
Privacy Training Module

HIPAA (Health Insurance Portability and Accountability Act)

Adapted for Center use from a training from Tri-County MHMR & TDMHMR

Objectives

1. Recognize rights related to privacy of protected health information.
2. Recognize staff actions related to protecting HIPAA privacy rights.
3. Recognize how to report privacy rights violations.

What is HIPAA?

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- This act consists of many parts pertaining to the healthcare delivery system. The rule that The Gulf Coast Center will be focusing on in this training module is the Privacy Rule.
- The Privacy Rule under HIPAA—
 - Requires health care providers to protect privacy of medical records and confidential information
 - Identifies certain rights of persons served to control use and disclosure of and access their medical records

Doesn't The Gulf Coast Center already practice confidentiality?

- Yes, but the Privacy Rule under HIPAA requires all health care providers to protect the privacy of medical records and identifies certain rights of individuals to control uses, disclosure of, and access to their medical records.
- The Gulf Coast Center and TDMHMR has always taken special precautions to protect the health information of persons served.

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- However, HIPAA clearly defines privacy rights related to the use and disclosure of health information for all persons.
 - Most of our current confidentiality practices already comply with HIPAA
 - However, it is vital that all staff know what rights HIPAA has identified and what actions we can take to protect the privacy of persons served.
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Purpose of Privacy Regulations

- To provide individuals access to their health information and control inappropriate use of health information
 - In the past, pharmacies and doctors have sold lists of patient names to pharmaceutical companies to gain free samples or favors from the companies.
 - When patient names are sold, junk mail, telephone marketing and e-mail ads increase.

Purpose of Privacy Regulations

- To improve quality of health care by restoring trust in the health care system

Some patients don't share all they need to with their doctor because they are fearful of it getting into the wrong hands. HIPAA hopes to eliminate this fear through the strict laws.

Purpose of Privacy Regulations

- To improve efficiency and effectiveness of health care delivery by creating a national framework for privacy protection
- - Many people have fears about business that is conducted over the internet or by e-mail. HIPAA provides guidelines for securing electronic transmissions and transferring health information.

HIPAA DEFINITIONS

- In order to understand HIPAA and protect access to health information, there are definitions we need to know.

HIPAA DEFINITION

- Covered Entity: A covered entity is anyone who assembles, collects, analyzes, uses, evaluates, stores, transmits, obtains, or possesses protected health information.
 - The Gulf Coast Center is a covered entity.
 - Other covered entities include health plans (Medicare, CHIP), and health care providers (doctors, pharmacies, hospitals)

HIPAA Definition

- Protected Health Information (PHI) is information that identifies the person receiving services, or can be used to identify the person receiving services (name, social security number, drivers license number, birth dates or age, county person resides in, diagnosis, etc.)
 - Is created or received by persons or organizations defined under HIPAA as covered entities

- **Protected Health Information (PHI)**

- PHI is identifiable information that has been collected from a consumer or consumer's health care provider, health plan, employer, or health care clearinghouse.
- PHI may include information about a person's past, present, or future physical or mental health, health care being provided to the person, and how payment was made for the health care

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- Protected Health Information (PHI) is transmitted in any form or medium, including: verbal, electronic, written, photographs, recordings, etc.
 - PHI is the term used by the HIPAA law; however, personal, private, and confidential refer to the same information.

HIPAA DEFINITIONS

- Legally Authorized Representative (L.A.R.)
 - The L.A.R. is a legally authorized representative and a person authorized by law to act on behalf of the person served.
 - The L.A.R. can be the consumer, a parent, legal guardian, appointed attorney, or other appointed persons.
 - Consumers will not have a L.A.R. unless they have been found incompetent by a court of law, and one has been appointed to them.
 - A consumer will have an L.A.R. if he/she has completed a legally recognized Power of Attorney document designating someone as his/her L.A.R.
 - Or, a consumer will have an L.A.R. if he/she is a minor.

HIPAA DEFINITION

- Authorized Person (Employee):
 - An authorized employee is a Gulf Coast Center staff person who has access to PHI and can share information on a need-to-know basis.

