

| | | | |
|--|---|------------------------|--|
| CHELAN-DOUGLAS RSN/PIHP POLICY AND PROCEDURE MANUAL | | Chapter: | 1.4.2.5 |
| Title: | HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT | Page: | 1 of 10 |
| | | Date Effective: | April 14, 2003 |
| Subject: | Confidentiality | Date Revised: | April 14, 2003 June 1, 2009 October 14, 2011 |
| | | Authorizing Signature: | |

AUTHORITY: Authorizing Source: RCW 70.02 45 CFR 164 (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).

In its designated role as the local mental health authority, the Chelan-Douglas Regional Support Network (CDRSN) has multiple responsibilities mandated by state statute [RCW 71.24.300]. The authority to access PHI and/or treatment records in order to fulfill these responsibilities/duties is also granted by state statute [RCW 71.05.390, RCW 71.05.630 (2)(a)(b)(e), RCW 70.02.050 (1)(b)(h), RCW 71.34.200 (6)(10)]. However, the privilege granted by these laws carries with it a commensurate amount of responsibility for assuring that the information obtained by the CDRSN in the performance of its duties is protected against further disclosure to unauthorized organizations and/or individuals. The CDRSN is acutely aware that mental illness continues to be a category of illness that may subject a person seeking services or receiving a diagnosis to discrimination and other disadvantages. It is also understood that with the growth of managed care and the increase in the amount and sensitivity of information made available to third-party payers/reviewers, there may be a corresponding decrease on the part of some individuals to seek treatment. The goal of the CDRSN is to adopt policies that will assure consumers that confidentiality protections are strong and will protect their privacy within State and Federal laws.

PURPOSE: To establish guidelines for the protection of confidential (Protected Health) information, abbreviated as PHI in compliance with state law and federal confidentiality and privacy rules.

DEFINITIONS: See 1.3.2.0

POLICY: 1. The Chelan-Douglas Regional Support Network, its employees, and its contracting agencies and their employees shall protect all

information, records and data from unauthorized disclosure in accordance with:

- 42 CFR 432.300 - 431.307 (Federal Statute) - “State Organization and General Administration”, “Safeguarding Information on Applicants and Recipients”
- RCW 70.02 - “Medical Records – Health Care Information Access and Disclosure” [RCW 70.02.020 – 70.02.060]
- RCW 71.05 - “Mental Illness” [RCW 71.05.325, 71.05.330, 71.05.390, 71.05.395, 71.05.400, 71.05.410, 71.05.420, 71.05.440, 71.05.445, 1.05.610 – 71.05.680]
- RCW 71.34 - “Mental Health Services For Minors” [RCW 71.34.025, 71.34.100, 71.34.200, 71.34.210, 71.34.220, 71.34.225]
- WAC 388-865-0115 – “Access to Clinical Records”
- 45 CFR Health Insurance Portability and Accountability Act of 1996

and for service recipients receiving alcohol and drug abuse services, in accordance with

- 42 CFR Part 2 (Federal Statute) – “Confidentiality of Alcohol and Drug Abuse Patient Records”

[Any program that specializes in the treatment, diagnosis, referring, or prevention of alcohol and drug abuse and receives direct or indirect federal financial assistance must comply with 42 CFR Part 2. A MICA program located in a mental health agency would be subject to 42 CFR Part 2. A mental health agency that does not specialize in alcohol and drug abuse services is not subject to 42 CFR Part 2. However, if a mental health agency enters into a Qualified Service Organization Agreement (QSOA) with an agency providing substance abuse services, the mental health agency must promise, in writing, to abide by the federal confidentiality regulations for information related to those clients covered under the QSOA. Also, if mental health staff participate in a case review group for substance abuse clients, the members of the group are subject to 42 CFR Part 2.]

Note: In considering issues related to confidentiality, it is important to note that any state provision that would permit or require a disclosure prohibited by the federal rules is invalid. If, however, a state statute is more stringent than a federal rule, the state statute prevails.

2. The CDRSN will obtain a signed authorization that meets the standards of the Privacy Rules from individuals prior to using or disclosing PHI in those situations for those uses that are not otherwise permitted or required under the Rule. A copy of the authorization form presently in use at the CDRSN is attached to the

Authorization policy.

