted to a TDMHMR facility or that you are being treated for alcohol or drug abuse, without your written permission. We will not disclose any information identifying you as an alcohol, drug, or substance user, except as allowed by law.

TDMHMR may only disclose information about your treatment for alcohol or drug abuse without your permission in the following circumstances:

- ★ Pursuant to a special court order that complies with 42 Code of Federal Regulations Part 2 Subpart E;
- ★ To medical personnel in a medical emergency;
- ★ To qualified personnel for research, audit, or program evaluation;
- ★ To report suspected child abuse or neglect;
- ★ To Advocacy, Inc. and/or the Texas Department of Protective and Regulatory Services, as allowed by law, to investigate a report that you have been abused or have been denied your rights.

Federal and State laws prohibit re-disclosure of information about alcohol or drug abuse treatment without your permission.

Federal rules restrict any use of information about alcohol or drug abuse treatment to criminally investigate or prosecute any alcohol or drug abuse patient.

COMPLAINT PROCESS:

If you believe that TDMHMR has violated your privacy rights, you have the right to file a complaint. You may complain by contacting:

TDMHMR Consumer Services and Rights Protection/Ombudsman Office
(512) 206-5670 or (800) 252-8154 (toll free)
P.O. Box 12668
Austin, Texas 78711

You may also file a complaint with:

Region VI, Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
(214) 767-4056
(214) 767-8940 (TDD)
(800) 368-1019 (toll free OCR Hotline)

You must file your complaint within 180 days of when you knew or should have known about the event that you think violated your privacy rights.

For complaints against alcohol or drug abuse treatment programs, contact the United States Attorney's Office for the judicial district in which the violation occurred. To locate this office, consult the blue pages in your telephone book.

TDMHMR will not retaliate against you if you file a complaint.

For further information:

Contact the TDMHMR Privacy Officer by:

- ★ calling 512-454-3761 or 888-404-1511 (toll free);
- ★ writing to P.O. Box 12668, Austin, TX 78711; or
- ★ e-mail at privacyofficer@mhmr.state.tx.us.

Contact the Privacy Coordinator at this facility by:

- ★ calling
- ★ writing to
- ★ e-mail at

Effective Date: April 14, 2003

Last Revision: 04/11/03

Texas Health and Safety Code, §614.017

§614.017. Exchange of Information.

(a) An agency shall:

(1) accept information relating to a special needs offender that is sent to the agency to serve the purposes of this chapter regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender, including information about the offender's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of this chapter.

(b) This section is not intended to conflict with a federal law that restricts the disclosure of information described by Subsection (a).

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

- (A) the Texas Department of Criminal Justice;
- (B) the Board of Pardons and Paroles;
- (C) the Texas Department of Mental Health and Mental Retardation;
- (D) the Texas Juvenile Probation Commission;
- (E) the Texas Youth Commission;
- (F) the Texas Rehabilitation Commission;
- (G) the Texas Education Agency;
- (H) the Criminal Justice Policy Council;
- (I) the Texas Commission on Alcohol and Drug Abuse;
- (J) the Commission on Jail Standards;
- (K) the Texas Department of Human Services;
- (L) the Texas Department on Aging;
- (M) the Texas School for the Blind and Visually Impaired;
- (N) the Texas Department of Health;
- (O) the Texas Commission for the Deaf and Hard of Hearing;
- (P) community supervision and corrections departments;
- (Q) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;
- (R) local jails regulated by the Commission on Jail Standards;
- (S) a municipal or county health department;
- (T) a hospital district;
- (U) a judge of this state with jurisdiction over criminal cases; and
- (V) an attorney who is appointed or retained to represent a special needs offender.

(2) "Special needs offender" means an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

Authorization for Disclosure, Use, or Receipt of Protected Health Information

Exhibit A. 414-A
Attachment EE



(Note: For individuals receiving alcohol or drug abuse treatment, **this form serves as the consent required by 42 CFR §2.31.**)

You have the right to refuse to sign this authorization. TDMHMR will not withhold treatment, Medicaid benefits, or payment processing if you refuse to sign this authorization. You will receive a copy of this signed authorization.

Individual: _____ Case No. : _____ DOB: _____

I authorize the designated staff at _____
(name of facility)

to disclose/use/receive the following protected health information about me: _____

(description of the specific types of information, including time period covered)

The facility's designated staff may disclose to/receive from: _____
(name of person, organization, or facility)

The disclosure/use is for the following purpose(s):

- _____ to coordinate my discharge planning/placement _____ at my request
- _____ to assist in my educational placement _____ to assist in additional funding
- _____ to discuss with my family the care and treatment I receive
- _____ other: _____

I also authorize the disclosure/use/receipt of my health information regarding: HIV/AIDS
 alcohol and drug abuse treatment

Note: If you are authorizing disclosure of information, then, except for information related to alcohol or drug abuse treatment, the potential exists for the information described in this authorization to be re-disclosed by the recipient. If the information is re-disclosed, then it is no longer protected by medical privacy laws.

