

Children's Home of Easton, Inc., includes Children's Home of Easton Services, Inc., and CHE Services, Inc. (CHE)

## **Policy and Procedures for the Access, Use, and Disclosure of Protected Health Information (PHI) under HIPAA**

### **I. Regulation References:**

All Children's Home of Easton policies and procedures, as they relate to local, state, federal, and funder regulations and requirements, will contain the appropriate regulation reference for quick identification, definition and confirmation of its applicability.

### **II. Children's Home of Easton' Purpose Statement and Definitions:**

1. Children's Home of Easton (CHE) and its affiliates are bound to adhering to state, federal, and funder regulations and expectations. It is also important to CHE and its affiliates to uphold the rights afforded to our clients and families. As warranted by various state, federal and funder regulations, clients and their families have the following rights:
  - i. the right to access and review the clinical record;
  - ii. the right to amend or correct information contained within the clinical record;
  - iii. the right to an accounting of disclosures; and
  - iv. the right to restrict the use and disclosure of clinical information

These rights apply to the agency's Designated Record Set.

2. This policy and procedure is provided for the foundation and intent of CHE policies and procedures that address the access, use and disclosure of PHI in accordance with local, state, federal and funder regulations (e.g. Health Insurance Portability- HIPAA).
3. For the definitions to the policies and procedures, please refer to the [CHE HIPAA Glossary](#).

### **III. Children's Home of Easton's Policy:**

1. **Applicability**: The policies and procedures shall apply to the Children's Home of Easton inclusive of its affiliates unless other wise identified in the applicability section of the policy.
2. **Ownership**: The clinical record is considered to be the property of Children's Home of Easton (CHE) as stated above. The clinical record and protected health information (PHI) contained within the clinical record will be maintained according to federal, state, local and funder regulations.
3. **Preemption**: CHE's policies and procedures adheres to funder regulations, Health Insurance Portability and Accountability Act (HIPAA), and other federal and state laws regarding the access and disclosure of PHI to youth served and their parents and/or family. In the event there are conflicting standards or laws between HIPAA and NYS, the law that allows more rights to the client and/or family shall supercede.

4. **Minimum Necessary:** As required by law, all disclosures to PHI will be kept to that which is minimally necessary to do one's job. The restriction of minimum necessary will not be applicable to those disclosures made with the receipt of a properly completed and signed authorization or as allowed by law. In which case, the disclosure will be based on the authorization and/or the local, state, federal, or funder preemption allowance. The minimum necessary restriction shall not impede the quality of services or health care. If there is any question regarding the amount of information to be disclosed, contact a Clinical Information Specialist (CIS) and/or the Privacy Officer.
  
5. Written policies and procedures, located with the Privacy Officer, in the Clinical Information department and posted to the Children's Home of Easton' intranet, govern the compilation, storage, dissemination, security, modification and accessibility of client PHI and records. These policies and procedures are designed to assure that CHE fulfills its responsibility to safeguard and protect client PHI against loss, unauthorized alterations or disclosure of information. These policies are also designed to assure that each client record contains all required information, complete signatures and dates, as well as uniformity of format and forms. All agency staff shall abide by the written policies and procedures regarding confidentiality of clinical records and disclosure of information within the clinical records as required by law
  
6. All PHI in any medium (written, electronic, or oral) is considered confidential at all times. The Privacy Officer and/or CIS and the use of professional judgment must be used in situations not covered by other CHE policies and procedures as identified here:
  - a) CHE Notice of Information Practices (Long & Short form)
  - b) CHE Policy and Procedure Cover Sheet
  - c) CHE Privacy and Security Protected Health Information (PHI) & Clinical/Educational Records
  - d) CHE Designated Record Set Contents of an Educational and Clinical Records
  - e) CHE Disclosure of Clinical Information – Authorization **NOT** Required
  - f) CHE Disclosure of Clinical Information – Authorization **Required**
  - g) CHE Disclosure of HIV/AIDS Related Information
  - h) CHE Electronic Mail (e-mail)
  - i) CHE E-mail Communication Guidelines
  - j) CHE Facsimile
  - k) CHE Access to Clinical Information – Client/Family Requests
  - l) CHE Employee to Clinical Information
  - m) CHE Client Amendment/Correction to a Clinical Record or Document
  - n) CHE Accounting of Disclosures
  - o) CHE Restrictions of Clinical Information by Client/Family Request
  - p) CHE Photography, Audio-Visual Taping, & Use of Client Protected Health Information
  
7. All agency staff shall abide by the written policies and procedures regarding privacy and security of PHI, their records and the disclosure of PHI as required by law. Breaches of confidentiality, non-compliance with agency policy and procedures can

result in disciplinary action (e.g., re-training, written notice, termination, monetary, and/or civil/criminal penalties).

8. No clinical information in any medium may be released without a properly completed and signed authorization, except as state in the identified polices and procedures above. Simply put, as follows:
  - i. As permitted during emergency situation;
  - ii. As permitted according to law and funder requirements.
  
