

Privacy, Security, DHS and You – Part 2

SECURE IT!

Consider your:

-  **Conversations**
Who - What - Where
-  **Computer**
Position - Password - Protection
-  **Copies**
Fax machines - Copiers - Printers

Presented by:
Department of Human Services
Information Security Office

Introduction

- 1. This training is a sequel to the New Employee Privacy/Security Computer Based Training (Privacy, Security, DHS and YOU-Part 1).**
- 2. This session is designated for those new DHS employees, volunteers, employees affiliated with DHS through contract, or others who work in areas where Clients are served, or in situations where handling confidential Client information is routine.**
- 3. If you have not taken module one (Privacy, Security, DHS and You – Part 1), please close out of this session take the first .**

PLEASE NOTE:

- This training is focused on how requirements for the Federal HIPAA Privacy Rule were incorporated into DHS rules and policies.
- This training **does not cover** all program-specific confidentiality or privacy policies and rules.
- For county partners, local County Counsels may provide additional direction and guidance.
- There are some situations that HIPAA might allow a particular Disclosure of confidential information, and a program-specific policy or rule would not.
- It is imperative that DHS staff working with Client information know and understand both program-specific and HIPAA-influenced policies and rules.

Disclaimer – the full text of the policies is not included, but that individuals are responsible to know what is in the policies.

Link to DHS Privacy Rule OAR 410-014-0000 – 0070 is found in ISO webpage.

Objectives

To understand:

- Proper and effective completion of the Authorization for Use and Disclosure of Confidential Information form.
- Extra privacy protections for sensitive Client records.
- Exceptions to a signed Authorization.
- Client rights afforded by the Federal HIPAA Privacy Rule.
- Designated forms that acknowledge and document Client requests to exercise those rights.
- The meaning of TPO (yes, another acronym to learn).

Chapter: 1

“Clients”

A Word About DHS Clients and Participants

A “Client” is an individual who requests or receives services from the Department of Human Services, often delivered through Counties or other service providers.

Examples of "Clients" include but are not limited to:

- Applicants for or recipients of public assistance
- Minors and adults receiving protective services from DHS
- Oregon Health Plan members or enrollees
- Persons who apply for or are admitted to a state training center or a state hospital or who are committed to the custody of the Department
- Children in the custody of the Department receiving services on a voluntary basis
- Children committed to the custody of DHS.

DHS, its employees, and Business Associates will respect and protect the privacy of records including Protected Health Information about Clients/patients who request or receive services from DHS.

All information on DHS Clients/patients is confidential and must be safeguarded in accordance with DHS privacy policies and rules.

Who is a ‘Participant’?

A “Participant” is an individual participating in DHS population-based services, programs, and activities that serve the general population. They do not receive actual program benefits or direct services that are received by a Client.

An example of a Participant is a person whose birth certificate is recorded with DHS Vital Statistics, or perhaps is the subject of public health studies or some other public health service.

For the simplicity's sake, we will use the term “Client” throughout the rest of the presentation.

Keep in mind, though, that in many situations the material is applicable to Participants as well.

As DHS employees we are entrusted with all manner of Client and Participant personal and health information.

We need to honor that trust by safeguarding their confidential information as if it were our own.

Chapter:2

Authorization

What is 2099?

DHS has a designated form for Clients to sign when giving us Authorization to release or request confidential information about them. It is form #2099, Authorization for Use and Disclosure of Confidential Information.

A signed Authorization is the foundation for disclosing or requesting confidential Client information. There are exceptions, and those will be noted later.

This form meets state and federal requirements. All required fields are included. When filled out completely and correctly it should be accepted by external partners and providers inside and outside of Oregon. County and Business Associate partners are invited to use this form as a template.

What is informed consent?

Informed Consent: Our Clients have the right to be well informed about how their confidential information will be used or disclosed.

It is important to sit with the Client and fully explain the content and the purpose of the form.

Can a Client sign a blank Authorization form?

No, a blank Authorization form cannot be signed in advance.

A Client should be asked to sign an Authorization form only when there is a need for specific information to be disclosed or requested, not in anticipation of a future need.

Instructions to Complete the Authorization Form

The 2099i provides instructions and walks you step by step through filling out the form.

You will find the 2099i on the DHS forms website. (links in the resources page)

It is a 5-page document giving you step-by-step, section-by-section instructions on completing the Authorization form.