Note: If you are signing as a parent/guardian/managing conservator of a minor or as a guardian of the person of an adult, the information disclosed/used/received may contain references about you and your family.

You have the right to revoke this authorization. To revoke this authorization, you must deliver a written statement, signed by you, to the organization or facility where you gave your authorization (identified above), which provides the date and purpose of this authorization and your intent to revoke it. Your revocation will be effective the date it is received by the organization/facility, except to the extent that the organization/facility has already relied upon your authorization to use or disclose your health information as described in the Notice of Privacy Practices.

Unless this authorization is revoked earlier it will expire on: _____
(date, event, or condition of expiration)

Individual's signature _____ Date _____

Representative's signature, if any _____ Representative's relationship to individual _____ Date _____

**Request For Action concerning
Protected Health Information**

Exhibit A, 414-A
Attachment FF



Individual: _____ SSN: _____ DOB: _____

I request that _____
(name of facility)

Provide me:

- _____ an accounting of disclosures of my health information covering the time period described below
- _____ a copy of my health information covering the time period described below **[possible fee]**
- _____ access to review my health information covering the time period described below
- _____ a summary of my health information covering the time period described below **[possible fee]**

time period: _____ to _____

Optional: Copies or access to my health information is for the following purpose:

- _____ To assist in disability evaluation
- _____ To assist my care provider
- _____ To assist in other evaluation and treatment
- _____ To assist in educational placement
- _____ Other: _____

Amend my medical records as follows: [please indicate if additional pages are attached]

Not disclose my health information to the following persons or organizations:

_____ TDMHMR agrees to the request _____ TDMHMR does not agree to the request

Not contact me in the following manner or at the following location:

Contact me in the following manner or at the following location:

Individual's signature

Date

Witness's signature

Date

AVISO DE NORMAS SOBRE LA PRIVACIDAD
Ley de Responsabilidad y Traslado de Seguros
Médicos de 1996 (HIPAA) y Ley de Prevención,
Tratamiento y Rehabilitación del Abuso de Drogas

**ESTE AVISO DESCRIBE
CÓMO SE PUEDE USAR Y DIVULGAR LA INFORMACIÓN MÉDICA SOBRE
USTED Y CÓMO USTED PUEDE TENER ACCESO A ELLA.
FAVOR DE LEERLO CUIDADOSAMENTE.**

Cuando usted recibe tratamiento o beneficios (tales como Medicaid) del _____, obtenemos o creamos información médica sobre usted. La información médica puede ser, entre otras, información que tiene que ver con (1) su salud o su estado físico o mental pasado, actual o futuro; (2) la atención médica que usted recibe; y (3) el pago pasado, actual o futuro de su atención médica.

El siguiente aviso le informa sobre nuestra obligación de proteger su información médica, su derecho a la privacidad y cómo podemos usar o divulgar su información médica.

Obligaciones del _____:

- ★ La ley nos exige que protejamos su información médica privada. Esto quiere decir que no usaremos ni permitiremos que otras personas vean su información médica sin su permiso, excepto de las maneras que describimos en este aviso. Protegeremos su información médica y la mantendremos en privado. Esta protección se aplica a toda la información médica que tenemos de usted, no importa cuándo ni en dónde haya recibido o buscado los servicios. No le diremos a nadie que usted buscó, recibe o alguna vez recibió servicios del _____, a menos que la ley nos permita divulgar esa información.
- ★ Le pediremos su permiso (autorización o consentimiento) por escrito para usar o divulgar su información médica. Hay veces cuando podemos usar o divulgar su información médica sin su permiso, como se explica en este aviso. Si nos da permiso para usar o divulgar su información médica, puede negarlo (revocarlo) en cualquier momento. Si revoca el permiso, no tendremos ninguna responsabilidad legal por haber usado o divulgado su información médica antes de saber que usted había revocado el permiso. Para revocar el permiso, envíe una declaración por escrito, firmada por usted, al centro del _____ donde dio el permiso, con la fecha y el propósito del permiso y una declaración de que lo quiere revocar.
- ★ Se requiere que le demos este aviso de nuestras obligaciones legales y normas sobre la privacidad, y tenemos que cumplir con lo que dice el aviso. Podemos cambiar el contenido de este aviso, y, si lo hacemos, distribuiremos copias del nuevo aviso en nuestros centros y en nuestro sitio en la Red, _____. El nuevo aviso se aplicará a toda la información médica que tenemos, no importa cuando la obtuvimos o la creamos.
- ★ Nuestros empleados deben proteger su información médica privada como parte de las funciones de su trabajo. No les permitimos a nuestros empleados ver su información médica a menos que la necesiten en el desempeño de su trabajo. Sancionaremos al empleado que no proteja su información médica privada.
- ★ No divulgaremos información de usted relacionada con el VIH o el SIDA sin su permiso específico por escrito, a menos que la ley nos permita divulgar la información.
- ★ Si también está en tratamiento para el abuso de alcohol o drogas, sus expedientes están protegidos por la ley federal y las regulaciones que se encuentran en el Código de Regulaciones Federales, Título 42, Parte 2. La violación de estas leyes que protegen los expedientes sobre el tratamiento del abuso de alcohol o drogas es un delito, y las posibles violaciones se pueden informar a las autoridades adecuadas de acuerdo con las regulaciones federales. La ley federal no protege la información sobre un delito que usted cometió en el _____ o en contra de cualquier empleado del _____ o sobre la amenaza de cometer tal delito. Las leyes y regulaciones federales no protegen la información sobre posible maltrato o descuido de niños ni impiden denuncias bajo la ley estatal a las autoridades estatales o locales adecuadas.

