

## Administrative Policy No. 5.03

**Subject:** Client Rights Relating to Protected Health Information

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**Authorizing Source:** HIPAA Privacy Rule - [45 CFR Parts 160, 162](#), and [164 RCW 42.56.590 RCW – Public Records Act Executive Order 00-03, Public Records Privacy Protections](#)

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**Approved By:** Original signed by Lori Melchiori  
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### Purpose

This policy describes Clients' rights regarding Protected Health Information (PHI) held by the Department of Social and Health Services (DSHS), as required by HIPAA Privacy Rule. As DSHS is a hybrid covered entity, the Client rights in this policy apply only to designated DSHS health care components or business associate organizational Units that have records in the clients designated record set. With regard to PHI, this policy supplements DSHS [Administrative Policy 5.02](#) that governs DSHS public records disclosure, related to access by clients to their records.

### Scope

This policy applies to all DSHS administrations and employees who handle protected health information.

### Definitions

**Business associate organizational units (BAOU):** BAOUs are internal to DSHS and perform the department's daily activities that relate to providing health care. These activities must relate to covered functions. Some examples of covered functions include: conducting quality assessment and improvement activities; studies related to improving case management and care coordination; contacting health care providers and patients with information about treatment alternatives; licensing activities, claims processing, data analyses, utilization review, patient safety activities, and legal, actuarial, accounting, consulting, data aggregation, management administrative, accreditation, or financial services, and other activities relating to the creation, renewal or replacement of a contract of health insurance, or health benefits. BAOUs are covered by HIPAA when performing work associated with a DSHS Health Care Component.

**Client:** A person who receives services or benefits from DSHS. This term includes, but is not limited to, consumers, recipients, applicants, residents of DSHS facilities or institutions, and parents receiving support enforcement services. Clients include persons who previously received services or benefits and persons applying for benefits or services.

**Client record:** Includes information held by DSHS that relates to a particular client.

**Covered entity:** A covered entity is a health plan, a health care clearinghouse, or a covered health care provider. A health care provider is a covered entity if it transmits information electronically in conjunction with a HIPAA covered transaction (see [45 CFR §160.103](#)). As defined in 45 CFR 164.103, DSHS is a hybrid covered entity that has designated programs as health care components within the administrations and divisions as provided on the [DSHS Website](#). DSHS is a hybrid covered entity. Only its Health Care Components, listed in [DSHS Form 03-387B](#), and identified [BAOUs](#) subject to the HIPAA Rules.

**Designated health care professional:** A person designated by an administration or division to consult in initial denials of access to PHI in the designated record set ([45 CFR §164.524\(a\)\(3\)](#)). This person is licensed to practice a health profession as defined in RCW [18.120.020](#) for DSHS.

**Designated record set:** A group of records maintained by DSHS that are: a) medical records and billing records about clients; b) enrollment, payment, claims adjudication, and case or medical management records; or c) used, in whole or in part, to make decisions about clients. In DSHS, the designated record set may be a subset of the client record.

**DSHS designated health care professional:** A person who is licensed to practice a health profession as defined in [RCW 18.120.020](#) and who is the person designated by the DSHS secretary to serve as the agency-wide reviewing official for all DSHS PHI reviews.

**DSHS privacy officer:** The person designated by the DSHS secretary or secretary's designee to oversee the department's privacy program.

**DSHS public records officer:** The person designated as the public records officer for the department under [RCW 42.56.580](#). The DSHS public records officer has primary responsibility for management, oversight and monitoring of the department's public records request process.

**Health care:** Care, services, or supplies related to the health of a client, including, but not limited to, preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; counseling for a physical or mental condition, and prescribed drug, device, or equipment.

**Health care component (HCC):** A component or combination of components of a hybrid covered entity designated by the hybrid covered entity as a health plan, a covered health care provider, or both.

**Health care provider:** A provider of medical or health services, and any person or organization that furnishes, bills, or is paid for providing health care in the normal course of business. A health care provider is a covered entity if it transmits information electronically in conjunction with a HIPAA covered transaction (See [45 §CFR 160.103](#)).

**Health Care Information Act (HCIA):** [Chapter 70.02 RCW](#) Medical Records – Health Care Information Access and Disclosure.

**Health information:** Any information, whether oral or recorded in any form or medium, that:

1. Is created or received by DSHS concerning a client or potential client; and
2. Relates to the past, present, or future physical or mental health or condition of the individual; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual; and
3. Identifies or can readily be associated with the identity of a client or potential client. "Health Information" is considered to be the same as "Health Care Information" in the HCIA ([RCW 70.02.010](#)).

**Health plan:** An individual or group plan, or government program that provides or pays the cost of medical care or health related services provided by department health care components or other covered entities as defined by HIPAA. This is the same as "third-party payor" as defined in the HCIA.

