

## **DISCLOSURE OF PROTECTED HEALTH INFORMATION TO “REGULATORS” POLICY**

**RESPONSIBILITY:** Designated Attorney or Designee(s), Privacy Official or Designee(s)

### **BACKGROUND:**

Governmental agencies that have the legal authority to oversee parts of the health care system, or government programs that use protected health information (PHI), may receive PHI from Behavioral Health and Health Facilities (BHFF) without the patient’s authorization. This includes WV Department of Health and Human Resources (DHHR), the federal Department of Health and Human Services (including the Centers for Medicare and Medicaid Services and the Office for Civil Rights), state Medicaid agencies, the Office of Sanitation, Office of Health Facilities Licensure and Certification (OHFLAC), state Fire Marshall, Office of the Inspector General, and county health departments.

Some of these disclosures are routine and recur on a regular basis. Once the disclosure has been reviewed and approved under BHFF’s policy regarding routine and recurring requests for protected health information, these disclosures may be made without further approval. See the ROUTINE AND RECURRING REQUESTS FOR AND DISCLOSURES OF PROTECTED HEALTH INFORMATION policy.

Non-routine disclosures to these agencies must be approved by the BHFF Designated Attorney or Designee(s). Federal privacy regulations establish certain requirements that must be considered in deciding whether to approve such a disclosure.

When a patient is the subject of an investigation, this policy provides decision rules to determine whether this policy, or the BHFF policy regarding DISCLOSURES OF PROTECTED HEALTH INFORMATION FOR LAW ENFORCEMENT PURPOSES, is to be followed.

### **POLICY:**

The following establishes the BHFF policy regarding the disclosure of protected health information to regulators without the written authorization of the person to whom the information pertains.

Routine And Recurring Disclosures of protected health information may be made to regulators (see DEFINITIONS) in accordance with the ROUTINE AND RECURRING REQUESTS FOR AND DISCLOSURES OF PROTECTED HEALTH INFORMATION policy. All such disclosures must be reviewed once, to assure compliance with this policy. Any change to the content of the disclosure that would increase the amount of PHI disclosed requires a new review. Such review will be documented, and the documentation will be retained for as long as the disclosure continues to be made on a routine and recurring basis, plus six years or longer if required by state law or regulation.

Non Routine and Non Recurring Disclosures are all other requests to disclose PHI to regulators and must be reviewed on a case-by-case basis by the Designated Attorney or Designee(s), or at his/her option, by the Privacy Official or Designee(s), to assure compliance with this policy and with the REQUESTS FOR, AND DISCLOSURES OF, PROTECTED HEALTH INFORMATION THAT ARE NOT ROUTINE AND RECURRING policy. For each such disclosure to a regulator, the Designated Attorney or Designee(s) or Privacy Official or Designee(s) will determine that the intended recipient has the legal authority to receive the PHI. The Designated Attorney or Designee(s) or Privacy Official or Designee(s) may not authorize the disclosure of PHI if it is not needed for an activity related to the requestor's legal authority and responsibilities. If it is reasonable under the circumstances, the Designated Attorney or Designee(s) or Privacy Official or Designee(s) may rely on the following to verify the identity and authority of a person requesting disclosure of PHI to a regulator:

1. Identity: The requestor presents proof using the following:
  - 1.1. Badge, credentials, other proof of government status
  - 1.2. PHI request on agency letterhead
  - 1.3. Letter on agency letterhead, contract, memorandum of understanding, purchase order or other documentation that the individual who will receive the PHI is a duly authorized agent of the governmental agency or public official under whose authority the PHI is being requested.
2. Authority: The requestor demonstrates authorization to request PHI by offering:
  - 2.1. A written statement of the legal authority under which the PHI is requested
  - 2.2. An oral statement of the legal authority, if a written statement is not practicable
  - 2.3. A warrant, subpoena, order or other legal process issued by a grand jury, or a judicial or administrative tribunal.

**Applicable policy when the patient is the subject of an investigation.**

If:

- (i) The PHI is requested in connection with an investigation or other activity which is not related to health care; and,
- (ii) The individual to whom the PHI pertains is the subject of the investigation or activity,

then the PHI may be disclosed only in accordance with the BHHF policy regarding DISCLOSURES OF PROTECTED HEALTH INFORMATION FOR LAW ENFORCEMENT PURPOSES, and this policy does not apply.

If the investigation or activity is related to health care, the PHI may be disclosed in accordance with this policy, even though the patient is the subject. In this context, a health care related investigation or activity means one that is directly related to:

- (i) The receipt of health care; or,
- (ii) A claim for public health care benefits (such as Medicare or Medicaid benefits); or,
- (iii) Qualification for or receipt of other public benefits when the patient's health is an integral part of such eligibility (such as Social Security disability benefits).

Effective Date: 4/14/03

Dates Revised:



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Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities