

|  |
|--|
| <b>POLICIES AND PROCEDURES</b>   |
| <b>TOPIC:</b> Patient Consent – Sensitive Health Information                   |
| <b>DOCUMENT NUMBER:</b> 102  |
| <b>EFFECTIVE DATE:</b> July 18, 2013<br><b>REVISED DATE:</b> November 21, 2015 |



**I. BACKGROUND AND PURPOSE**

The purpose of this policy is to describe the categories of Sensitive Health Information that shall not be subject to routine disclosure through the WVHIN’s Health Information Exchange. Sensitive Health Information shall generally require the execution of a written authorization from the Patient before it may be disclosed, and disclosure must be made through some means other than the Health Information Exchange.

**II. POLICY**

Federal and state laws impose heightened privacy and security requirements upon the disclosure of certain types of Protected Health Information that may be considered particularly private or sensitive to a Patient. These laws require strict compliance, and Patient fears and concerns about their privacy must be given utmost attention and respect. The heightened legal requirements for this type of Protected Health Information, which shall be generically referred to as Sensitive Health Information, cannot be adequately addressed by an Opt-Out policy. Depending upon the Permissible Purpose for which Sensitive Health Information is being sought, the law may require a Patient to specifically authorize in writing a disclosure of his or her Sensitive Health Information by signing a document that contains certain elements. Sensitive Health Information that requires the execution of a specific written authorization shall not be disclosed through the WVHIN’s Health Information Exchange.

Any disclosure of Sensitive Health Information for a Permissible Purpose must be conducted in compliance with federal and state laws. The recognized categories for Sensitive Health Information under the WVHIN’s Health Information Exchange are:

- ▶ Drug or Alcohol Abuse Information
- ▶ Mental Health Information
- ▶ Psychotherapy Notes
- ▶ HIV-Related Tests
- ▶ Out-Of-Pocket Goods and Services
- ▶ Patient-Restricted Information

The scope of each of these categories of Sensitive Health Information is further described below.

Drug or Alcohol Abuse Information means any information that is defined as confidential and protected by federal law in 42 C.F.R. Part 2. Drug or Alcohol Abuse Information is considered Sensitive Health Information. It includes any information from a federally assisted drug or alcohol abuse program, as defined by federal regulation in 42 C.F.R. Part 2, which would identify the Patient as a drug or alcohol abuser. In the absence of a written authorization signed by the Patient, federal law permits Drug or Alcohol Abuse Information to be disclosed for only the Permissible Purpose of Emergency Treatment or for audit and evaluation activities related to the Payment. Accordingly, under its current configuration, Drug or Alcohol Abuse Information may be shared through the Health Information Exchange only for the Permissible Purposes of Emergency Treatment and for audit and evaluation activities related to Payment. Any disclosure of Drug or Alcohol Abuse Information for Emergency Treatment or Payment must be accompanied by a written warning that prohibits re-disclosure of the information except as may be authorized by law. Drug or Alcohol Abuse Information may only be shared for Treatment, Payment (other than audit and evaluation), Public Health Reporting, or Limited Health Care Operations if there is a Patient's signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

Mental Health Information means any information that is defined as confidential and protected by West Virginia Law at Chapter 27, Article 3. Mental Health Information is considered Sensitive Health Information. This includes any diagnosis or treatment information, or any information that would specifically identify a Patient as receiving mental health services. In the absence of a written authorization signed by the Patient, West Virginia law permits mental health treatment information to be disclosed for the Permissible Purposes of Treatment, Emergency Treatment, and Public Health Reporting. Accordingly, under its current configuration, Mental Health Information may be shared through the Health Information Exchange for the Permissible Purposes of Treatment, Emergency Treatment, and Public Health Reporting. Mental Health Information may only be shared for Payment or Limited Health Care Operations if there is a Patient's signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