3. Any CDRSN employee who is contemplating the disclosure of PHI without the consumer's authorization for those uses that are not otherwise permitted or required under the Rule must first consult with their administrator or the Privacy Officer. Additional consultation with legal counsel may also be required, but a decision to do so will be at the discretion of the CDRSN Administrator.
4. Employee Oath of Confidentiality:
 - a. All CDRSN employees shall sign an annual Oath of Confidentiality statement. This statement will affirm that the employee will not make unauthorized disclosures of any information they may acquire in the performance of their duties as an employee of the Chelan-Douglas Regional Support Network. The employee shall acknowledge that she/he has read all policies related to confidentiality and privacy and that she/he understands that violation of this policy, the oath, or any state or federal regulation may be cause for discipline, including dismissal.
 - b. PHI protected from unauthorized use and/or disclosure includes any information acquired about a consumer, whether or not it is in writing or recorded in some other form, including the patient's identity, address, medical or treatment information, and all communications made by him or her to program staff. PHI also means any information, whether oral or recorded in any form or medium, that:
 - i. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
 - ii. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
 - c. All disclosures, and especially those made pursuant to authorization form, must be limited to information that is the minimum necessary to accomplish the need or purpose for the disclosure. It would be improper to disclose everything in a patient's file if the recipient of the information only needs one specific piece of information. In completing an authorization form, it is, therefore, important to determine first, the purpose or need for the communication of information. Once this has been identified, it is easier to determine how much and what kind of information will be disclosed, tailoring it to what is essential to accomplish the need or purpose that has been identified. A general guideline for disclosure of confidential information is to

- disclose only what is the minimum necessary, for only as long as is necessary, in light of the purpose of the communication.
- d. Any minor thirteen years of age or older may request and receive outpatient mental health [RCW 71.34.030] or chemical dependency [RCW 70.96A.095] treatment without the consent of the minor's parent. If parental consent was not required for treatment, parental authorization is not required to make disclosures. Parental consent is required for any treatment of a minor under the age of thirteen. If parental consent was required for treatment, parental authorization is also required to make disclosures.
 - e. Information about applicants for service, whether or not they are admitted to treatment, former consumers, and deceased consumers is protected from disclosure without proper authorization.
5. Disclosure of records related to alcohol or drug abuse services:
- a. Except under certain specified conditions, Federal law 42 CFR Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records") prohibits the disclosure of records or other information concerning any consumer in a federally assisted alcohol or drug abuse program. Any state laws that permit or require a disclosure prohibited by the federal law are invalid. A general medical release form or any consent form that does not contain all of the elements specified in 42 CFR Part 2, Section 2.31 ("Form of Written Consent") is not acceptable. Each disclosure made with the consumer's written consent must be accompanied by a written statement about prohibition of redisclosure as outlined in 42 CFR Part 2, Section 2.32 ("Prohibition on Redisclosure").
6. Disclosure to the Department of Corrections:
- a. Consumer consent is not required for release of relevant records regarding inmates of correctional institutions from mental health service providers to the Washington State Department of Corrections (DOC) when such information is necessary to carry out DOC responsibilities as authorized in RCW 71.05.445 and 71.34.225 (WAC 388-865-0600). Relevant records (specifically defined under WAC 388-865-0610) include agency records and reports, except where prohibited by federal laws or regulations. For purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release or is no longer in lawful custody.
 - b. Written requests from Department of Corrections personnel must include the purpose for which information is intended, proper identification of the person to whom records are to be

sent, specifics regarding what relevant information is requested, and the name, title, date, and signature of the requester (WAC 388-865-0640). The scope of the information is dependent on the reason for the request (WAC 388-865-0620), and must be provided to the Department of Corrections within the specified time frames (WAC 388-865-0630).

