

<b>CHELAN-DOUGLAS RSN/PIHP POLICY AND PROCEDURE MANUAL</b>		Chapter:	1.4.2.14
Title:	HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT	Page:	1 of 5
		Date Effective:	April 14, 2003
Subject:	Opportunity to Agree or Object	Date Revised:	October 14, 2011
		Authorizing Signature:	

**AUTHORITY:** Authorizing Source: RCW 70.02 45 CFR 165 (HIPAA)

**SCOPE:** This policy applies to Chelan-Douglas Regional Support Network/Prepaid Inpatient Health Plan (CDRSN/PIHP) and its contractors (agencies/providers), and subcontractors (referred to as contractors or agencies or providers throughout this policy).

**PURPOSE:** The Chelan-Douglas Regional Support Network, in compliance with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for providing consumers with an opportunity to agree or object, in advance of the use or disclosure of PHI to a consumer's next of kin, guardian or conservator regarding death, serious illness or to avert harm or if directly relevant to that individual's involvement with the consumer's care or payment related to the consumer's care.

**DEFINITIONS:** See 1.3.2.0

**POLICY:** The Chelan-Douglas Regional Support Network will inform each consumer through our Notice of Privacy Practices, of his or her right to prevent or restrict us from

1. disclosing PHI about them to persons involved in their care; and
2. notifying persons about their location, general condition, or death.

With regard to consumers who are present and have the capacity to make decisions, PHI may only be disclosed to people involved in their care (meaning relatives, friends, or community support people), if we:

1. notify the consumer in advance of the anticipated disclosure and obtain their agreement to disclose;
2. provide the consumers with the opportunity to object to disclosures of PHI and the consumer does not express an opinion; or
3. can, in the exercise of our professional judgment, infer from the circumstances that the consumer does not object to the disclosure of PHI.

With regard to consumers who are not present or who are incapacitated or in an emergency situation, we will disclose the minimum necessary

PHI as to:

1. their admission to a facility or that they are seriously physically ill to persons involved in the consumer's care or if directly relevant to that individual's involvement with the consumer's care or payment related to the consumer's care.
2. Upon the death of a consumer, his or her next of kin, guardian or conservator, if any, shall be notified.

It will be our policy, when disclosing PHI to persons involved in the consumer's care, to limit disclosures to PHI about the current circumstance. In addition, should the staff believe, in the exercise of their professional judgment, that a disclosure of PHI might cause the patient serious harm, the staff may withhold PHI from the person involved in their care. Care providers should use their professional judgment about the scope of the person's involvement in the consumer's care – both to the length of time of that person's involvement and to the depth of disclosure of PHI that is appropriate in a particular circumstance.

In disaster situations, no individual agreement will be required prior to disclosure of PHI to federal, state, or local agencies involved in disaster relief activities. This policy also applies to any private disaster relief organization that is authorized by law or their charters to assist in disaster relief efforts.

#### PROCEDURE:

1. Disclosures to Person's Involved in an Consumer's Care or for Notification Purposes
  - A. Guardians and Other Legal Custodians
    - 1) At times this organization will have consumers who are not able to direct or make decisions about any or some of their health care. In all cases, the authority of someone else to direct or decide about the health care of a consumer, and to, therefore, have access to the PHI necessary to make decisions or direct care, must be verified by the appropriate documentation. This documentation will outline the authority of the consumer and the limits to that authority. In all cases, this documentation must be reviewed by the Privacy Officer or Counsel, if they do not understand the limits or extent of the authority being granted. In all cases, the decision to disclose and the extent of the disclosures to be made must be carefully and clearly communicated to team members by the Privacy Officer.
    - 2) Any employee who is accessing PHI at the request of an Agent, Guardian, Monitor or State Entity assigned custody should:

- a) Ensure that they clearly understand the limits of the disclosures of PHI that can be made.
  - b) Consult with the Privacy Officer to determine if the disclosure should be made.
- 3) Withholding PHI if a treatment team member believes that, even though a disclosure of PHI is authorized, disclosure of the information will cause harm to the consumer they should:
- a) If the primary staff, make the decision to not disclose and document the decision in the record including the reasons why, in their professional judgment, the PHI was not disclosed.
  - b) If not the primary staff: the team member should consult with the primary staff who will make the decision and follow the procedure in a) above.
- B. Family Members, Partners, and Others Authorized by Consumer to be Involved in Consumer's Care
- 1) Many consumers who are enrolled with the CDRSN choose to have family members, significant others, friends, and other community supports involved in their care on a regular, on-going basis. This is something the CDRSN encourages because it is often beneficial to the consumer's ability to successfully integrate, stay in the community and recover. However, it is important that before any PHI is disclosed to these individuals, we understand the consumer's wishes with regard to these disclosures and we offer them an opportunity to object or agree to the disclosure.
- a) In all cases the PHI disclosed must be limited to the minimum necessary and what is directly relevant to the person's involvement in the current care of the consumer, or for the payment for services delivered to the consumer.
  - b) Staff persons who make disclosures pursuant to this procedure should, in addition to documenting the disclosure, record the nature and the duration of the relationship, if known.
  - c) In all cases the consumer must be offered the opportunity to agree or object to the individual's involvement in a private area. If the staff believes that this involvement will be regular and consistent, they can document the verbal permission of the consumer which should include the date the permission was given by the consumer, and the names of the individuals to whom disclosures can be made. This permission can be given at any time. The form should note if permission has been given to discuss the following information: treatment information, diagnosis, medications, attendance or other information,

which should be listed.

- d) In all cases, before disclosing information to someone involved in the consumer's care, the Privacy Officer should be consulted.
- 2) In some cases the consumer will not want another involved in their care except on a very limited basis or only in a specific circumstance.
- a) In these cases, the consumer must be present to give their permission directly to the CDRSN staff member.
  - b) The employee should take the consumer to a private location and should ask for their agreement or objection and should discuss the limits of the disclosures the consumer wishes to be made.
  - c) Each disclosure made should be documented in the record only if material to the consumer's care. The judgment of the disclosing employee should determine whether or not a disclosure needs to be documented.
- 3) If the consumer has presented as an emergency and:
- a) is not capable, in the judgment of the CDRSN staff, to agree or object, and
  - b) the CDRSN staff believes the disclosure is in the best interests of the consumer, then the disclosure of the minimum necessary PHI can be made to the individual regarding death, serious illness or to avert harm or if directly relevant to that individual's involvement with the consumer's care or payment related to the consumer's care.
  - c) This disclosure should be documented in the record along with the reasons the CDRSN staff believed the disclosure should have been made.
  - d) If the consumer is not present only information regarding the consumer's death, serious illness or to avert harm or if directly relevant to that individual's involvement with the consumer's care or payment related to the consumer's care may be disclosed.
- 4) Then a disclosure of PHI cannot be made.
- 5) In all cases, if the treatment team members or other professionals they have consulted believe that the disclosure of PHI, even if agreed to by the consumer, may cause harm to the consumer or others, they should refuse to make the disclosure.

## 2. Disclosures for Disaster Relief Purposes

- A. Disclosures for notification purposes may be made to a private or public entity charged by law or by charter to assist in disaster relief efforts.

- 1) The PHI needed for notification purposes includes the name, location, and general condition of the consumer.
- 2) The requirements described in 3 above apply in these circumstances unless it is determined that the procedures will interfere with the ability of the relief agency to respond to the emergency situation.
- 3) The decision about whether or not to disclose in these circumstances should be made by the senior staff person on site at each agency location.

SEE ALSO: Privacy notice  
Treatment, Payment, and Health Care Operations  
Authorizations  
Administrative requirements – documentation retention