Reasons Why an Authorized Person (Employee) may need to share PHI:

- For treatment - this would pertain to sharing information within the TDMHMR Service Delivery System as needed.
- For payment—this includes determining what kind of coverage a consumer has, and for billing companies for services rendered.
- For health care operations—this includes sharing information with other staff on a need-to-know basis and developing procedures for the agency.

DISCLOSURE EXCEPTIONS

- In special circumstances, extending outside of treatment, payment and health care operations, an authorized employee and covered entity may need to share PHI with others without written authorization from the consumer or L.A.R.

Disclosure exceptions include, but are not limited to...

- A medical emergency
- An employee is required to report certain communicable diseases to state health agencies
- Food and Drug Administration requires information on medical devices that break or malfunction
- Child abuse or domestic violence suspected in criminal investigation (Department of Protective and Regulatory Services)
- Court orders
- Police investigating criminal charges where patient is probable suspect
- Suspicious deaths or suspected crime victims
- Provider must report information to coroners and funeral directors upon death

HIPAA DEFINITIONS

- Authorized employees at all other times must get a consumer's or L.A.R.'s written authorization prior to providing PHI to anyone.
- A written authorization may have been formerly referred to as a consent form. The *Authorization for Release of Confidential Information* form is used to share information with outside entities.
- Written authorization is required for any sharing of PHI other than the prior reasons and exceptions.

A written authorization must include the following:

- The name of the individual;
- Description of PHI (protected health information) being shared
- Identification of each purpose
- Identification of person(s), or class of persons, disclosing the PHI
- Identification of recipient
- Expiration date or event
- Consumer's or legally authorized representative's dated signature
- If there is a legal guardian, their description of authority should be included
- Statement indicating the right of the consumer to revoke the authorization
- A statement that the Center may not withhold treatment, Medicaid benefits, or payment processing if the individual does not sign the authorization.

NOTE: The Center may require the individual to sign the authorization before providing treatment if:

- The treatment is alcohol or drug abuse treatment and the purpose of the authorization is to obtain payment for the alcohol and drug abuse treatment; or
- The treatment is research-related and the purpose of the authorization is to obtain permission to use and disclose PHI for such research.
- A statement that explains that except for information related to alcohol or drug abuse treatment, the information disclosed pursuant to this authorization may not be protected by medical privacy laws and may be subject to re-disclosure by the recipient.
- A copy of the signed authorization form must be given to the individual.

NOTE: The authorization must specifically authorize the release of alcohol/drug information and/or HIV/AIDS information before those types of information may be released, if applicable.

Drug/Alcohol Information

Disclosure of protected health information that relates to alcohol or substance abuse treatment apply to all consumers who are receiving or have received alcohol or substance abuse treatment, even if the consumer is also receiving mental health or mental retardation services. Protected health information related to alcohol or substance abuse treatment may not be disclosed for any purpose without a prior valid authorization that specifies that drug/alcohol Information may be released *unless* the information is disclosed:

- to medical personnel to meet a medical emergency in accordance with 42 CFR §2.51, provided that a component must document the following information in the individual's record (A) the name of the medical personnel to whom disclosure was made and the personnel's affiliation with any health care entity; (B) the name of the person making the disclosure; (C) the date and time of the disclosure; and (D) the nature of the emergency;
 - when required by specific court order;
 - when required or authorized by law;
 - when used by members of the Center's workforce; and
 - when advising the legally authorized representative of a consumer of minority age.
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SUMMARY OF DEFINITIONS

1. Covered Entity: Refers to The Gulf Coast Center, TDMHMR and any other facility that collects Protected Health Information.
 2. Protected Health Information (PHI): Any identifying information or data that can link a consumer to services rendered.
 3. Legally Authorized Representative (L.A.R.): Parent, legal guardian or other person who represents a consumer and makes medical/legal decisions for him/her.
 4. Authorized Person (Employee): A staff person who has the ability to share PHI with outside sources either with or without a consent and authorization.
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RIGHTS UNDER THE HIPAA PRIVACY RULE