7. Disclosure of testing or treatment for HIV or other sexually transmitted diseases:
 - a. Release of information related to testing or treatment of sexually transmitted diseases must be specifically authorized in accordance with RCW 70.24.105.
8. Disclosure to Family Members:
 - a. It is the policy of the Chelan-Douglas Regional Support Network to promote the involvement of family members in the treatment of consumers of all ages, whenever possible. This is particularly important when family members are in the role of primary caretaker for the consumer. Families need information about illness management, medications and their side effects, and other areas of information that are relevant to providing knowledgeable care giving and support.
 - b. Nevertheless, the intent is not to promote family involvement at the expense of the consumer's right to privacy. Kinship does not grant family members an exemption from the laws governing the release of PHI. Consumers thirteen years of age and older must give authorization before PHI can be shared with their family members. Parental consent/authorization is required for outpatient treatment of a minor under the age of thirteen; therefore, parents/guardians have the right to access PHI about the minor.
9. Disclosure To Protect Third Parties:
10. Mandatory Reporting of Child and Vulnerable Adult Abuse and/or Neglect:
 - a. Social service/mental health personnel [as defined in RCW 26.44.020 (8) and
 - b. RCW 74.34.020 (8)] are required by Washington State law to report suspected incidents of abuse and neglect of children [RCW 26.44.030 (1)] and vulnerable adults [RCW 74.34.035 (1)]. In doing so, they have civil immunity under the law for good faith reporting [RCW 26.44.060 (1)(a); RCW 74.34.050 (1)]. Failure to report can result in a gross misdemeanor charge [RCW 26.44.080; RCW 74.34.053 (1)].
 - c. PHI may be disclosed to DSHS protective services or

investigating law enforcement for purposes consistent with mandatory reporting requirements [RCW 26.44.030; RCW 74.34.067]. However, information considered privileged by statute and not directly related to reports required by RCW 26.44 and RCW 74.34 must not be divulged without a valid written waiver of the privilege [RCW 26.44.030 (7); RCW 74.34.067 (3)]. Persons or agencies exchanging information under RCW 26.44.030 (7) or RCW 74.34.067 (3) are not permitted to further disseminate or release the information except as authorized by state or federal statute.

11. Imminent Danger to an Identified Third Party:

- a. Washington State law provides that a mental health professional who concludes that his or her client represents an imminent danger to an identified third party may take steps, including notifying the individual and/or law enforcement officials, to protect the third party without becoming liable for a breach of confidentiality. The law does not mandate such reporting; rather it gives the clinician discretion in deciding how to proceed. The clinician will not be liable if he or she decides not to act. The CDRSN supports staff in taking all reasonable steps to protect any identifiable individual or group of people from significant and imminent risk or danger. [RCW 70.02.050 (1)(d); RCW 71.05.390 (10); RCW 71.34.200 (12)].
- b. A similar statute allows for the release of all necessary and relevant information, upon request from appropriate law enforcement agencies, in the event of a crisis or emergent situation that poses a significant and imminent risk to the public [RCW 71.05.390 (11), RCW 71.34.200 (11)].

12. Disclosure to Protect the Consumer:

- a. Disclosure of privileged communication is permitted if the professional reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the consumer [RCW 70.02.050 (d)].

13. Ombuds Staff and Quality Review Team:

- a. Ombuds and Quality Review Team staff must have the consumer's written authorization to obtain PHI and/or treatment records from a provider agency or the Chelan-Douglas Regional Support Network and/or its staff. This policy is not required by state or Federal statute, but is supported by the Chelan-Douglas Regional Support Network in order to reinforce the functional independence of the Ombuds and Quality Review Team and to strengthen consumer confidence. The Ombuds and Quality Review Team staff is otherwise subject to all other aspects of

the CDRSN Confidentiality Policy as described herein.

14. County Staff and CDRSN Governing Board:

- a. The Interagency Agreements and/or Business Associate provisions between the Chelan-Douglas Regional Support Network and each of its member counties permit exchange of PHI without the written authorization of the consumer, unless excepted by law, for purposes directly related to the administration of the Agreement and the state Medicaid plan.
- b. Members of the CDRSN Governing Board are county representatives and as such are subject to the conditions of the Interagency Agreements and/or business associate provisions between the Chelan-Douglas Regional Support Network and its member counties. Nevertheless, dissemination of PHI to Board members must be done in accordance with all confidentiality and privacy policies and only after approval by the CDRSN Administrator.

