

UTAH STATE DEVELOPMENTAL CENTER POLICY AND PROCEDURE MANUAL		
USES AND DISCLOSURES OF PHI POLICY		PAGE 1 OF 12
DIRECTIVE: 70.	EFFECTIVE DATE: April 14, 2003	REVISION DATE: 9/20/2010
REVIEWING ENTITY: HIPAA COMMITTEE		
PURPOSE: Utah State Developmental Center (USDC) may use and disclose protected health information with the individual's prior authorization in certain circumstances and without authorization in others.		
AUTHORITY REFERENCE: HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996, 45 C.F.R. § 164 and "Health Information Technology for Economic for Clinical Health Act" (HITECH). See American Recovery and Reinvestment Act of 2009, § 13400 (P.L. 111-115); 45 CFR § 164.400 -164.414.		

Policy:

1. **Using and disclosing information for treatment, payment, and health care operations.**
 - a. USDC may use or disclose protected health information for treatment, payment, and health care operations (TPO) without the prior authorization of the individual.

Procedures:

1. **USDC may disclose protected health information without authorization for its own treatment activities or for the health care activities of another health care provider.**
 - a. Treatment means the provision, coordination, or management of "health care" and related services by one or more health care providers, including:
 - i. The coordination or management of health care by a health care provider with a third party;
 - ii. Consultation between health care providers relating to a individual; or
 - iii. The referral of an individual for health care from one health care provider to another.

Examples: The State Hospital may contact a covered entity (health care provider) to discuss the care of an individual who will soon be released from the hospital back to the community for outpatient treatment. The hospital and the local mental health center may exchange protected health information without prior authorization in order to plan the discharge and subsequent treatment of the individual.

A physician may send without prior authorization a copy of an individual's medical record to healthcare providers who need the information to treat the individual. In the event that a patient is transferred to another hospital/facility in a medical separation transfer, the following information accompanies the patient: advance directives, if any, face sheet, medication administration record (MAR), current page of physician's orders, history and physical, pertinent medical progress notes, list of current medication, continuity of nursing care sheet, pertinent lab test/results, consultations, immunization record, and nursing emergency transfer sheet.

2. **USDC may disclose protected health information without authorization for its own payment activities or to another covered entity for that entity's payment activities.**

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 2 OF 12

- a. Payment means the activities undertaken to obtain or provide reimbursement for the delivery of health care and includes:
 - i. Eligibility or coverage determinations;
 - ii. Billings, collection activities, claims management, and related health care data processing;
 - iii. Medical necessity reviews, appropriateness of care, or justification of charges;
 - iv. Utilization reviews; and
 - v. Disclosures to consumer reporting agencies related to collection of reimbursement.

Examples: The Developmental Center may disclose protected health information without prior authorization to an individual's health insurance company to determine eligibility and to seek reimbursement.

A caseworker at the Developmental Center believes an individual may be eligible for Medicaid benefits. The case manager may contact Medicaid to find out if the individual is enrolled and to initiate the claims process.

3. USDC may use or disclose protected health information without authorization for its own health care operations.

- a. USDC may disclose information without authorization to another covered entity for the health care operations of that entity, if:
 - i. Both that entity and USDC has or had a relationship with the individual who is the subject of the information;
 - ii. The information pertains to such relationship; and
 - iii. The disclosure is for the purpose of:
 - A. Conducting quality assessment and improvement activities, including: outcome evaluation and development of clinical guidelines, provided that obtaining generalized knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; or
 - B. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance; conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improve of their skills as health care providers; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or
 - C. Detecting health care fraud and abuse or for compliance purposes.

Policy:

2. Authorization for use and disclosure of protected health information.

- a. Except as otherwise permitted or required by law or these policies, USDC shall obtain a completed and signed authorization for release of protected health information from the individual, or the individual's personal representative.

Procedures:

1. When an authorization is required.

- a. A valid authorization is required in the following situations:
 - i. For disclosures to an employer for use in employment-related determinations;
 - ii. For research purposes unrelated to the individual's treatment;
 - iii. For any purpose in which federal law requires a signed authorization;
 - iv. For disclosures to any person(s) designated by the individual; and
 - v. For use and disclosure of psychotherapy notes.