Su derecho a privacidad en _____

- ★ Usted puede ver u obtener una copia de la información médica que tengamos sobre usted. Hay razones por las cuales no le permitimos ver u obtener una copia de su información médica, y si le negamos su solicitud, le diremos por qué. Puede apelar nuestra decisión en algunas situaciones. Puede optar por recibir un resumen de su información médica en vez de una copia. Si quiere un resumen o una copia de su información médica, es posible que tenga que pagar una tarifa razonable para obtenerlo.
- ★ Si cree que la información está incorrecta, puede pedir que la corrijamos. No destruiremos ni cambiaremos nuestros expedientes, pero añadiremos la información correcta a los expedientes y anotaremos en ellos que usted nos dio la información.
- ★ Puede obtener una lista de cuantas veces hemos dado información médica sobre usted a otras personas en los últimos seis años. La lista no incluye información divulgada para tratamiento, pago, gestiones de la atención médica, seguridad nacional, cumplimiento de la ley ni cuando divulgamos la información con su permiso. La lista no incluirá divulgaciones hechas antes del 14 de abril de 2003. Puede obtener una lista por año sin costo alguno.
- ★ Puede pedir que limitemos algunas de las maneras en que usamos o divulgamos su información médica. Consideraremos su petición, pero la ley no nos obliga a aceptarla. Si la aceptamos, lo pondremos por escrito y lo cumpliremos, excepto en casos de emergencia. No podemos aceptar limitar el uso o la divulgación de la información que se permite por ley.
- ★ Puede pedir que nos comuniquemos con usted en un lugar diferente o de alguna manera distinta. Aceptaremos su petición siempre y cuando sea razonable.
- ★ Puede obtener una copia de este aviso cuando la pida.

Tratamiento, pago y administración de la atención médica

Podemos usar o divulgar su información médica para proveer le atención médica, para obtener el pago de la atención médica o para nuestra administración de la atención médica.

La información médica sobre usted se puede intercambiar, sin su permiso, entre centros del MHMR, autoridades locales de la salud mental o el retraso mental, centros de MHMR en la comunidad y contratistas de los servicios de salud mental y retraso mental, con el propósito de tratamiento, pago o administración de la atención médica.

Tratamiento. Podemos usar o divulgar su información médica para proporcionar, coordinar o administrar la atención médica y los servicios relacionados. Esto incluye prestarle atención médica a usted, consultar a otro proveedor médico sobre usted y enviarle a otro proveedor de atención médica. Por ejemplo, _____. También podemos comunicarnos con usted, a menos que nos pida que no lo hagamos, para recordarle de una cita o para ofrecerle tratamientos alternativos u otra información relacionada con la salud que le podría interesar.

Pago. Podemos usar o divulgar su información médica para obtener el pago por la atención médica recibida o para proporcionarle beneficios bajo un plan de salud, como el programa de Medicaid. Por ejemplo, _____.

Administración de la atención médica. Podemos usar o divulgar su información médica para la administración de la atención médica.

- Actividades que mejoran la atención médica, los programas de evaluación y la creación de procedimientos;
- Administración de casos y coordinación de servicios;
- Revisión de la competencia, la preparación y el desempeño de los profesionales de la atención médica y de otros;
- Programas de entrenamiento y resolución de quejas internas;
- Actividades de acreditación, certificación, expedición de licencias o verificación de referencias;
- Revisiones médicas, servicios legales o funciones de auditoría; y
- Planeación y administración de negocios o administración general.

Por ejemplo, _____.

A menos que esté en tratamiento para el abuso de alcohol o drogas, el _____ tiene permiso para usar o divulgar su información médica sin su permiso para los siguientes propósitos.