Psychotherapy Notes mean any information that is defined as confidential and protected by federal law at 45 C.F.R. Part 164. Psychotherapy Notes are considered Sensitive Health Information. They include notes recorded by a mental health provider documenting or analyzing the contents of a conversation during a private, group, or family counseling session and that are separated from the rest of the Patient's medical record. Psychotherapy Notes exclude any summary of notes regarding: diagnosis, functional status, treatment plans, symptoms, prognosis, progress to date, medication prescription and monitoring, counseling sessions start and stop times, the modalities and frequencies of treatment furnished, and the results of clinical tests. While this excluded information may not constitute Psychotherapy Notes, it may constitute Drug or Alcohol Abuse Information or Mental Health Information. In the absence of a specific written authorization signed by the Patient applicable only to Psychotherapy Notes, federal law prohibits the disclosure of Psychotherapy Notes for any Permissible Purpose except Public Health Reporting. Psychotherapy Notes may only be shared for Treatment, Emergency Treatment, Payment, or Limited Health Care Operations if there is a Patient's specific signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

HIV-Related Tests mean any information that is defined as confidential and protected by West Virginia Law at Chapter 16, Article 3C. HIV-Related Tests are considered Sensitive Health Information. This includes the HIV test, the test result, or any information that would specifically identify a Patient as receiving an HIV-Related Test. In the absence of a written authorization signed by the Patient, West Virginia law permits HIV-Related Tests to be disclosed for the Permissible Purposes of Treatment, Emergency Treatment, Payment, and Public Health Reporting. Any disclosure of an HIV-Related Test must be accompanied by a written warning that prohibits re-disclosure of the information except as may be authorized by law or the Patient. Accordingly, under its current configuration, HIV-Related Tests may be shared through the Health Information Exchange for the Permissible Purposes of Treatment, Emergency Treatment, Payment, and Public Health Reporting. An HIV-Related Test may only be shared for Limited Health Care Operations if there is a Patient's signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

Out-Of-Pocket Goods and Services are considered Sensitive Health Information. They include any goods or services for which the Participating Organization has been paid out-of-pocket in full by the Patient, and the Patient has requested the Participating Organization to restrict the disclosure of said goods and services to a Health Plan as contemplated under 45 C.F.R. § 164.522(a)(1)(vi). In the absence of a written authorization signed by the Patient applicable to Out-Of-Pocket Goods and Services, federal law permits Out-Of-Pocket Goods and Services to be disclosed for any Permissible Purpose to any entity other than a Health Plan. Out-of-Pocket Goods and Services may only be shared with a Health Plan if there is a Patient's signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

Patient-Restricted Information is considered Sensitive Health Information. It includes any information that is subject to a disclosure restriction impacting any Permissible Purpose, other than Public Health Reporting and Emergency Treatment, and that has been specifically requested by a Patient and agreed to by the Participating Organization as contemplated under 45 C.F.R. § 164.522. In the absence of a specific written authorization signed by the Patient, federal law permits the disclosure of Patient-Restricted Information as defined herein for the Permissible Purposes of Emergency Treatment and Public Health Reporting. Accordingly, under its current configuration, Patient-Restricted Information may be shared through the Health Information Exchange for the Permissible Purposes of Emergency Treatment and Public Health Reporting. Patient-Restricted Information may only be shared for Treatment, Payment, and Limited Health Care Operations if it does not include a restriction for such purposes or if there is a Patient's signed consent or authorization on a currently valid document that satisfies all legal requirements for the disclosure.

### **III. PROCEDURES**

#### **A. Patient Procedures.**

1. A Patient's Sensitive Health Information shall not be disclosed through the Health Information Exchange for the Permissible Purposes of Treatment, Emergency Treatment,

Payment, Limited Health Care Operations, or Public Health Reporting unless such disclosure is consistent with the law.

2. A Patient's Sensitive Health Information may be disclosed through the Health Information Exchange for Treatment if such information constitutes Mental Health Information, HIV-Related Tests, Out-Of-Pocket Goods and Services, and Patient-Restricted Information that does not include a restriction for Treatment.

3. A Patient's Sensitive Health Information may be disclosed through the Health Information Exchange for Emergency Treatment if such information constitutes Drug and Alcohol Abuse Information, Mental Health Information, HIV-Related Tests, Out-Of-Pocket Goods and Services, and Patient-Restricted Information.

4. A Patient's Sensitive Health Information may be disclosed through the Health Information Exchange for Payment if such information constitutes HIV-Related Tests, Drug or Alcohol Abuse Information (but only for audit and evaluation activities), and Patient Restricted Information that does not include a restriction for Payment.