- b. USDC may obtain, use, or disclose information only if the written authorization includes all the required elements of a valid authorization. USDC staff will use the approved "Authorization to Release Protected Health Information" form. A valid authorization must contain the following information:
 - i. A description of the information to be used or disclosed, that identifies the purpose of the information in a specific and meaningful fashion, except that "at the request of the individual" is sufficient when the individual initiates the authorization;
 - ii. The name or other specific identification about the person(s) or class of person(s), authorized to make the specific use or disclosure;
 - iii. The name or other specific identification of the person(s) or class of persons, to whom USDC may make the requested use or disclosure;
 - iv. An expiration date, or an expiration event that relates to the individual or to the purpose of the use or disclosure, and the expiration date/event has not yet expired;
 - v. Signature of the client, or of the client's personal representative, and the date of signature; and
 - vi. If the individual's personal representative signs the authorization form instead of the individual, a description or explanation of the representative's authority to act for the individual, including a copy of the legal court document (if any) appointing the personal representative, must also be provided.
 - vii. A description of the individual's right to revoke the authorization;
 - viii. A description of how the protected health information may be re-disclosed and no longer have privacy protection.

- c. Uses and disclosures must be consistent with and limited to what the individual has authorized on a signed authorization form.

- d. An authorization must be voluntary and informed. USDC may not require the individual to sign an authorization as a condition of providing treatment services, payment for health care services, except:
 - i. Before providing research-related treatment, USDC may require the individual to sign an authorization for the use or disclosure of protected health information for such research; or
 - ii. USDC may require a individual to sign an authorization before providing health care that is solely for the purpose of creating protected health information for disclosure to a third party.

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 4 OF 12

Example: An individual is applying for life insurance and the application requires the results of a physical exam be sent to a life insurance company. The health care provider conducting the exam may require the individual to authorize the release of the exam results to the life insurance company.

- e. An authorization for use and disclosure of protected health information may not be combined with any other document to create a compound authorization, except for consents for research studies.
- f. USDC must provide a signed copy to the individual or the individual's personal representative when USDC initiates the authorization.
- g. USDC must document and retain each signed authorization form for a minimum of six years from when it was revoked or expired.

Policy:

3. Uses and disclosures not requiring authorization.

- a. To the extent required or permitted by law and these policies, USDC may use or disclose protected health information without the written authorization of the client.

Procedures:

1. When an authorization is *not* required:

- a. USDC may disclose information without authorization to individuals who have requested disclosure of their information to themselves.
- b. **Psychotherapy Notes:** USDC may use or disclose psychotherapy notes without written authorization of the individual only for:
 - i. Use by the originator of the psychotherapy notes, for treatment purposes;
 - ii. Use or disclosures by USDC in training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - iii. When being used or disclosed by a health oversight agency in connection with oversight of the originator of the psychotherapy notes; or
 - iv. To the extent authorized under state law to defend USDC in a legal action or other proceeding brought by the individual.
- c. **Child Abuse Reporting:** USDC will use or disclose protected health information without written authorization of the individual if USDC has reason to believe that a child is a victim of abuse or neglect. USDC may disclose information to the Division of Child and Family Services or the nearest law enforcement agency.
- d. **Adult Abuse Reporting:** USDC shall use or disclose information without written authorization of the individual if USDC has reason to believe that an adult is a victim of abuse or neglect (elder abuse, nursing home abuse, or abuse of the mentally ill or developmentally disabled). USDC may disclose protected information to Adult Protective Services or the nearest law enforcement agency:
 - i. If the individual agrees to the disclosure, either orally or in writing; or
 - ii. When USDC staff, in the exercise of professional judgment believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 5 OF 12

- iii. When the individual is unable to agree because of incapacity, a law enforcement agency or other public official authorized to receive the report represents that:
 - A. The protected information being sought is not intended to be used against the individual, and
 - B. An immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- iv. When USDC staff make a disclosure permitted above, USDC must promptly inform the individual that such a report has been or will be made, except if:
 - A. USDC staff, in the exercise of professional judgment believes informing the individual would place the individual at risk of serious harm; or
 - B. USDC staff would be informing a personal representative and USDC staff reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the individual, as determined by USDC staff, in the exercise of professional judgment.
- e. **Public Health:** In accordance with Utah Law USDC will disclose protected health information to a public health authority to prevent or control a disease, injury or disability.
- f. **Health Oversight:** USDC will disclose protected health information to a health oversight agency for oversight activities that are authorized by state and federal laws.
 - i. Types of oversight activities include:
 - A. Audits;
 - B. Civil, administrative, or criminal investigations;
 - C. Inspections;
 - D. Licensure or disciplinary actions;
 - E. Civil, administrative, or criminal proceedings or actions; or
 - F. Other activities necessary for oversight of the health care system, government benefit programs, determining compliance with program standards.
 - G. If a health oversight activity is conducted in conjunction with an oversight activity involving a non-health claim for public benefits, the joint activity is considered a health oversight activity and the disclosure may be made.