- ★ **Exigencias de la ley.** Podemos usar o divulgar su información médica según exige la ley estatal o federal.
- ★ **Denuncias de posible maltrato o descuido de niños.** Podemos divulgar su información médica a una autoridad del gobierno si es necesario para denunciar el maltrato o descuido de un niño.
- ★ **Amenaza grave a la salud o la seguridad.** Podemos usar o divulgar su información médica al personal médico, autoridad policial o judicial si usted u otra persona están en peligro y la información es necesaria para evitar el daño físico.
- ★ **Estudios.** Podemos usar o divulgar su información médica si un consejo de administración de estudios dice que se puede usar para un estudio, o si la información que lo identifique a usted se quita de la información médica. La información que lo identifique a usted se mantendrá en reserva.
- ★ **A una autoridad gubernamental se informa que usted es víctima del maltrato.** Podemos divulgar su información médica a una persona legalmente autorizada para investigar una denuncia de que a usted le han maltratado, desatendido, o le han negado sus derechos.
- ★ **Actividades de supervisión relacionadas con la salud y la salud pública.** Divulgaremos su información médica cuando se nos exija recopilar información sobre enfermedades o lesiones, para estudios de salud pública o para informar sobre estadísticas demográficas.
- ★ **Cumplimiento de requisitos legales.** Podemos divulgar su información médica a un empleado o agente de un doctor u otro profesional que lo atienda, para cumplir con los requisitos legales, de expedición de licencias o de acreditación, siempre y cuando la información se proteja y no se divulgue para ningún otro propósito.
- ★ **Propósitos relacionados con la muerte.** Si se muere, podemos divulgar información médica sobre usted a su representante personal y al examinador médico o al funcionario encargado de investigar su muerte, para identificarlo a usted o para determinar la causa de muerte. Nosotros podemos divulgar información acerca de usted para propósitos funerarios, incluyendo inscripciones en la lápida, a menos que usted nos diga que no.
- ★ **A un correccional.** Si está bajo la custodia de un correccional, podemos divulgar su información médica a la correccional para poder proporcionarle a usted atención médica.
- ★ **Si usted esta dentro del sistema de justicia criminal,** nosotros podemos divulgar su información médica a otras agencias envueltas en su tratamiento, rehabilitación, ó supervisión.
- ★ **Para localizarlo si se desaparece del centro.** Podemos divulgar alguna información sobre usted a las autoridades policiales y judiciales para que lo puedan localizar y devolver al centro si se desapareció.
- ★ **Programas de beneficios del gobierno.** Podemos usar o divulgar su información médica cuando sea necesario para administrar un programa de beneficios del gobierno, como Medicaid.
- ★ **A su representante legalmente autorizado (LAR).** Podemos compartir su información médica con una persona la ley lo permita para representar sus intereses.
- ★ **Si recibe servicios para el retraso mental,** podemos dar información médica sobre su estado físico y mental actual a sus padres, tutor, parientes o amigos, de acuerdo con el Persons with Mental Retardation Act, a menos que usted nos diga que no.
- ★ **Procesos judiciales y administrativos.** Podemos divulgar su información médica en cualquier proceso penal o civil si un juez administrativo o de la corte ha dictado una orden o citación que exige que la divulguemos. Algunos tipos de procesos administrativos o de la corte en que podemos divulgar su información médica son:
 - **procesos para su internación involuntaria** para tratamiento o servicios por orden de la corte.
 - **exámenes por orden de la corte** por un problema o trastorno mental o emocional.
 - **procesos relacionados con el maltrato o descuido** de una persona que vive en una institución.
 - **procesos para revocar la licencia** contra un doctor u otro profesional.
- ★ **Por seguridad nacional.** Nosotros divulgaremos su información médica para seguridad nacional y actividades de inteligencia, y para protección del Presidente de Estados Unidos.
- ★ **Secretaría de Salud y Servicios Humanos.** Tenemos que divulgar su información médica al Departamento de Salud y Servicios Humanos de EE.UU. cuando la piden para hacer cumplir las leyes que protejen la privacidad.

Si está bajo tratamiento para el abuso de alcohol o drogas, el _____ no informará sin su permiso por escrito, a ninguna persona sin autorización fuera del _____ que usted ha sido internado en un centro del _____ o que está bajo tratamiento para el abuso de alcohol o drogas. No divulgaremos ninguna información que lo identifique a usted como consumidor de alcohol, drogas u otras sustancias, a menos que lo permita la ley.

El _____ sólo puede divulgar información sobre su tratamiento por el abuso de alcohol o drogas sin su permiso en las siguientes situaciones:

- ★ de conformidad con una orden especial de la corte que cumpla con el Código de Regulaciones Federales 42, Parte 2, Subparte E;
- ★ al personal médico en una emergencia médica;
- ★ al personal capacitado para estudio, auditoría o evaluación de programas;
- ★ para denunciar el posible maltrato o descuido de niños;
- ★ a Advocacy, Inc. o al Departamento de Servicios de Regulación y Protección de Texas, según lo permita la ley, para investigar una denuncia de que a usted lo han maltrato o le han negado sus derechos.

La ley federal y estatal prohíbe que terceros divulguen, sin su permiso, información sobre el tratamiento del abuso de alcohol o drogas.

Las leyes Fedrales prohíben el uso de cualquier información sobre el tratamiento del abuso de alcohol ó drogas para investigar ó enjuiciar ilegalmente a cualquier paciente con problemas de abuso de alcohol ó drogas.

