



ACCOUNTING FOR THE DISCLOSURE OF PHI PROTOCOL

GUIDING PRINCIPLE

We are committed to a culture of recovery throughout our systems of care, in our interactions with one another, and with those persons and families who trust us with their care.

OVERVIEW

- Pursuant the Health Insurance Portability and Accountability Act (HIPAA) of 1996, individuals have the right to receive a written accounting of disclosures of his/her protected health information (PHI) maintained in his/her designated record in the six (6) years prior to the date of which the accounting is requested with a few exceptions.

DEFINITIONS

- **Consumer:** Any individual who has received or is receiving services from DMHSA.
 - In the context of the protocol, when a consumer has a personal representative, the personal representative will fulfill the duties of the consumer in this protocol.
- **Designated Record Set:** A group of records maintained by or for DMHSA that are:
 - The medical records and billing records about consumers maintained by or for DMHSA;
 - The enrollment, payments, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - Used, in whole or in part, by or for DMHSA to make decisions about consumers.
- **Disclosure:** The release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
 - This includes PHI released verbally and as a hard copy.
- **Limited Data Set:** Protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: names, postal address information (other than town or city, State, and zip code), telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers and serial numbers, including license plate numbers, device identifiers and serial numbers, web Universal Resource Locators (URLs), Internet Protocol (IP) address numbers, biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

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- **Protected Health Information (PHI):** Individually identifiable health information that is transmitted or maintained in any form or medium, by a covered entity, health plan or clearinghouse as defined under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Part 160 and 164.
 - **Individually Identifiable Health Information:** Any form, including demographic information, collected from an individual that:
 1. Is created or received by a healthcare provider, health plan, employer, healthcare clearinghouse; and
 2. Related to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual, and
 - a. Identifies the individual, or
 - b. There is reasonable basis to believe that the information can be used to identify the individual.

STANDARDS OF CARE

- Consumers at the Department of Mental Health and Substance Abuse (DMHSA) have the right to receive a list of disclosures of PHI made by DMHSA in the six (6) years prior to the date on which the accounting is requested. In order to comply with this requirement, DMHSA will track disclosures of PHI, **except** for disclosures made:
 - To carry out treatment, payment and health care operations
 - To a consumer regarding his/her own PHI
 - Pursuant to a signed and valid authorization for release of PHI form
 - For the Inpatient Directory or to persons involved in the consumer's care or other notification purposes
 - For national security or intelligence purposes
 - To correctional institutions or law enforcement officials having lawful custody of an inmate or other individual
 - When temporarily suspended by a law enforcement official or health oversight agency (exception only applies during the period of suspension)
 - As part of a limited data set
 - Incidental to a permissible use or disclosure
 - On or prior to April 14, 2003 (implementation date of HIPAA's Privacy Regulations)
- When requested, the accounting of disclosures shall include:
 - Disclosure to business associates.
 - Disclosure to public health agencies/authorities for the purpose of preventing or controlling disease, injury or disability; for reporting child abuse or neglect; for reporting domestic violence; for reporting births and deaths; for public health investigations and interventions; for reporting disease or infection exposure; to conduct public health surveillance, and if necessary to prevent or lessen a serious and imminent threat to the health or safety of particular person or the general public.

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- Disclosure to an entity subject to the Food and Drug Administration (FDA) for reporting adverse reactions to medications, product defects or biological product deviations; to track products; to enable product recalls repairs or replacements; and to conduct post-marketing surveillance.
 - Disclosure to an employer only includes PHI specific to a work-related illness or injury and for requirements of the employer to comply with its obligations under federal or state occupational safety and health laws.
 - Disclosure to health oversight agencies for government benefits program eligibility; to determine compliance with civil rights laws; during the course of audits, civil, administrative or criminal investigations, inspections, or other proceedings.
 - Disclosure to judicial and administrative proceedings in response to court or administrative order; court ordered warrant; in response to a subpoena; in response to a discovery request; or other lawful processes by someone else involved in a dispute.
 - Disclosures to law enforcement officials for the purpose of locating a suspect, fugitive, material witness or missing person; about a consumer who is or is suspected to be a victim of a crime; regarding crimes on DMHSA property; regarding suspicious deaths; in response to an administrative request; civil investigative demand or grand jury subpoena; and for the purpose of averting a serious threat to health or safety.
 - Disclosures about victims of abuse, neglect or domestic abuse to a government agency authorized by law to receive reports of abuse, neglect or domestic violence.
 - Disclosure to deceased persons' PHI to the coroner, medical examiner or funeral directors and to organ procurement organizations.
 - Disclosure for research only if disclosure was made without an authorization as permitted by the Privacy Rule.
 - Disclosure for military and/or veteran's administration authorities for specialized government functions to armed forces personnel for military purposes; to authorized federal officials for the protection of the President and other Federal officials; and to other government agencies.
 - Disclosure for worker's compensation as authorized by and to the extent necessary to comply with the law.
- A request for an accounting must be made in writing.