Highly Sensitive Records Section:

On the Authorization form- **2099** you will see a place between Sections A and B that references highly sensitive records.

Those records are:

1. HIV/AIDS
2. Mental Health
3. Alcohol/Drug diagnoses, Treatment, referral
4. Genetic Testing

These records are protected by state and federal regulations that are more stringent (stronger) than HIPAA rules.

We are directed by state and federal regulations to specifically inform Clients that they have the option to agree or not agree to disclose these specially protected records.

Client initials are required on the form next to any of the special records, if the Client agrees to their Disclosure. These records require a signed Authorization by Clients for Disclosure.

NOTE: They are restricted from Disclosure under the HIPAA exceptions for Treatment, Payment, and Health Care Operations (TPO). More on TPO to follow.

Can a Client Revoke an Authorization?

A Client can revoke an Authorization at any time.

The revocation must be in writing and signed by the Client, except that substance abuse Treatment patients may orally revoke an Authorization to disclose information obtained from a substance abuse Treatment program.

Revocations will not apply to information already released while the Authorization was valid and in effect.

Can a Client Revoke Authorization by phone?

If a Client phones the office to revoke an Authorization, let the Client know that he/she will have to make that revocation in writing by coming into the office, or by mailing or faxing a signed statement.

If the Client is unwilling or unable to do so,

You must:

- A. Make a notation in the Client file that an oral request has been made to revoke the Authorization
- B. Reference the Client's inability or unwillingness to put the request in writing.
- C. Document that the Authorization in question has been revoked.

Are there Exceptions to a Signed Authorization?

There are many exceptions; too many to list here. Here are just a few examples of situations when a signed Authorization is not required to Use or disclose confidential Client information:

- .When court ordered
- .For Public Health activities
- .When reporting child or adult abuse
- .To avert serious threat to health or safety
- .Emergency medical Treatment
- .Treatment, Payment or Health Care Operations (TPO)

A complete list of exceptions can be found in the DHS privacy rule OAR 410-014-0020 and DHS privacy policy AS-100-03.

Disclosing Information

You will want to become familiar with Minimum Necessary Policy #AS-100-04.

This policy states that DHS will Use and Disclose only the minimum amount of information necessary to provide services and benefits to Clients, and only to the extent provided in DHS policies.

DHS employees must make reasonable efforts to limit the amount of information to the least amount needed to accomplish the intended purpose of the Use, Disclosure, or request.

As always, there are exceptions. Some examples of these exceptions are:

- Disclosures to or requests by a health care provider for Treatment.
 - Disclosures made to the individual about his or her own protected information
 - Uses or Disclosures authorized by the individual that are within the scope of the Authorization
 - Uses or Disclosures that are Required by Law
- (This list of examples is not all inclusive.

See DHS policy AS-100-04 in the ISO page for complete listing of exceptions.

There are occasions that require the request or Disclosure of an entire Client file.

That is allowable only if all of that information is necessary to accomplish the purpose stated on the signed Authorization form.

An example of an exception to policy, individuals with developmental disabilities who are transferring from one county to another, the entire case record must be forwarded to the receiving county.

Chapter:3

TPO

What is TPO?

Treatment, Payment, Health Care Operations (TPO)

As noted, the Federal HIPAA Privacy Rule creates exceptions to a signed Authorization for purposes of TPO. This was done to expedite usual and customary practices in the delivery of health care.

- Health care professionals can consult regarding the care of a patient/Client without a signed Authorization (Treatment).
- Health care professionals can submit a claim without a signed Authorization (Payment).
- Health care professionals and systems can perform functions related to quality assessment and improvement, medical review, legal services, auditing, and many other business functions, without a signed Authorization (Health Care Operations).

Link to Policy #AS-100-03 can be found in the ISO page.

Chapter:4

Clients privacy Rights

What rights do Clients have?

The federal HIPAA Privacy Rule gives Clients certain rights regarding the Use and Disclosure of their Protected Health Information.

It is important to read the DHS Client rights policy.

The information that follows is essentially a summary of the policy, not the full text.

DHS Clients have rights to the following:

What form do Clients need to access their own information?

DHS Clients can request access to their own information using Form #**DHS 2093**

Instructions to Clients and staff are on Form #DHS 2093.

Response timelines are included.