PROCESO DE QUEJAS:

Si cree que el _____ ha violado su derecho a la privacidad, tiene el derecho de presentar una queja. Puede quejarse a:

También puede presentar una queja ante:

TDMHMR Consumer Services and
 Rights Protection/Ombudsman Office
 P.O. Box 12668
 Austin, TX 78711
 (512) 206-5670
 (800) 252-8154 (gratis)

Region VI, Office for Civil Rights
 U.S. Department of Health and Human Services
 1301 Young Street, Suite 1169
 Dallas, TX 75202
 (214) 767-4056
 (214) 767-8940 (TDD)
 (800) 368-1019 (toll free OCR Hotline)

Tiene que presentar la queja dentro de los 180 días de la fecha cuando supo o debería haber sabido del evento que usted cree violó su derecho a la privacidad.

Para presentar una queja en contra de un programa de tratamiento del abuso de alcohol o drogas, comuníquese con la oficina del U.S. Attorney del distrito judicial en el que ocurrió la violación. Para encontrar esta oficina, consulte las páginas azules del directorio telefónico.

El _____ no tomará represalias en su contra por presentar una queja.

Para más información:

AVISO DE NORMAS SOBRE LA PRIVACIDAD
 Ley de Responsabilidad y Traslado de Seguros
 Médicos de 1996 (HIPAA) y Ley de Prevención,
 Tratamiento y Rehabilitación del Abuso de Drogas



**ESTE AVISO DESCRIBE
 CÓMO SE PUEDE USAR Y DIVULGAR LA INFORMACIÓN MÉDICA SOBRE
 USTED Y CÓMO USTED PUEDE TENER ACCESO A ELLA.
 FAVOR DE LEERLO CUIDADOSAMENTE.**

Cuando usted recibe tratamiento o beneficios (tales como Medicaid) del Departamento de Salud Mental y Retraso Mental de Texas (MHMR), obtenemos o creamos información médica sobre usted. La información médica puede ser, entre otras, información que tiene que ver con (1) su salud o su estado físico o mental pasado, actual o futuro; (2) la atención médica que usted recibe; y (3) el pago pasado, actual o futuro de su atención médica.

El siguiente aviso le informa sobre nuestra obligación de proteger su información médica, su derecho a la privacidad y cómo podemos usar o divulgar su información médica.

Obligaciones del MHMR:

- ★ La ley nos exige que protejamos su información médica privada. Esto quiere decir que no usaremos ni permitiremos que otras personas vean su información médica sin su permiso, excepto de las maneras que describimos en este aviso. Protegeremos su información médica y la mantendremos en privado. Esta protección se aplica a toda la información médica que tenemos de usted, no importa cuándo ni en dónde haya recibido o buscado los servicios. Cuando usted esté en un centro de MHMR, no permitiremos que ninguna persona sin autorización lo entreviste, le tome fotos, lo filme ni lo grabe sin su permiso por escrito. No le diremos a nadie que usted buscó, recibe o alguna vez recibió servicios del MHMR, a menos que la ley nos permita divulgar esa información.
- ★ Le pediremos su permiso (autorización o consentimiento) por escrito para usar o divulgar su información médica. Hay veces cuando podemos usar o divulgar su información médica sin su permiso, como se explica en este aviso. Si nos da permiso para usar o divulgar su información médica, puede negarlo (revocarlo) en cualquier momento. Si revoca el permiso, no tendremos ninguna responsabilidad legal por haber usado o divulgado su información médica antes de saber que usted había revocado el permiso. Para revocar el permiso, envíe una declaración por escrito, firmada por usted, al centro del MHMR donde dio el permiso, con la fecha y el propósito del permiso y una declaración de que lo quiere revocar.
- ★ Se requiere que le demos este aviso de nuestras obligaciones legales y normas sobre la privacidad, y tenemos que cumplir con lo que dice el aviso. Podemos cambiar el contenido de este aviso, y, si lo hacemos, distribuiremos copias del nuevo aviso en nuestros centros y en nuestro sitio en la Red, www.mhmr.state.tx.us. El nuevo aviso se aplicará a toda la información médica que tenemos, no importa cuando la obtuvimos o la creamos.
- ★ Nuestros empleados deben proteger su información médica privada como parte de las funciones de su trabajo. No les permitimos a nuestros empleados ver su información médica a menos que la necesiten en el desempeño de su trabajo. Sancionaremos al empleado que no proteja su información médica privada.
- ★ No divulgaremos información de usted relacionada con el VIH o el SIDA sin su permiso específico por escrito, a menos que la ley nos permita divulgar la información.
- ★ Si también está en tratamiento para el abuso de alcohol o drogas, sus expedientes están protegidos por la ley federal y las regulaciones que se encuentran en el Código de Regulaciones Federales, Título 42, Parte 2. La violación de estas leyes que protegen los expedientes sobre el tratamiento del abuso de alcohol o drogas es un delito, y las posibles violaciones se pueden informar a las autoridades adecuadas de acuerdo con las regulaciones federales. La ley federal no protege la información sobre un delito que usted cometió en el MHMR o en contra de cualquier empleado del MHMR o sobre la amenaza de cometer tal delito. Las leyes y regulaciones federales no protegen la información sobre posible maltrato o descuido de niños ni impiden denuncias bajo la ley estatal a las autoridades estatales o locales adecuadas.