15. Health Insurance Portability and Accountability Act (HIPAA):

- a. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates the establishment of standards for the privacy of individually identifiable health information. The regulation entitled, "Standards for Privacy of Individually Identifiable Health Information" (the Privacy Rule) became effective on April 14, 200. The Privacy Rule establishes a federal floor of safeguards to protect the confidentiality of medical information. Any law whether local, state or federal which provide stronger privacy protections, will continue to apply over and above the new federal privacy standards.
- b. The Privacy Rule requires the Chelan-Douglas Regional Support Network to:
 - Provide information to patients about their privacy rights and how their information can be used;
 - Adopt clear privacy procedures for our organization;
 - Train employees so that they understand the privacy procedures;
 - Designate an individual to be responsible for seeing that the privacy procedures are adopted and followed; and
 - Secure patient records containing individually identifiable health information so that they are not readily available to those who do not need them.
 - Designate an individual to be responsible for the security of all electronic utilization, storage and transmission of Personal Health Care Information data.

SEE ALSO: Policies and procedures for confidential communications of PIHP

Privacy notice

Chelan-Douglas Regional Support Network
636 Valley Mall Parkway, Suite 200
East Wenatchee, WA 98802
509-886-6318

Annual Oath of Confidentiality and Non-Disclosure

Organizational information that may include, but is not limited to, financial, patient identifiable, employee identifiable, intellectual property, financially non-public, contractual, of a competitive advantage nature, and from any source or in any form (i.e. paper, magnetic or optical media, conversations, film, etc.), may be considered confidential. Information's confidentiality and integrity are to be preserved and its availability maintained. The value and sensitivity of information is protected by law and by the strict policies of the Chelan-Douglas Regional Support Network. The intent of these laws and policies is to assure that confidential information will remain confidential through its use, only as a necessity to accomplish the Chelan-Douglas Regional Support Network mission.

As a condition to receiving computer Logon Credentials and allowed access to a computer or system, and/or being granted authorization to access any form of confidential information identified above, I, the undersigned, agree to comply with the following terms and conditions:

1. My Logon Credentials are equivalent to my LEGAL SIGNATURE and I will not disclose these to anyone or allow anyone to access the system using my Logon Credentials.
2. I am responsible and accountable for all entries made and all retrievals accessed under my Logon Credentials, even if such action was made by me or by another due to my intentional or negligent act or omission. Any data available to me will be treated as confidential information.
3. I will not attempt to learn or use another's Logon Credentials.
4. I will not access any on-line computer system using a Logon Credentials other than my own.
5. I will not access or request any information I have no responsibilities for. In addition, I will not access any other confidential information, including personnel, billing or private information unless this access is included in my role.
6. If I have reason to believe that the confidentiality of my User Logon Credentials /password has been compromised, I will immediately change my password and notify the Chelan-Douglas Regional Support Network Information Systems Manager.
7. I will not disclose any confidential information unless required to do so in the official capacity of my employment or contract. I also understand that I have no right or ownership interest in any confidential information.
8. I will not leave a secured computer application unattended while signed on.
9. I will comply with all policies and procedures and other rules of the Chelan-Douglas Regional Support Network relating to confidentiality of information,

privacy, security and sign-on codes.

10. I understand that my use of the system will be periodically monitored to ensure compliance with this agreement.
11. I agree not to use the information in any way detrimental to the organization and will keep all such information confidential and secured while in my control or possession.
12. I will not disclose protected health information or other information that is considered proprietary, sensitive, or confidential unless there is a need to know basis.
13. I will limit distribution of confidential information to only parties with a legitimate need in performance of the organization's mission.
14. I agree that disclosure of confidential information is prohibited indefinitely, even after termination of employment or business relationship, unless specifically waived in writing by the authorized party.
15. This agreement shall survive the termination, expiration, or cancellation of this agreement.

I further understand that if I violate any of the above terms, I may be subject to disciplinary action, including discharge, loss of privileges, termination of contract, legal action for monetary damages or injunction, or both, or any other remedy available to the Chelan-Douglas Regional Support Network.

Staff Name _____ Date: _____
(Please Print)

Signature _____