Exception: A health oversight activity does not include:

- ii. The individual is the subject of the investigation or activity; and
- iii. The investigation or activity does not relate to the following:
 - A. Receipt of health care;
 - B. Claim for public benefits related to health, or qualification for, or receipts of public benefits or services when an individual's health is integral to the claim for the benefits or services.
- g. **Judicial and Administrative Proceedings:** USDC may disclose protected health information in response to an order of a court or administrative tribunal, provided that USDC discloses only the protected health information authorized by the order.
 - i. USDC may disclose protected health information in response to a subpoena, discovery request, or other lawful process, **without a court order** if one of the following circumstances applies:

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 6 OF 12

- A. USDC receives satisfactory assurance from the party seeking the protected health information that reasonable efforts have been made to ensure that the individual who is the subject of the protected health information has been given notice of the request for the protected health information by providing USDC with a written statement and documentation demonstrating that:
 - I. A good faith effort was made to provide a written notice to the individual;
 - II. The notice included sufficient information about the litigation or proceeding to permit the individual to raise an objection to the court or administrative tribunal; and
 - III. The time for the individual to raise objections has elapsed, and;
 - (i) No objections were filed, or
 - (ii) All objections filed by the individual have been resolved by the court or administrative tribunal and the disclosures being sought are consistent with such resolution.
- B. USDC receives satisfactory assurance from the party seeking the protected health information that reasonable efforts have been made by USDC to secure a qualified protective order.
 - I. The party seeking protected health information must provide USDC with a written statement and documentation demonstrating that:
 - (i) The parties to the dispute have agreed to a qualified protective order and have presented it to the court or administrative tribunal; or
 - (ii) The party seeking PHI has requested a qualified protective order from a court or administrative tribunal
 - II. A “qualified protective order” means an order of the court or administrative tribunal or stipulation by the parties that:
 - (i) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which the information was requested; and
 - (ii) Requires the return or destruction of the protected health information (including all copies) at the end of the litigation or proceeding.
- ii. USDC may disclose protected health information without receiving satisfactory assurances from the party seeking the information if the USDC makes reasonable efforts to provide notice to the individual, meeting the requirement of “A” above, or seeks a qualified protective order meeting the requirements of “B” above.
- h. **Law Enforcement:** USDC may use or disclose protected health information to law enforcement officials without the written authorization of the individual for the following law enforcement purposes.
 - i. USDC shall disclose protected health information, in accordance with UCA 26-23a-2, to report wounds or other physical injuries caused by the use of a deadly weapon (knife, gun, or explosive device).
 - ii. USDC may disclose information in compliance with, and limited to the relevant specific requirements of:
 - A. A court order or warrant, summons or subpoena issued by a judicial officer;
 - B. A grand jury subpoena; or

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 7 OF 12

- C. An administrative request, including administrative subpoena or summons, a civil or authorized investigative demand, or similar lawful process, provided that the information is relevant, material, and limited to a legitimate law enforcement inquiry, and de-identified information could not reasonably be used.
- iii. USDC may disclose limited protected health information upon request of a law enforcement official without authorization for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:
 - A. The information USDC may disclose is limited to:
 - I. Name and address;
 - II. Date and place of birth;
 - III. Social security number;
 - IV. ABO blood type or RH factor;
 - V. Type of injury;
 - VI. Date and time of treatment;
 - VII. Date and time of death if applicable; and
 - VIII. A description of distinguishing physical characteristics including height, weight, gender, race, hair, and eye color, presence or absence of beard or mustache, scars, and tattoos. In cases of criminal court commitments, a photograph may be provided.

Exception: USDC may not disclose, for purposes of identification or location, protected health information related to the subject's DNA or DNA analysis, dental records, or typing, samples, or analysis of bodily fluids or tissues.