Su derecho a privacidad en MHMR

- ★ Usted puede ver u obtener una copia de la información médica que tengamos sobre usted. Hay razones por las cuales no le permitimos ver u obtener una copia de su información médica, y si le negamos su solicitud, le diremos por qué. Puede apelar nuestra decisión en algunas situaciones. Puede optar por recibir un resumen de su información médica en vez de una copia. Si quiere un resumen o una copia de su información médica, es posible que tenga que pagar una tarifa razonable para obtenerlo.
- ★ Si cree que la información está incorrecta, puede pedir que la corrijamos. No destruiremos ni cambiaremos nuestros expedientes, pero añadiremos la información correcta a los expedientes y anotaremos en ellos que usted nos dio la información.
- ★ Puede obtener una lista de cuantas veces hemos dado información médica sobre usted a otras personas en los últimos seis años. La lista no incluye información divulgada para tratamiento, pago, gestiones de la atención médica, seguridad nacional, cumplimiento de la ley ni cuando divulgamos la información con su permiso. La lista no incluirá divulgaciones hechas antes del 14 de abril de 2003. Puede obtener una lista por año sin costo alguno.
- ★ Puede pedir que limitemos algunas de las maneras en que usamos o divulgamos su información médica. Consideraremos su petición, pero la ley no nos obliga a aceptarla. Si la aceptamos, lo pondremos por escrito y lo cumpliremos, excepto en casos de emergencia. No podemos aceptar limitar el uso o la divulgación de la información que se permite por ley.
- ★ Puede pedir que nos comuniquemos con usted en un lugar diferente o de alguna manera distinta. Aceptaremos su petición siempre y cuando sea razonable.
- ★ Puede obtener una copia de este aviso cuando la pida.

Tratamiento, pago y administración de la atención médica

Podemos usar o divulgar su información médica para proveer la atención médica, para obtener el pago de la atención médica o para nuestra administración de la atención médica.

La información médica sobre usted se puede intercambiar, sin su permiso, entre centros del MHMR, autoridades locales de la salud mental o el retraso mental, centros de MHMR en la comunidad y contratistas de los servicios de salud mental y retraso mental, con el propósito de tratamiento, pago o administración de la atención médica.

Tratamiento. Podemos usar o divulgar su información médica para proporcionar, coordinar o administrar la atención médica y los servicios relacionados. Esto incluye prestarle atención médica a usted, consultar a otro proveedor médico sobre usted y enviarle a otro proveedor de atención médica. Por ejemplo, podemos usar su información médica para recetarle algún medicamento. También podemos comunicarnos con usted, a menos que nos pida que no lo hagamos, para recordarle de una cita o para ofrecerle tratamientos alternativos u otra información relacionada con la salud que le podría interesar.

Pago. Podemos usar o divulgar su información médica para obtener el pago por la atención médica recibida o para proporcionarle beneficios bajo un plan de salud, como el programa de Medicaid. Por ejemplo, podemos usar su información médica para cobrarle a su compañía de seguros la atención médica que usted recibió.

Aviso a solicitantes y beneficiarios de asistencia financiera o de pagos bajo un programa federal de beneficios: cualquier información que nos dé está sujeta a verificación por medio de programas de comparación de datos.

Administración de la atención médica. Podemos usar o divulgar su información médica para la administración de la atención médica.

- Actividades que mejoran la atención médica, los programas de evaluación y la creación de procedimientos;
- Administración de casos y coordinación de servicios;
- Revisión de la competencia, la preparación y el desempeño de los profesionales de la atención médica y de otros;
- Programas de entrenamiento y resolución de quejas internas;
- Actividades de acreditación, certificación, expedición de licencias o verificación de referencias;
- Revisión médica, servicios legales o funciones de auditoría; y
- Planeación y administración de negocios o administración general.

Por ejemplo, podemos usar su información médica para crear procedimientos para prestar atención médica a personas en nuestros centros.

A menos que esté en tratamiento para el abuso de alcohol o drogas, el MHMR tiene permiso para usar o divulgar su información médica sin su permiso para los siguientes propósitos.