When can DHS deny rights to access information?

DHS has the right to deny that request, or a portion of the request, under the following circumstances:

- If federal law prohibits the Disclosure
- If a portion of the information is Psychotherapy Notes
- The information is subject to the federal Clinical Labs Improvement Amendments of 1988 or exempt pursuant to 42 CFR 493.3(a) (2)
- DHS believes, in good faith, that the information can cause harm to the Client, Participant or to any other person
- The documents are protected by attorney work-product privilege
- A portion of the information is about other people

DHS Clients have rights to the following:

What form do Clients need to receive an accounting of Disclosure DHS has made of their Protected Health Information (PHI)?

Clients can receive an accounting of Disclosures DHS has made of their Protected Health Information using Form #2096

- The request must be made for a time period not to exceed six years preceding the date of the request, and not to precede March 31, 2003
- The accounting will only include health information not previously authorized by the Client for Use or Disclosure
- The accounting will not include information collected, used or disclosed for Treatment, Payment, or Health Care Operations
- The request will be made on form #DHS 2096

DHS Clients have rights to the following:

What form do Clients use to request that DHS takes specific action regarding the use or disclosure of their information?

Clients can request that DHS take specific actions regarding the Use or Disclosure of their information using Form #**DHS 2095**

- Restricting Use of their information while carrying out Treatment, Payment or Health Care Operations activities
- Even if confidentiality laws allow DHS to make a Use or Disclosure of information, a Client has the right to request a restriction on that
- Requests will be made on form #DHS 2095

DHS Clients have rights to the following:

Which form is used to receive DHS Notice of Privacy Practice?

Clients can receive a DHS Notice of Privacy Practices using Form #2090

- Informs Clients about how DHS may Use and/or Disclose their information
- Advises Clients of the actions they might take or ask DHS to take with regard to the Use and/or Disclosure of their information
- Is to be given to all direct health care Clients, with a request that they sign Form #DHS 2092, an Acknowledgement of Receipt
- It is to be mailed to all Oregon Health Plan members
- It is to be made available, and provided upon request, to all other Clients.
- It is to be posted in all offices where Clients are served.

DHS Clients have rights to the following:

Request to receive information from DHS by alternative means or at alternative locations.

- DHS must accommodate reasonable requests by Clients to receive communication by alternative means, such as by mail, email, fax or telephone.
- DHS must accommodate reasonable requests by Clients to receive communication at an alternative location.
- Reasons for this type of request may include a domestic violence situation or the Client may have a relationship with a DHS staff person in a particular office.

DHS Clients have rights to the following:

Can Clients request amends to their health information?

Yes, clients can request amendments to their health information using Form #2094

Please note:

- DHS is not obligated, but must consider the request.
- It is applicable to health information.
- DHS cannot amend records not created by DHS.
- Requests will be made on form #DHS 2094

DHS Clients have rights to the following:

Can Clients file a complaint?

Yes, Clients have the right to submit complaints if they believe that DHS has improperly used or disclosed information about them. They can file the complaint using Form# 2090.

They can file those complaints:

- 1. With the branch office, county program or DHS Business Associate where they are receiving services**
- 2. With the DHS Privacy Program**
- 3. With the DHS Governor's Advocacy Office**
- 4. With the federal Office for Civil Rights**

All of these above processes require the Clients to complete form 2090

Contact information for each of these options is given on the last page of the Notice of Privacy Practices – Form #2090.

What is OCR?

The Office for Civil Rights

The **Office for Civil Rights** is the Federal compliance agency over the **HIPAA Privacy Rule**.

Our Clients have the right to file a formal privacy complaint with them, and they have.

DHS has had to investigate several complaints filed against us. Every time that happens the Department is at risk of having to pay fines and/or having sanctions placed against us.

Federal funding for many of DHS programs is contingent upon compliance with all applicable Federal laws.

Improper Disclosure of confidential Client information puts not only the Client but also the Department at great risk.

You may periodically hear about OCR or read about it in our newsletter.

Summary

As DHS employees we have a tremendous responsibility to serve our Clients well.

We also have a responsibility to maintain their trust by protecting their personal information.

All DHS Client program areas have a Privacy Representative.

If you are not sure who your representative is, contact the Privacy Program at 503-945-5780 or dhsprivacyhelp@state.or.us

Congratulation!!

Go forth and do good.