9. The written authorization of the client and/or their personal representative (see individual policies and procedures for details) to the disclosure of information shall be considered valid only if the following conditions have been met:
  - i. Informed Consent is assured;
  - ii. The client gives consent voluntarily;
  - iii. The provision of services is not contingent upon securing the disclosure of the information unless this service cannot be provided without the necessary information.
  - iv. The client's authorization shall be acquired in accordance with all applicable federal, state, local and funder laws, rules and regulations.
  - v. The disclosure of clinical information is judged to be in the client's best interest.

#### 10. **Disclosures in Emergencies:**

- i. In a life threatening situation or when an individual's condition or situation precludes the possibility of obtaining written authorization, the agency may disclose pertinent medical information to the medical personnel responsible for the individual's care without the individual's authorization, if obtaining such authorization would cause an excessive delay in delivering treatment to the individual.
- ii. An attempt to obtain the proper authorization as soon as reasonably possible afterwards should be made.
- iii. The following must be noted in the clinical record:
  - a) The date the information was disclosed;
  - b) The person to whom the information was disclosed;
  - c) The reason the information was disclosed;
  - d) The reason the authorization was not obtained; and
  - e) The specific information disclosed.

#### 11. **Notifications & Special Considerations:**

- i. **Law Enforcement:**
  - a) When criminal charges have been made against or by a client:
    1. The client's parent/legal guardians shall be notified immediately to inform them of the situation and to obtain their authorization for the police to question their child.
    2. If they feel the child should speak to the police, they have the right to be present or to have an attorney present at the time of questioning.
    3. If they do not want the police to question the child, we WILL NOT make the child available to the police.

4. The client has the right to refuse to speak to the police whether their parents/legal guardian would like them to or not. The child MUST be notified of this right.
  5. If any police action is taken against the client, make sure that the parents/legal guardian and other agencies involved are notified.
- b) An alleged victim of a crime may speak to the police to provide them with information. Notification shall be made to the client's parent/legal guardian and to the appropriate external agency (DSS, OMH, OMRDD, MHLS, OCFS, etc...)
- ii. **OMH:**
- a) If a parent requests access to the clinical record for a child who is 16 years old or over or the parent has agreed to a confidential relationship between the minor and the service provider, the child must authorize access.
  - b) If the child is between the ages of 12 and 15, the child may be notified of this request. If the child objects, the facility may elect to deny the request.
- iii. **OMRDD:**
- a) Developmentally disabled individuals 18 years old and older must be notified and authorize access.
- iv. **HIV/AIDs:**
- a) The protected individual shall be informed of any disclosures of HIV information upon request of the individual.
  - b) HIV/AIDs related clinical information may be disclosed to emergency personnel and those providers of care immediately treating the protected individual. Disclosure must still be noted in the clinical record.
- v. All programs/services:
- a) As otherwise required by law (e.g., emancipated minors, ability of minors to receive treatment without parental consent), the child may need to authorize access.
  - b) In the event a court grants authority to make health care decisions for the minor to someone other than the parent, notification and authorization may be required from that individual (e.g., law guardian).
  - c) CHE must promptly inform the individual of any disclosures or the intent of making a disclosure as identified in [Disclosure of Clinical Information: Authorization Not Required](#) policy and procedure except if:
    - 1) CHE, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
    - 2) CHE would be informing a personal representative, and CHE 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 interest of the individual as determined by the CHE staff, in the exercise of professional judgment.
    - 3) In either case, documentation should be included re: communication of disclosure.

1. **Verification:**
  - i. As required by law, CHE staff shall make “Reasonable & Best Efforts” to verify the identification and authority of the person requesting access to a CHE clinical record.
  - ii. In most cases, the client, legal guardian/parent or other personal representative will have the authority to request access.
  - iii. The presentation of court orders and/or subpoenas is sufficient for the disclosures of information providing they are for the proper services (e.g., all OMH funded services require a court order. A subpoena is not sufficient in these instances). A CIS or the Privacy Officer must be contacted in all subpoenas and court orders.
  - iv. CHE’s “Reasonable & Best Effort” verification may include (not all inclusive):
    - a) Verifying access according to the agency client database and/or the clinical record documentation for signature comparison, DOB, guardianship, etc...
    - b) Explain that due to confidentiality, CHE has a “call back” procedure before information can be obtained over the phone. Ask for the requestor’s phone number and call them back.
    - c) Requests that have agency letterhead.
    - d) Ask for the requestor’s driver’s license or other picture id (e.g., work id, state issue id, badge), if present in person.
    - e) The production/copy of a current court order and/or other legal document (e.g., affidavit) showing custodianship, advocacy or guardianship will be sufficient evidence of authority.
    - f) Law enforcement’s identification shall be verified with their name and badge number.
    - g) Public Officials, external Surveyors, etc...should show identification prior to any disclosures.
  - v. “Best Efforts” shall be documented with the documentation of the disclosure.
  - vi. Proper care, treatment and services shall not be hindered in an attempt of verifying identity and authorization.
  - vii. Exercising professional judgment shall be used with any disclosures.