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- Medical records personnel shall manage requests for accountings of PHI.
- Medical records personnel shall maintain, for each consumer, a continuous record on the Accounting Record of Disclosures of Protected Health Information Log. Each disclosure made by the Department, excluding those disclosures that qualify as an exception shall be recorded on the Log at the time the disclosure is made.
 - Since each consumer is entitled to receive an accounting upon request it is imperative that the log be accurate, complete and up-to-date.

PROTOCOL

Notification of Right:

- Staff shall inform the consumer that he/she has the right to request and receive a list of an accounting of the disclosures of his/her PHI.

Requests:

- If a consumer request for an accounting of the disclosures of his/her PHI, medical records personnel shall provide the consumer with a Request for an Accounting of Disclosures of PHI form.
 - The request must be provided in writing, signed and dated by the consumer or personal representative.
 - A DMHSA professional may assist the consumer in completing the form, if necessary.

Receiving Requests:

- Medical records personnel shall receive the written requests.
 - The request will not be reviewed until the form is completed and signed by the consumer or personal representative.
- Upon receipt of the completed form, medical records personnel will forward the request to the appropriate personnel for processing.

Fulfilling Requests:

- Medical records personnel shall provide the consumer with the written log/accounting of disclosures no later than sixty (60) days after receiving the completed form.
 - If the Department is unable to act on the request for accounting of disclosures within sixty (60) days of receipt of the request, the Department may have one extension of no more than thirty (30) days. Medical records personnel will notify the consumer of the extension, the reason for the extension and the date by which action will be taken.

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Content of the Accounting/Log:

- For each disclosure, excluding those disclosures that qualify as an exception, the accounting will be recorded on the Accounting Record of Disclosure of Protected Health Information Log and include:
 - Date of the disclosure;
 - Name of the entity or person who received the PHI and, if known, the address of such person or entity;
 - A brief description of the PHI that was disclosed; and
 - A brief statement of the purpose of the disclosure that reasonably informs the consumer of the basis for the disclosure; or in instead of such statement, a copy of the authorization for release of PHI form, if any.
- The accounting will include disclosures, excluding those disclosures that qualify as an exception, during the period specified on the request form.
 - The specified period may be up to six (6) years prior to the date of the request.
 - Disclosures made on or before April 14, 2003 will not be included in the accounting.
- If there are multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may provide:
 - The standard accounting information required for the first disclosure during the accounting period;
 - The frequency, periodicity, or number of the disclosures made during the accounting period; and
 - The date of the last such disclosure during the accounting period.

Charging for Request:

- There will not be a fee for the first request for an accounting of disclosures of PHI in any twelve (12) month period.
 - The Department may charge a reasonable, cost-based fee of 1.94/page for each subsequent request by the same person within the twelve (12) month period provided that the Department informs the consumer of the fee prior to fulfilling the request and offers the consumer the chance to withdraw or modify the request to avoid or reduce the fee.
- If applicable, medical records personnel shall explain the fees to the consumer.
- Medical records personnel will notify the consumer (either mail or verbally) of the estimated charges before making copies of the list so the requestor will have an

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opportunity to withdraw or modify the request if the charges are greater than anticipated.

- If the consumer modifies his/her request, the form must be amended and the consumer must sign for the modified request.
- The charges must be paid in cash, with the exact amount since medical records cannot provide change.
- The charges must be paid in full prior to the release of the list.
- DMHSA may waive the fees in special circumstances, such as when a consumer cannot afford to pay, provided there is written verification (i.e., welfare documents, documents indicating appointment of a public defender due to the consumer indigent status, etc.).

Suspending a Consumer's Right to Receive Listing:

- The Department may temporarily suspend a consumer's right to receive a list of times protected health information had been released to a health oversight agency or law enforcement official if the agency or official provides the Department with a written statement that says the consumer is likely to impede the agency's or official's activities. The written statement must specify the time period for which the suspension is required.
 - If the information to temporarily suspend a consumer's right to receive a list of times protected health information had been released to a health oversight agency or law enforcement official is provided verbally, the Department is to:
 - Document the statement made,
 - Name the individual making the statement, and
 - Temporarily suspend the consumer's right to the list of releases.
 - This suspension can be no longer than thirty (30) days unless the Department receives a written request for suspension.

Retention of Form:

- DMHSA will maintain a record of the information required to be included in an accounting, the Request for Accounting of Disclosures of PHI form, and a copy of the Log provided to the consumer. This record shall be retained for six (6) years from the date it was created or the date it was last in effect, whichever is later.