- ★ **Exigencias de la ley.** Podemos usar o divulgar su información médica según exige la ley estatal o federal.
- ★ **Denuncias de posible maltrato o descuido de niños.** Podemos divulgar su información médica a una autoridad del gobierno si es necesario para denunciar el maltrato o descuido de un niño.
- ★ **Amenaza grave a la salud o la seguridad.** Podemos usar o divulgar su información médica al personal médico, autoridad policial o judicial si usted u otra persona están en peligro y la información es necesaria para evitar el daño físico.
- ★ **Estudios.** Podemos usar o divulgar su información médica si un consejo de administración de estudios dice que se puede usar para un estudio, o si la información que lo identifique a usted se quita de la información médica. La información que lo identifique a usted se mantendrá en reserva.
- ★ **A una autoridad gubernamental se informa que usted es víctima del maltrato.** Podemos divulgar su información médica a una persona legalmente autorizada para investigar una denuncia de que a usted le han maltratado, desatendido, o le han negado sus derechos.
- ★ **Actividades de supervisión relacionadas con la salud y la salud pública.** Divulgaremos su información médica cuando se nos exija recopilar información sobre enfermedades o lesiones, para estudios de salud pública o para informar sobre estadísticas demográficas.
- ★ **Cumplimiento de requisitos legales.** Podemos divulgar su información médica a un empleado o agente de un doctor u otro profesional que lo atienda, para cumplir con los requisitos legales, de expedición de licencias o de acreditación, siempre y cuando la información se proteja y no se divulgue para ningún otro propósito.
- ★ **Propósitos relacionados con la muerte.** Si se muere, podemos divulgar información médica sobre usted a su representante personal y al examinador médico o al funcionario encargado de investigar su muerte, para identificarlo a usted o para determinar la causa de muerte. Nosotros podemos divulgar información acerca de usted para propósitos funerarios, incluyendo inscripciones en la lápida, a menos que usted nos diga que no.
- ★ **A un correccional.** Si está bajo la custodia de un correccional, podemos divulgar su información médica a la correccional para poder proporcionarle a usted atención médica.
- ★ **Si usted esta dentro del sistema de justicia criminal,** nosotros podemos divulgar su información médica a otras agencias envueltas en su tratamiento, rehabilitación, ó supervisión.
- ★ **Para localizarlo si se desaparece del centro.** Podemos divulgar alguna información sobre usted a las autoridades policiales y judiciales para que lo puedan localizar y devolver al centro si se desapareció.
- ★ **Programas de beneficios del gobierno.** Podemos usar o divulgar su información médica cuando sea necesario para administrar un programa de beneficios del gobierno, como Medicaid.
- ★ **A su representante legalmente autorizado (LAR).** Podemos compartir su información médica con una persona la ley lo permita para representar sus intereses.
- ★ **Si recibe servicios para el retraso mental,** podemos dar información médica sobre su estado físico y mental actual a sus padres, tutor, parientes o amigos, de acuerdo con el Persons with Mental Retardation Act, a menos que usted nos diga que no.
- ★ **Procesos judiciales y administrativos.** Podemos divulgar su información médica en cualquier proceso penal o civil si un juez administrativo o de la corte ha dictado una orden o citación que exige que la divulguemos. Algunos tipos de procesos administrativos o de la corte en que podemos divulgar su información médica son:
 - **procesos para su internación involuntaria** para tratamiento o servicios por orden de la corte.
 - **exámenes por orden de la corte** por un problema o trastorno mental o emocional.
 - **procesos relacionados con el maltrato o descuido** de una persona que vive en una institución.
 - **procesos para revocar la licencia** contra un doctor u otro profesional.
- ★ **Por seguridad nacional.** Nosotros divulgaremos su información médica para seguridad nacional y actividades de inteligencia, y para protección del Presidente de Estados Unidos.
- ★ **Secretaría de Salud y Servicios Humanos.** Tenemos que divulgar su información médica al Departamento de Salud y Servicios Humanos de EE.UU. cuando la piden para hacer cumplir las leyes que protejen la privacidad.

Si está bajo tratamiento para el abuso de alcohol o drogas, el MHMR no informará sin su permiso por escrito, a ninguna persona sin autorización fuera del MHMR que usted ha sido internado en un centro del MHMR o que está bajo tratamiento para el abuso de alcohol o drogas. No divulgaremos ninguna información que lo identifique a usted como consumidor de alcohol, drogas u otras sustancias, a menos que lo permita la ley.

El MHMR sólo puede divulgar información sobre su tratamiento por el abuso de alcohol o drogas sin su permiso en las siguientes situaciones:

- ★ de conformidad con una orden especial de la corte que cumpla con el Código de Regulaciones Federales 42, Parte 2, Subparte E;
- ★ al personal médico en una emergencia médica;
- ★ al personal capacitado para estudio, auditoría o evaluación de programas;
- ★ para denunciar el posible maltrato o descuido de niños;
- ★ a Advocacy, Inc. o al Departamento de Servicios de Regulación y Protección de Texas, según lo permita la ley, para investigar una denuncia de que a usted lo han maltrato o le han negado sus derechos.

La ley federal y estatal prohíbe que terceros divulguen, sin su permiso, información sobre el tratamiento del abuso de alcohol o drogas.

Las leyes Fedrales prohíben el uso de cualquier información sobre el tratamiento del abuso de alcohol ó drogas para investigar ó enjuiciar ilegalmente a cualquier paciente con problemas de abuso de alcohol ó drogas.

PROCESO DE QUEJAS:

Si cree que el MHMR ha violado su derecho a la privacidad, tiene el derecho de presentar una queja. Puede quejarse a:

TDMHMR Consumer Services and Rights Protection/Ombudsman Office
(512) 206-5670 o (800) 252-8154 (gratis)
P.O. Box 12668
Austin, TX 78711

También puede presentar una queja ante:

Region VI, Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
(214) 767-4056
(214) 767-8940 (TDD)
(800) 368-1019 (gratis)

Tiene que presentar la queja dentro de los 180 días de la fecha cuando supo o debería haber sabido del evento que usted cree violó su derecho a la privacidad.