5. A Patient's Sensitive Health Information may be disclosed through the Health Information Exchange for Limited Health Care Operations if such information constitutes Out-of-Pocket Goods and Services (but not to a Health Plan) and Patient-Restricted Information that does not include a restriction for Limited Health Care Operations.

6. A Patient's Sensitive Health Information may be disclosed through the Health Information Exchange for Public Health Reporting if such information constitutes Mental Health Information, Psychotherapy Notes, HIV-Related Tests, Out-Of-Pocket Goods and Services, and Patient-Restricted Information.

**B. Participating Organization Procedures.**

1. A Participating Organization must electronically tag all Drug or Alcohol Information to block it from being disclosed through the Health Information Exchange for all Permissible Purposes except Emergency Treatment, or for audit and evaluation activities related to Payment.

2. A Participating Organization must electronically tag all Mental Health Information to block it from being disclosed through the Health Information Exchange for all Permissible Purposes except Treatment, Emergency Treatment, or Public Health Reporting.

3. A Participating Organization must electronically tag all HIV-Related Tests from being disclosed through the Health Information Exchange for all Permissible Purposes except Treatment, Emergency Treatment, Payment, or Public Health Reporting.

4. A Participating Organization must electronically tag all Psychotherapy Notes for all Permissible Purposes except Public Health Reporting.

5. A Participating Organization must electronically tag all Out-of-Pocket Goods and Services to prohibit their disclosure for any Permissible Purpose to a Health Plan.

6. A Participating Organization must electronically tag all Patient-Restricted Information to prohibit its disclosure for any purpose except Emergency Treatment and any purpose outside of the scope of the agreed restriction by the Patient.

7. Participating Organizations will be solely responsible for electronically tagging Sensitive Health Information in order to segregate it and otherwise comply with the laws governing such information.

8. Participating Organizations that submit an Inquiry to receive Sensitive Health Information must identify the Permissible Purpose for which they are seeking the Sensitive Health Information as part of the Inquiry.

9. Any Participating Organization that receives Sensitive Health Information in response to an Inquiry must refrain from re-disclosing such information to third parties except as may be authorized by law.

10. Any Participating Organization that receives unauthorized Sensitive Health Information must immediately notify in writing or electronically the Participating Organization from whom it originated, and must return or destroy such unauthorized Sensitive Health Information. For purposes of this Policy and Procedure, the term “immediately” means within the same business day.

11. Any Participating Organization that desires to request or disclose Sensitive Health Information from or to another Participating Organization pursuant to a legally valid authorization signed by the Patient may do so using the DIRECT secure messaging service associated with the WVHIN.

C. WVHIN Procedures.

1. The WVHIN will offer Participating Organizations the ability to electronically tag Sensitive Health Information that cannot be exchanged through the Health Information Exchange without a signed authorization from the Patient.

2. The WVHIN will share Sensitive Health Information in response to an Inquiry from a Participating Organization only if the Patient has elected not to Opt-Out, the Participating Organization has identified the appropriate Treatment or Payment relationship to the Patient, the Participating Organization has identified a Permissible Purpose for obtaining the Sensitive Health Information in the Inquiry, and it is for a Permissible Purpose that is authorized by law without a Patient’s signed authorization.

3. A Patient’s Sensitive Health Information may be disclosed through the Health Information Exchange for Public Health Reporting if such information constitutes Mental Health

Information, Psychotherapy Notes, HIV-Related Tests, Out-Of-Pocket Goods and Services, or Patient-Restricted Information.

4. Absent compliance with Paragraphs 2 or 3 above, no Sensitive Health Information will be shared in response to an Inquiry from a Participating Organization or otherwise. The Participating Organization that submitted the Inquiry will receive no acknowledgment of any kind that Sensitive Health Information for this Patient may exist.

5. Any disclosure of Sensitive Health Information through the Health Information Exchange must be accompanied by a written warning that prohibits re-disclosure of the information by the receiving organization except as may be authorized by law.

6. DIRECT secure messaging is a WVHIN subscription service available to Participating Organizations and Health Care Providers. Participating Organizations or Health Care Providers may utilize this DIRECT functionality to request or disclose Sensitive Health Information among each other pursuant to a legally valid authorization signed by the Patient. DIRECT secure messaging is a distinct service made available by the WVHIN separate from its Health Information Exchange, and is not subject to the Opt-Out rules contained in the Policy and Procedure on Patient Consent – General.