




**Department of Health Care Finance & Administration
Division of TennCare**

Policy Number: PRIV 007	
Policy Subject: Use and Disclosure of Personal Information	
Approved by: Sarah Raybin	Effective Date: 06/16/2023
Position: Chief Compliance and Privacy Officer	
Signature: 	

PURPOSE OF POLICY

This policy addresses how the Division of TennCare (TennCare) uses and discloses applicant and enrollee personal information, including but not limited to, Personally Identifiable Information (PII) and Protected Health Information (PHI). This policy also addresses use and disclosure of PHI for law enforcement purposes and release of enrollee records by court authorized requests. TennCare must follow specific guidelines for both required and permitted disclosures pursuant to the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws and regulations.

POLICY

TennCare shall only use and disclose personal information as required or permitted by the Privacy Act, HIPAA, and other federal and state laws and regulations. TennCare must seek authorization to use and disclose personal information unless it is expressly required or permitted to use and disclose such information without prior consent. TennCare will provide enrollees with all the privacy rights granted by the Privacy Act, HIPAA, and other federal and state laws and regulations.

Any request for the use or disclosure of enrollee PHI for law enforcement purposes shall be reviewed by a member of Executive staff and the TennCare Privacy Office/Office of General Counsel (OGC). All service of process shall be received only by OGC.

TennCare shall cooperate required with law enforcement officials as to use or disclosure of enrollee PHI for law enforcement purposes when permitted by HIPAA and by federal and state laws and regulations. TennCare shall timely respond to requests in judicial and administrative proceedings for enrollee records maintained by TennCare. Such requests, referred to in this policy as Court Records Authorizations (CRA), will be processed through the TennCare Privacy Office.

DISCUSSION & LEGAL BASIS

Privacy laws outline how TennCare may use and disclose enrollee personal information, including when enrollee notice and approval is necessary. Generally, TennCare must seek authorization from an enrollee to use and disclose enrollee personal information when use or disclosure is not related to treatment, payment, and general healthcare operations activities.

Permitted Uses and Disclosures. Under HIPAA, TennCare may use or disclose personal information without an enrollee's prior consent for treatment, payment, and healthcare operations. Treatment activities include, but are not limited to, the provision of medical services, care coordination, and case-management. Payment activities include, but are not limited to, eligibility determinations, billing, claims processing, collections, and medical necessity review. Health care operations activities include, but are not limited to, quality improvement activities, medical review, credentialing and licensing, training operations, administrative functions, and fraud and abuse detection.

Required Disclosures. Under HIPAA, TennCare must disclose personal information under several circumstances, including to the enrollee when requested under applicable regulations, and to the Secretary of the Department of Health and Human Services (DHHS) to investigate or determine TennCare's compliance with HIPAA.

Uses and Disclosures for Which Enrollee Authorization is Required. Except as described above, enrollee authorization is required for any use or disclosure of personal information, including any use or disclosure for marketing purposes.

If TennCare seeks an authorization form from an enrollee for use or disclosure of enrollee personal information, TennCare must subsequently provide the enrollee with a copy of the signed authorization if requested.

Uses and Disclosures Requiring an Opportunity for the Enrollee to Agree or Object (45 CFR §164.510). TennCare may orally inform an individual of and obtain the individual's agreement or

objection to use or disclosure permitted by HIPAA (45 C.F.R. § 164.510), under two (2) circumstances:

- 1) use and disclosure for facility directories; and
- 2) use and disclosure for involvement in the individual's care and notification.

Authorization to use or disclose personal information is **not** required under the following circumstances per 45 C.F.R. § 164.512 and 5 U.S.C. § 552a:

- a) uses and disclosures required by law;
- b) uses and disclosures for public health activities (or to facilitate public health investigations);
- c) certain disclosures about victims of abuse, neglect or domestic violence;
- d) uses and disclosures for health oversight activities (e.g., investigation by the DHHS and the Office of Civil Rights);
- e) disclosures for judicial and administrative proceedings (see below);
- f) disclosures for law enforcement purposes (see below);
- g) uses and disclosures about decedents in certain circumstances;
- h) uses and disclosures for cadaveric organs, eye or tissue donation purposes;
- i) uses and disclosures for research purposes when authorization is waived by the Institutional Review Board (IRB) or Privacy Board;
- j) uses and disclosures to avert a serious threat to health or safety;
- k) uses and disclosures for specialized government functions, especially to assure proper execution of a military mission, etc.; and
- l) certain disclosures for worker's compensation.

Use and Disclosure of PHI for Law Enforcement Purposes. TennCare may use or disclose enrollee PHI for law enforcement purposes to the extent that such use or disclosure is required or permitted by law and complies with and is limited to the relevant requirements of the law. TennCare may use and disclose enrollee PHI without enrollee authorization or prior consent when permitted by the following circumstances:

- 1) disclosures made pursuant to process;
- 2) disclosures not required by law, but permitted if limited information for identification and location of a suspect, fugitive, material witness, or missing person;
- 3) disclosures not required by law regarding victims of a crime;
- 4) enrollee's death resulting from criminal conduct; and

- 5) criminal conduct that occurred on the premises of TennCare.

Release of Enrollee Records by Court Authorized Requests. Court Records Authorizations (CRA) are those made by or related to a court order, subpoena duces tecum, or other legal document in the course of a judicial or administrative law proceeding. This policy does not apply to routine records authorizations during TennCare operations such as the processing of medical services appeals. It likewise does not apply to court or other legal requests for TennCare records not containing enrollee PHI. Enrollee PHI is confidential except as use or disclosure is permitted by HIPAA and other federal and state privacy rules.