- The HIPAA Privacy Rule has identified several rights that all persons have regarding their PHI.
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Written Notices of Privacy Practices

- The Gulf Coast Center will provide a notice of the agency's privacy practice to every consumer and L.A.R. These notices will include:
 - Description of the Center's duty to keep PHI confidential
 - Uses and disclosures of PHI that may be made without written consent
 - Individual's rights pertaining to PHI

Notice of Privacy Practices

- The notice that consumers receive must be:
 - Written in plain language and be made available in other languages if requested
 - Provided to the person on the first day of service delivery or as soon as reasonably practical after an emergency treatment situation beginning on Monday, April 14, 2003
 - Available at all facilities. Ask your program's Office Manager for copies. It is also available on the Center's intranet for downloading and copying. English and Spanish versions are available. (It is two pages long; please copy as one piece of paper, front & back, to conserve paper.)
 - It must be posted in a clear and prominent location at the facilities where consumers may read it easily.
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Acknowledgement of Receipt of Notice

- Written acknowledgement must be obtained from consumers and L.A.R.s stating that they received the Privacy Notice, except in the case of an emergency, beginning with their first appointment/face-to-face contact beginning on Monday, April 14, 2003.
 - This will be documented on the new *Acknowledgement of Receipt of Notice of Privacy Practices* (GCC #CG2010) form. Ask your program's Office Manager for copies. It is also available on the Center's intranet for downloading and copying.
 - If a signature on the acknowledgment cannot be obtained, staff must document the reason on the *Acknowledgement* form.
 - **The completed form should be filed permanently in the individual's chart under "Legal/Consents" and never purged from the chart.**
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As mentioned before, the Privacy Rule gives individuals certain rights...

Right to Request Restrictions

- A consumer has a right to restrict the use and disclosure of PHI
 - The Gulf Coast Center does not have to agree to the restriction, but must abide by the restriction if it agrees to it
 - For example, a consumer may request that his/her insurance provider not know that he/she is taking an anti-depressant. The Gulf Coast Center may agree or disagree to that restriction.
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Right to Request Confidential Communications

- Consumers have a right to see who the Center has been sharing their PHI with.
 - The Gulf Coast Center cannot require the consumer to explain the basis of the request
 - The Gulf Coast Center may require the person to specify where he/she wants to be contacted, if not at home (a consumer may not want family members to know he/she is receiving services)
 - The Gulf Coast Center may require the consumer to provide information as to how payment, if any, will be handled

Right to Access PHI

- All consumers have the right to their own Private Healthcare Information unless:
 - Access to PHI is likely to endanger the life or physical safety of the consumer or another person
 - Is in a research project that includes treatment, and has consented to a temporary denial of access to PHI
 - PHI is compiled for use in a court case
 - PHI is in psychotherapy notes
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Psychotherapy Notes Defined:

- Psychotherapy notes are notes recorded in any form by a mental health professional documenting or analyzing the contents of conversation during a counseling session that are kept separate from the rest of the consumer's medical record. The term *does not include* medication prescription and monitoring; counseling session start and stop times; modalities and frequencies of treatment furnished; results of clinical tests; and any summary of diagnosis, functional status, treatment plans, symptoms, prognosis and progress to date.
 - This term does not refer to the progress notes normally kept in the medical record.
 - If psychotherapy notes need to be disclosed to an external agency, the Center must obtain a specific authorization from the consumer.
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Review of PHI Before Release

- As explained in the previous slide, the professional may deny access to the information if access to the PHI is likely to endanger the life or physical safety of the consumer or another person.
 - The consumer must give written authorization, even to receive his/her own information. If the information contains alcohol/drug and/or HIV/AIDS information, that must be specified on the authorization. The consumer must first complete an *Authorization for Release of Confidential Information* form (GCC #9020), even to receive his/her own information.
 - Before releasing information from a medical record to either a consumer, his/her legally authorized representative, or his/her attorney, a professional (i.e., psychiatrist, psychologist, or LCDC) must review the consumer's information.
 - The professional must write a progress note stating that the record has been reviewed and that it is okay to release the information. If it is not okay to release the information, they must provide a written denial to the requestor that uses plain language and contains the basis for the denial; the portion of the record to which access is denied; the duration of the denial, and a statement of the requestor's right to request a review of the denial of access and the procedures for requesting a review; and a description of how the consumer may complain to the Center, TDMHMR, to the Secretary of the U.S. Department of Health and Human Services, or to the Texas Attorney General.
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Prior to the consumer's access to the protected health information, the Center will ensure:

- Protected health information or other confidential information about other consumers or persons who have not authorized disclosure *will be deleted* before access is provided.
- The identity of any person providing information relating to the consumer *may not be deleted*.
- All references in the protected health information of a minor regarding the place of residence of a managing or joint managing conservator *will be deleted*.
- **NOTE: The information to be deleted must be deleted from the copies only, never the originals!!**

Right to Access PHI

- If a consumer is unable to access his/her PHI due to the reasons listed previously, he/she does have the right to request review by another professional.
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Right to Request Amendments

- Consumers can request that something be changed in their PHI if they feel it is incorrect.
 - The Gulf Coast Center has the right to deny the request if:
 - The Gulf Coast Center did not create the PHI the consumer wants revised (for example, it is documentation from a State School, hospital, doctor, etc.)
 - The individual is denied access to PHI
 - The PHI is accurate and complete
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Right to Request an Accounting for Release of Information

- A consumer has a right to request a listing of all non-routine uses and disclosures of PHI (this is for PHI disclosed without an authorization for special purposes)
 - The listing provided to the consumer must provide the date of the disclosure, who received the information, description of the PHI disclosed, and the reason for the disclosure.
 - The Medical Records Administration office will process these requests.
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Right to File a Complaint

- All consumers have a right to file a complaint about The Gulf Coast Center services. Appropriate agencies or persons to file a complaint with are:
 - **Cindy Kegg, The Gulf Coast Center's Right's Protection Officer/Corporate Compliance Officer**
 - TDMHMR Office of Consumer Services and Rights Protection Office
 - U.S. Department of Health and Human Services
 - Texas Attorney General's Office
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Staff Actions related to HIPAA

- It is important for all staff to remember the privacy rights related to HIPAA.
 - There are several actions all employees can take to keep PHI confidential and assist the consumer in exercising their rights.
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Staff Actions

- Employees access PHI only to the degree necessary to perform their jobs.
 - Staff should only have access to PHI regarding the consumers that they are working with, not other persons receiving services
 - Staff should not share information with each other about consumers unless they are working with the same person.

Staff Actions

- Employees do not identify a person directly or indirectly as a recipient of services.
 - When receiving a phone call, fax, or e-mail, staff should not confirm or deny that a person receives services at The Gulf Coast Center. (Do not e-mail consumers.)
 - Confirming that a consumer is at the facility would be violating HIPAA Privacy Rules

Staff Actions

- Employees have a duty to safeguard PHI from intentional or unintentional use of disclosure that is in violation of the HIPAA Privacy Rule by...
 - Keeping records locked up when not in use.
 - Users should log off their computers while away from their desks.
 - Written information in nurse stations, desks, etc., should be covered from public view.
 - Discussions about consumers should be made in private, away from public areas.
 - Electronic records should be kept secure. Facilities should monitor who accesses PHI.
 - Paper records should be shredded and never left in the garbage for disposal with regular trash.
 - Do not share your computer password with anyone. Create a password that is unique and difficult for someone else to guess. Do not write it down where someone else can see it or find it.

Staff Actions

- Employees communicate about persons served only with those who are authorized and have a need to know.
 - Any staff persons outside the interdisciplinary team working with a consumer probably do not have a need to know PHI about the individual
 - If you are unsure of who to release information to, DON'T RELEASE IT!!! Check with your Supervisor, Peggy LeCompte, the Medical Records Administrator/HIPAA Privacy Officer, or Linda Bell, Director of Legal Affairs.