REFERENCE

- HIPAA § 164.528(a)
- HIPAA §164.506
- HIPAA §164.502
- HIPAA §164.508
- HIPAA §164.510
- HIPAA §164.512(k)(2)

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- HIPAA §164.512(k)(5)
- HIPAA §164.514(e)
- HIPAA §164.528(b)
- HIPAA §164.528(c)
- HIPAA §164.528(d)
- HIPAA §164.530(j)

FORMS

- Request for an Account of Disclosures of PHI form
- Accounting Record of Disclosures of Protected Health Information Log

APPROVED:		Date: 
	_____ Wilfred Aflague Director	



Department of Mental Health & Substance Abuse

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REQUEST FOR AN ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

Consumer Last Name		Consumer First Name		Chart Number		Date of Birth	
Consumer's Street Address							
City, State, Zip Code		Phone Number					

1. DATE RANGE

I would like an accounting of all reportable disclosures of my Protected Health Information (PHI) for the following time frame. *Please note, the maximum time frame that can be requested is six (6) years prior to the date of this request.*

From (Month/Year): _____ **To (Month/Year):** _____

2. FEES

There will not be a fee for the first (1st) request for an accounting in any twelve (12) month period. The Department may charge a fee of \$1.94/page for each subsequent request, by the same person, within the twelve (12) month period provided the Department informs you of the fee prior to fulfilling the request and offers you the chance to withdraw or modify the request to avoid or reduce the fee. I understand there is:

No fee for this request.

A fee of \$1.94/page and I wish to proceed. Personnel from medical records will be contacting you shortly to inform you of the exact cost. We will not process your request until you agree to the cost associated with your request and we will not release the information until we receive the full payment. At this time, fees must be paid in cash and the amount of cash must be exact. Medical records personnel do not have the ability to provide change.

3. CONSUMER ACKNOWLEDGEMENT OF CONDITIONS OF ACCOUNTING OF DISCLOSURES

- I understand that, by law, DMHSA is not required to account for disclosures that meet the following criteria and therefore will not be included in the accounting list:
 - The disclosure was necessary to carry out treatment, payment, and health care operations.
 - The disclosure was to the consumer for which the PHI was created or obtained.
 - The disclosure was pursuant to a signed authorization by the consumer or personal representative.
 - The disclosure was for the Department's inpatient directory or to persons involved in my care or other notification purposes.
 - The disclosure was used as part of a limited data set.
 - The disclosure was for national security or intelligence purposes.
 - The disclosure was to a correctional institution.
 - The disclosure was incidental to a permissible use or disclosure
 - The disclosure was temporarily suspended by law enforcement or health oversight agency
- I understand DMHSA must respond to my request within sixty (60) days.

By signing below, I acknowledge I understand the conditions of accounting of disclosures.

REQUEST FOR AN ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

Signature of Consumer or Personal Representative _____
Date

Print Name _____
Personal Representative's Title (e.g., Guardian)

DEPT. MENTAL HEALTH AND SUBSTANCE ABUSE USE ONLY

Date Received by Medical Records Personnel: _____ Rcvr Signature: _____

MEDICAL RECORDS RESPONSIBILITIES (initial appropriate items/lines below)
NOTIFICATION:

- No fee.
- Notified the requestor of the estimated fees on _____ (date).
- Agreed to fee of \$1.94 per page X _____ pages = \$_____.
- Modified request
- Withdrew request [End process]

Medical Records Personnel:	Date:	Time:
Signature:		

PROCESSING:

Processed by: _____ Start date: _____ Date ready for pick-up: _____

Notified consumer, accounting ready for pick-up on _____ (date)

Medical Records Personnel:	Date:	Time:
Signature:		

IF FEE:

Total payment of \$ _____ received on _____ (date) by _____ (receiver).

Medical Records Personnel:	Date:	Time:
Signature:		

RELEASE:

Released by: _____ Date released: _____ ID Provided: _____

Attach a copy of the log to this form.

Medical Records Personnel:	Date:	Time:
Signature:		

→Routing: Original to consumer's chart. Copy to consumer.



Department of Mental Health & Substance Abuse

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ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION LOG

Consumer Last Name	Consumer First Name	Chart Number	Date of Birth
DATE RELEASED/ FREQUENCY:	NAME OF ENTITY/PERSON REQUESTING DISCLOSURE: (Include address, if known)	BRIEF DESCRIPTION OF PHI DISCLOSED: ("H" = Hard-copy "V" = Verbal) <i>EX: complete record, summary, medications, etc.</i>	PURPOSE OF DISCLOSURE: (Refer to attached copy of Authorization for Release of PHI form if line is left blank.) <i>EX: Record request, Subpoena, etc.</i>
		<input type="checkbox"/> H <input type="checkbox"/> V	
		<input type="checkbox"/> H <input type="checkbox"/> V	
		<input type="checkbox"/> H <input type="checkbox"/> V	
		<input type="checkbox"/> H <input type="checkbox"/> V	
		<input type="checkbox"/> H <input type="checkbox"/> V	
		<input type="checkbox"/> H <input type="checkbox"/> V	

[Reportable disclosures include disclosures: required by law, to business associates, to public health agencies, to FDA, to employers/worker's compensation, to health oversight agencies, for judicial and administrative proceedings, for law enforcement purposes, about victims of abuse or neglect of children/vulnerable adults, about decedents to medical examiners/funeral directors, to avert serious threat to health of safety, for special government functions/military, to DHHS, and others outlined in the protocol.]

I certify this is a complete record of all reportable disclosures of the above consumer's protected health information from _____ (month/year) to _____ (month/year).

Released By (Print Name): _____ Date: _____ Time: _____

Signature: _____

→Routing: Original to consumer's chart. Copy to consumer.