PROCEDURE

1. TennCare staff shall determine whether authorization is required in order to respond to a request to use or disclose enrollee personal information. Certain circumstances may not require an authorization such as:
 - a) If a request for personal information involves a permitted use and disclosure (e.g., for treatment, payment, or healthcare operations)
 - b) If a request for personal information is required by state or federal law.

Whenever authorization is not required, TennCare staff should follow departmental procedures and log or account for the release of specified information to outside entities as applicable.

2. If a request for personal information requires enrollee authorization, then the proper written documentation, including approval of the enrollee or their representative, must be obtained before releasing the information.
3. TennCare staff should utilize the Permission to Release Records form as approved by the TennCare Privacy Office and the Office of General Counsel (OGC) to process Authorizations, or equivalent documents. If TennCare requires a signed authorization form from an individual for use or disclosure of personal information, TennCare must provide the individual with a copy of the signed authorization form if requested.
4. As appropriate, TennCare may require authentication and verification of identity for an enrollee requesting their own personal information.

5. Each division within TennCare shall develop procedures related to the job functions of the employees that comply with the guidelines of TennCare regarding uses and disclosures of enrollee personal information.
6. Any questions regarding required and/or permitted uses and disclosures of enrollee personal information should be directed to the TennCare Privacy Office.

Requests from Law Enforcement: All requests for the use or disclosure of enrollee PHI from a law enforcement agency or official shall be handled by the TennCare Privacy Office. Any division within TennCare or any TennCare staff person receiving a request for enrollee information from any law enforcement official shall forward the request to:

TennCare Privacy Office
Office of General Counsel
310 Great Circle Road Nashville, TN 37243
Phone: (615) 507-6820

1. TennCare shall verify the identity and the authority of any law enforcement official to whom a permitted disclosure is made prior to making the disclosure of PHI.
2. Employees should immediately contact their immediate supervisors and the TennCare Privacy Office if any questions arise as to the legitimacy of a law enforcement official.
3. Disclosures made for law enforcement purposes shall be logged and maintained by TennCare to be provided to an enrollee in the event that the individual asserts his/her right to receive an accounting of disclosures (See PRIV 008. Accounting of Disclosures of Enrollee Records). However, TennCare must temporarily suspend an individual's right to receive an accounting of disclosures to a law enforcement official whenever a request is made by an authorized law enforcement official to suspend the accounting in the event such an accounting to the individual would be reasonably likely to impede the law enforcement activities.
4. Any questions regarding permitted uses and disclosures for law enforcement purposes should be directed to the TennCare Privacy Office.

Court Authorized Requests: All CRAs shall be handled by the TennCare Privacy Office. Any TennCare staff person receiving a CRA shall forward it to the Privacy Office (see above).

1. Steps of record tracking shall be maintained in a separate desktop procedure. This procedure shall be updated periodically by the TennCare Privacy Officer.
2. With a court order, TennCare shall release only the information expressly authorized by the order.
3. In response to a subpoena, discovery request, or other lawful process, requested information may be released as provided by HIPAA and verified by the TennCare Privacy Office.
4. Copy charges shall be applied depending on the nature and scope of the request.
5. When filing objections or other responses, please see Tenn. R. Civ. Pro. 45 and/or applicable Federal provisions.
6. The CRA should be deemed complete when objection or response is mailed. Verification of delivery should be received prior to file closure.

DEFINITIONS

Enrollee: An individual applying for or currently enrolled in any category of State of Tennessee’s Medicaid program (TennCare), and Children’s Health Insurance Program (CHIP, known as CoverKids in Tennessee), or in any Tennessee federal Medicaid waiver program approved pursuant to Sections 1115 or 1915 of the Social Security Act/ For purposes of TennCare privacy policies, the term “enrollee” may also be used to reference one who was previously an enrollee during a period for which there is a privacy request or compliance inquiry.

Law Enforcement Official: An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to 1) investigate or conduct an official inquiry into a potential violation of law; or 2) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law. For example, U.S. attorneys, district attorneys, FBI, TBI, MFCU and OIG.

Personally Identifiable Information (PII): Information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

The Privacy Act of 1974: A United States federal law, enacted December 31, 1974, and codified at 5 U.S.C. § 552a, which establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information.

Protected Health Information (PHI): Information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual and that:

- (1) 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
- (2) 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.

Electronic Protected Health Information (ePHI): Electronic health information (ePHI) is any PHI that is created, stored, transmitted, or received electronically.

Subpoena: A command to appear in court to testify as a witness.

Subpoena Duces Tecum: A legal paper requiring someone to produce documents or records for examination by the court.

OFFICE OF PRIMARY RESPONSIBILITY

TennCare Privacy Office, Office of General Counsel (OGC)

RELATED POLICIES

De-Identification of Enrollee Records
Authorized Representatives in Agency Interactions

RELATED FORMS

[Permission to Release Records](#)

REFERENCES

45 C.F.R §§ 160-164

45 C.F.R. § 164.501

45 C.F.R. § 164.502

45 C.F.R. § 164.506

45 C.F.R. § 164.508

45 C.F.R. § 164.510

45 C.F.R. § 164.512

45 C.F.R. § 164.528

The Privacy Act of 1974

5 U.S.C. § 552a (c)(3), (d)(5), (e)(4), (j), (k), (t)

Tennessee Compilation of Rules & Regulations 1200-13-11-.01