Staff Actions

- Employees refer requests for PHI, requests from persons served to amend records, and related requests to the appropriate office.
 - All requests made by consumers should be made to Peggy LeCompte, the Medical Records Administrator/HIPAA Privacy Officer or Liz Bennett, Secretary for Medical Records Administration/Billing, located at the Angleton Recovery Building at the Brazoria County CSC. **Telephone:** 1-800-710-4322 or (979) 849-2311; **FAX:** (979) 849-7558 (call to confirm receipt of fax)
 - Also, if you receive a subpoena, court order, or a request for an affidavit, notify Peggy LeCompte immediately.

Staff Actions

- Employees report or assist others in reporting suspected privacy rights/HIPAA violations
 - If an employee or consumer wishes to make a complaint about The Gulf Coast Center, call or refer them to:
 - **Cindy Keggs, The Gulf Coast Center's Rights Protection Officer/Corporate Compliance Officer**
 - TDMHMR Office of Consumer Services and Rights Protection
 - U.S. Department of Health and Human Services
 - Texas Attorney General's Office

STAFF RESOURCES

- Peggy LeCompte, Medical Records Administrator/Privacy Officer (1-800-710-4322 or 979-849-2311) is the contact for:
Employee inquires about HIPAA
 - Consumers requesting a release of information, accounting for disclosures, or amendments to their records
 - Information about consents/authorizations

Privacy Question:

Two consumers live in the same group home. They do not always get along and there is an allegation of a physical fight between the two. One consumer's mother, his L.A.R., contacts you to discuss the situation and asks specific questions about the other consumer's diagnosis and behaviors. What can you discuss with her?

- A. Nothing
- B. Just information about her son/daughter for whom she is the Legal Authorized Representative (L.A.R.).
- C. You can share information regarding the other consumer

Answer:

- B. Just information about her son/daughter for whom she is the Legal Authorized Representative (L.A.R.).

Privacy Question

A police officer visits a Center program with an arrest warrant for John Doe. The staff's responsibility in this situation is to:

- A. State that they cannot provide information to the police officer due to federal confidentiality laws.
- B. Provide the officer with detailed information about the consumer.
- C. Bring the officer to the consumer, if he is at the program.

Answer:

Bring the officer to the consumer, if he is at the program (answer continued on next page)

However, if this happens at a Recovery Program and the individual is in a group session, you would not take the officer to the person in group unless the officer also had a search warrant. If the officer does not have a search warrant, you can tell the officer the time that group is over and that he/she is welcome to wait in the lobby for the individual.

Privacy Question:

You receive a phone call stating that the person is a consumer's sister and she knows the consumer receives services here. The sister is not the consumer's L.A.R., but wants to know what time the consumer is leaving today. What do you do?

- A. State that you cannot provide information to the sister due to federal confidentiality laws.
 - B. Provide the time the consumer will leave, since the caller is a family member
 - C. Allow the consumer to talk with the caller
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Answer:

- A. State that you cannot provide information to the sister due to federal confidentiality laws.

However, if you have a written authorization from the consumer stating that you can release information to her sister, then you may give her sister the information.

Possible Consequences of
Privacy Rights Violations

- The government plans to begin looking more closely at centers, such as The Gulf Coast Center, for HIPAA and privacy violations. Investigations will be based on complaints received by the government.
 - Regulation violations carry consequences. Inadvertent slips of information without resulting in personal gain usually results in \$100 fine (each offense) not to exceed \$25,000 in a year
 - Knowingly releasing PHI – 1 year in jail and/or \$50,000 fine
 - Accessing PHI under false pretenses – 5 years in jail and/or \$100,000 fine
 - Releasing PHI with intent to harm-10 years in jail and/or \$250,000 fine
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Summary

- The Definitions, Rights of the consumer, and actions to take as staff members are what you need to know to perform your job in compliance with HIPAA.
 - To summarize:
 - All consumers have privacy rights
 - There are actions you can take to help protect privacy rights and help the persons served exercise their rights
 - You can report and help others report complaints
 - Authorized persons (employees) may need to share PHI for treatment, payment, and health care operations
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You've reached the end of the HIPAA training module. Please take the 15 question test and forward the completed test to Lina Ellis at Administration.