Para presentar una queja en contra de un programa de tratamiento del abuso de alcohol o drogas, comuníquese con la oficina del U.S. Attorney del distrito judicial en el que ocurrió la violación. Para encontrar esta oficina, consulte las páginas azules del directorio telefónico.

El MHMR no tomará represalias en su contra por presentar una queja.

Para más información:

llame al MHMR Privacy Officer:

- ★ al (512) 454-3761 ó al 1 (888) 404-1511 (gratis);
- ★ escriba a Box 12668, Austin, Texas 78711-2548; o
- ★ por medio de Internet al privacyofficer@mhmr.state.tx.us

**Autorización para Divulgar, Usar ó
Recibir Información Médica Protegida**

Exhibit A. 414-A
Attachment EE (Spanish)



(Nota: Para individuos que reciben tratamiento por el abuso de alcohol y drogas, **esta forma sirve como consentimiento requerido por 42 CFR §2.31.**)

Usted tiene el derecho a negarse a firmar esta autorización. TDMHMR no le negará tratamiento, beneficios de Medicaid, ó tramites de pago si usted se niega a firmar esta autorización. Usted recibirá una copia de esta autorización firmada.

Nombre del individuo: _____ No. de caso: _____ FDN: _____

Yo autorizo al personal designado de _____
(nombre del centro)

a divulgar/usar/recibir la siguiente información médica protegida de mi: _____

(descripción específica del tipo de información, incluyendo el período de tiempo)

El personal designado puede revelar a/recibir de: _____
(nombre de la persona, organización, ó centro)

La divulgación/uso es para el/los siguiente(s) proposito(s):

- _____ para coordinar mi planeamiento/localidad al ser dado de alta _____ a mi petición
- _____ para asistir en necesidades de educación especial _____ para asistir en fondos adicionales
- _____ para discutir con mi familia el cuidado y tratamiento que recibo
- _____ otro: _____

Tambien autorizo la divulgación/uso/recibo de mi información médica relacionada a:

- VIA/SIDA
- tratamiento para el abuso de alcohol y drogas

Nota: Si esta autorizando información divulgada, entonces, excluyendo información relacionada al tratamiento para el abuso de alcohol y drogas, hay posibilidad que información decrita en esta autorización sea re-divulgada por el destinatario. Si esta información es re-divulgada, entonces ya no esta protegida por las leyes de privacidad médica.

Nota: Si usted esta firmando como padre/guardián/tutor de un menor ó como tutor de un adulto, la información divulgada/usada/recibida puede contener referencias acerca de usted ó su familia.

Usted tiene derecho a revocar este consentimiento. Para revocar este consentimiento, usted debe proporcionar una declaración por escrito, firmada por usted, a la organización ó centro donde dió su consentimiento (identificado arriba), el cual provee la fecha de el consentimiento y su intento de revocarlo. Su revocación será efectiva en la fecha que sea recibida por la organización/centro, excluyendo al grado que la organización/centro ya haya procedido a su autorización de usar ó divulgar su información médica tal como se describe en el Aviso del Ejercicio de la Privacidad.

A menos que esta autorización sea revocada previamente, esta expirará el: _____
(fecha, evento, ó condición de expiración)

Firma del individuo _____ Fecha _____

Firma del representante, si alguno _____ Relación del representante con el individuo _____ Fecha _____

Petición para Medidas Relacionadas a Información Médica Protegida

Exhibit A, 414-A
Attachment FF (Spanish)



Nombre del individuo: _____ NSS: _____ FDN: _____

Yo solicito que _____
(nombre del centro)

Me proporcione:

- _____ un informe de mi información médica divulgada durante el periodo de tiempo descrito abajo
- _____ una copia de mi información médica durante el periodo de tiempo descrito abajo **[posible cuota]**
- _____ acceso a revisar mi información médica durante el periodo de tiempo descrito abajo
- _____ un resumen de mi información médica durante el periodo de tiempo descrito abajo **[posible cuota]**

periodo de tiempo: _____ a _____

Opcional: Copias ó acceso a mi información médica es para el siguiente propósito:

- _____ Para asistir una evaluación de incapacidad _____ Para asistir a mi proveedor de cuidado médico
- _____ Para asistir en otra evaluación y tratamiento _____ Para asistir en necesidades de educación especial
- _____ Otro: _____

Corrija mi información médica como se indica : [por favor indique si páginas adicionales son incluídas]

No divulgue mi información médica a las siguientes personas u organizaciones:

_____ TDMHMR acepta la petición _____ TDMHMR no acepta la petición

No se comunique conmigo de la siguiente forma ó al siguiente lugar:

Comuinquese conmigo de la siguiente forma ó al siguiente lugar:

Firma del individuo

Fecha

Firma del testigo

Fecha