- i. **Crime Victims:** USDC may disclose protected health information upon request to a law enforcement official about an individual who is or is suspected to be the victim of a crime, if:
 - i. USDC is otherwise authorized by law to disclose that information for purposes of an abuse reporting law or for public health or health oversight purposes; or
 - ii. The individual agrees to the disclosure, either orally or in writing; or
 - iii. USDC is unable to obtain the individual's agreement due to incapacity or emergency circumstance, if:
 - A. The law enforcement official represents that such information is needed to determine whether a violation of law by someone other than the victim has occurred and such information is not intended for use against the victim;
 - B. The law enforcement official represents that immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - C. USDC determines that the disclosure is in the best interests of the individual.
- iv. USDC may disclose protected health information to a law enforcement official about an individual who has died, for the purpose of alerting law enforcement of the death, if USDC suspects that death may have resulted from criminal conduct.
- v. USDC may disclose protected health information to a law enforcement official if USDC believes in good faith that the information constitutes evidence of criminal conduct on USDC premises.
- vi. USDC may use or disclose protected health information, if consistent with applicable law and standards of ethical conduct, when in good faith it believes the use or

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 8 OF 12

- disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the use or disclosures is to person(s) reasonably able to prevent or lessen the threat, including the target of the threat, or except that the use or disclosure may not be made if the statement is made in the course of treatment for the criminal conduct that is the basis of the statement, counseling, therapy or in the course of requesting treatment, counseling, or therapy;
- A. Who has made a statement admitting participation in a violent crime that USDC reasonably believes may have caused serious harm to the victim, or for law enforcement authorities to identify or apprehend an individual.
 - B. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- j. **Government Functions:** USDC may disclose protected health information without the authorization of the individual for the following specialized government functions unless federal or state law prohibits such disclosure.
- i. For individuals who are Armed Forces personnel, as deemed necessary by appropriate military command authorities to ensure the proper execution of the military mission, when an appropriate notice is published in the Federal Register.
 - ii. To authorized federal officials for conducting lawful intelligence, counterintelligence, and other national security activities, as authorized by the federal National Security Act (50 U.S.C. 401, et seq.) and implementing authority.
 - iii. To authorized federal officials for the protection of the President or of other persons authorized by applicable federal law.
 - iv. To the United States Department of Health and Human Services when required to investigate or determine USDC's compliance with HIPAA.
- k. **Correctional Institutions:** USDC may disclose protected health information without the written authorization of the individual to a correctional institution or a law enforcement official having lawful custody of that individual, if the institution or official represents that the information is necessary for:
- i. Providing health care to the person;
 - ii. The health or safety of the individual or of other inmates;
 - iii. The health and safety of the officers, employees, or others at the correctional institution;
 - iv. The health and safety of the individual and officers or other person responsible for transporting inmates;
 - v. The administration and maintenance of the safety, security, and good order of the correctional institution.

The Unit may use protected health information of inmates for any purpose for which protected health information could be disclosed.

- l. **Workers Compensation:** USDC may disclose protected health information to the extent necessary to comply with workers' compensation laws or laws relating to other similar programs that are established by law and provide benefits for work-related injuries or illness.
- m. **Disaster Relief:** USDC may use or disclose protected health information to federal, state, or local government agencies engaged in disaster relief activities, as well as private disaster assistance organization (Red Cross) for the purpose of coordinating the

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 9 OF 12

notification of a family member, personal representative, or other person responsible for the individual's care, of the individual's location, general condition or death.

- n. **Organ/Tissue Donation:** USDC will disclose protected health information, in accordance with UCA 26-28-6, to an appropriate procurement organization for the purpose of facilitating organ, tissue, eye, or other body part donation and transplantation.
- o. **Coroners, Medical Examiners, and Funeral Directors:** USDC may disclose protected health information without authorization for the purpose of identifying a deceased person, determining a cause of death, or duties authorized by law, to coroners and medical examiners. USDC may disclose protected health information to funeral directors, consistent with Utah law, as required to carry out their duties.

Policy:

- 4. **Client authorization is not required if informed in advance and given a chance to object.**
 - a. USDC may use or disclose protected health information for a facility directory and for involving family members or friends in the individual's care, provided that the individual is informed in advance and has been given the opportunity to either agree, to refuse, or restrict the use or disclosure.

Procedures:

- 1. **Use and disclosure for facility directories:**
 - a. Except when the individual objects, USDC may:
 - i. Use the following protected health information to maintain a directory of individuals in its facility:
 - A. Name;
 - B. Location in the facility; and
 - C. Religious affiliation
 - ii. Disclose for directory purposes:
 - A. To members of the clergy, the individual's name, location and religious affiliation;
 - B. To all other persons who ask for the individual by name, the individual's location in the facility.
 - b. Before using the protected health information for a facility directory, USDC must:
 - i. Inform the individual of the protected health information that may be included in the directory and the person to whom it may be disclosed; and
 - ii. Provide the individual the opportunity to restrict or prohibit some or all of the uses or disclosures.
 - A. The individual will complete the "Patient Objections to Patient Directory" form to indicate if they wish to restrict some or all of the information listed in the patient directory.
 - B. If it is not practicable to provide an opportunity to object because of the individual's incapacity or an emergency treatment circumstance, USDC may use or disclose some or all of the protected health information for the facility's directory, if the disclosure is:
 - I. Consistent with the individual's prior expressed preference, if any, that is known to USDC; and

- II. In the individual's best interest as determined by USDC, in the exercise of professional judgment.
 - c. USDC must inform the individual and provide an opportunity to object to uses or disclosures when it becomes practicable to do so.
- 2. Use and Disclosure for notifying family or friends:**
- a. USDC may use and disclose protected health care information to a family member, other relative, or close personal friend of the individual, or any other person named by the individual, subject to the following limitations:
 - i. USDC may reveal only the protected information that directly relates to such person's involvement with the individual's care or payment for such care.
 - ii. USDC may use or disclose protected information for notifying (including identifying or locating) a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death.
 - iii. If the individual is present for, or available prior to, such a use or disclosure and has the capacity to make health care decisions, USDC may disclose the protected information if it:
 - A. Obtains the individual's agreement to disclose to the third parties involved in his/her care;
 - B. Provides the individual an opportunity to object to the disclosure, and the individual does not express an objection; or
 - C. Reasonably infers from the circumstances that the individual does not object to the disclosure.
 - iv. If the individual is not present, or the opportunity to object to the use or disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, USDC may determine, using professional judgment, whether the use or disclosure is in the individual's best interests and if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care.
 - A. Any agreement, objection, refusal, or restriction by the individual, may be oral or in writing. USDC will document any such oral communication in the client's case file.
 - B. USDC will also document in the case file the outcome of any opportunity provided to object; the individual's decision not to object; or the inability of the individual to object.

Exception: Oral permission to use or disclose information for purposes described subsection (a) of this section is not sufficient when the individual is referred to or receiving alcohol and drug abuse treatment. Written authorization is required under these circumstances.

Policy:

- 5. Re-disclosure of an individual's information:**
- a. Unless prohibited by state and federal laws, information held by USDC and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by USDC policy. Whether or not the information remains protected depends on whether the recipient is subject to federal laws, court protective orders or other lawful process.

**UTAH STATE DEVELOPMENTAL CENTER
POLICY AND PROCEDURE MANUAL**

USES AND DISCLOSURES OF PHI POLICY

PAGE 11 OF 12

- b. Federal regulations (42 CFR part 2) prohibit USDC from making further disclosure of alcohol and drug treatment information without the specific written authorization of the individual to whom it pertains.

Policy:

6. Revocation of an authorization

- a. A client may revoke in writing an authorization at any time.

Procedures:

- a. An individual must complete a “Revocation of Authorization” form, to revoke a written authorization to disclose information. USDC must boldly mark the original authorization form “revoked” and include the “Revocation of Authorization” form, in the individual’s file.
- b. When an individual revokes only one record holder on the authorization form, USDC will boldly mark that section only “revoked” and include the date and the individual’s signature.
- c. Revoked authorization forms must be maintained in the individual’s file.
- d. No revocation shall apply to information already released while the authorization was valid and in effect.

Policy:

7. Verification of individuals requesting information

- a. Protected health information may not be disclosed without verifying the identity of the person requesting the information and the authority of such person to have access to protected health information if the person and their authority is not known to the USDC staff member fulfilling the request.

Procedures:

- a. USDC may rely on any of the following to verify identity of a public official or a person acting on behalf of the public official:
 - i. Agency identification badge, or other proof of government status;
 - ii. A written statement on appropriate governmental letterhead;
 - iii. If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government’s authority, or other evidence such as a contract for services, memorandum of understanding, or purchase order.
- b. For all other requestors, any of the following may be relied upon to verify identity:
 - i. Identification badge;
 - ii. Driver’s license or other government issued identification;
 - iii. Written statement of identification on agency letterhead; or
 - iv. Similar proof
- c. Verification of Authority
 - i. Legal documentation that includes the authority to make health care decisions on behalf of the individual.

UTAH STATE DEVELOPMENTAL CENTER POLICY AND PROCEDURE MANUAL	
USES AND DISCLOSURES OF PHI POLICY	PAGE 12 OF 12

Policy:

8. Denial of requests for information:

- a. Unless an individual has signed an authorization, or the information about the individual can be disclosed pursuant to this policy, USDC shall deny any request for protected health information.

Karen A. Clarke, Superintendent