**HIPAA:** The Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d et seq. To implement HIPAA, the U.S. Department of Health and Human Services Office for Civil Rights (OCR) has adopted the [HIPAA Privacy Rule, Security Rule and Breach Notification Rules](#).

**Hybrid covered entity:** A single legal entity:

1. That is a covered entity;
2. Whose business activities include both covered and non-covered functions; and

3. That designates health care components in accordance with the Privacy Rule.

The department is a hybrid covered entity under the HIPAA Privacy Rule.

**Individually identifiable:** Means that a record contains information, which reveals or can likely be associated with the identity of the person or persons to whom the record pertains, such as, names, addresses, client ID numbers, and unique characteristics. Also may be known as individually identifiable health information or "IIHI".

**Non-covered health care provider:** A provider of medical or health services, and any person or organization that furnishes, bills, or is paid for providing health care in the normal course of business who does not use electronic media to transmit health information to perform HIPAA covered transactions. For example, a social service worker whose activities meet the HIPAA definition of furnishing health care will be a health care provider but will not be subject to HIPAA if that social service worker does not transmit health information in an electronic form in connection with a transaction covered by HIPAA. The "non-covered" term means not covered by HIPAA.

**Personal representative:** A person with authority to make decisions on behalf of an adult or an unemancipated minor under Washington law. A personal representative includes parents or guardians of minor children, guardians for persons declared to be incompetent by a court, and personal representatives for estates of deceased persons but does not include legal representatives or attorneys unless granted this authority by the client or law.

**Protected health information (PHI):** Individually identifiable health information about a client that is transmitted or maintained by a DSHS health care component in any form or medium. PHI includes demographic information that identifies the individual or about which there is a reasonable basis to believe can be used to identify the individual. Individually identifiable health information in DSHS records about an employee or others who are not clients is not protected health information.

**PHI Review:** Review of the denial of access to PHI in designated record sets by the DSHS designated health care professional under [45 CFR §164.524 \(a\)\(4\)](#).

**Privacy Coordinator:** A person designated by DSHS administrations, divisions, institutions, or regions to manage and direct privacy issues, client privacy rights, and to coordinate with the DSHS privacy officer in carrying out the department's privacy program described in [Administrative Policy 5.01](#).

**Public records coordinator:** A person designated to respond to public records requests within an organizational unit or who is appointed as responsible to respond to public records requests for an office, program, facility, division, or administration.

## Policy

### A. **General: DSHS must follow special requirements when client records include protected health information (PHI)**

DSHS client records contain information made confidential by a variety of state and federal laws. This policy describes special rights granted by the HIPAA privacy rule related to protected health information (PHI). DSHS administrations use the designated privacy coordinator system to address issues relating to client rights regarding PHI whenever possible under the oversight of the DSHS privacy officer and in consultation with the DSHS public records officer who also oversees the functions of public records coordinators in carrying out duties under this policy.

As a hybrid covered entity, this policy pertains only to designated DSHS health care components. Documentation of methods used to determine these designations is found at: <http://one.dshs.wa.lcl/FS/Records/Privacy/Pages/HIPAA.aspx>.

### B. **DSHS may disclose PHI**

DSHS health care components may disclose protected health information (PHI) of clients as follows, unless a more restrictive law prevents disclosure:

1. To clients, if the information is about them;
2. To personal representatives of clients;
3. To other DSHS health care components for treatment, payment, and health care operations activities;
4. To non-covered health care providers for treatment and payment activities;
5. To health care providers for treatment and payment;
6. To health plans for payment;
7. For research that has been reviewed and approved by the Washington State Institutional Review Board.
8. With a valid authorization from the client;
9. In a facility directory with the appropriate permission;
10. To a person involved in a client's care with the appropriate permission;

11. To law enforcement officials to report crime;
12. To the Department of Health and Human Services; or
13. To agencies, organizations, and individuals as required or permitted by federal or state law.

**C. Clients have specific rights related to PHI**

This policy sets out client rights related to PHI:

1. The right to request and receive the DSHS Notice of Privacy Practices.
2. The right to request access to and a copy of PHI in their designated record set (DRS);
3. The right to appeal a DSHS denial for access to PHI in the DRS;
4. The right to request an amendment of PHI in their DRS;
5. The right to receive an accounting of individuals or organizations who received PHI from their client record under specified circumstances;
6. The right to request restrictions on the use or disclosure of PHI; and
7. The right to request alternative communication of PHI.

**D. Clients have the right to request and receive a Notice of Privacy Practices**

1. The Notice of Privacy Practices (NPP) for Client Confidential Information form ([DSHS 03-387](#)) describes how client confidential information is used and disclosed by DSHS health care components, and the rights clients have relating to their records.
2. DSHS must revise and post its NPP whenever there is a material change to uses and disclosures, the client's rights, the client's or DSHS legal duties, or other privacy practices. Material changes trigger requirements to post material revisions on the department's main website and inform clients in the next annual mailing in accordance with HIPAA.
3. DSHS health care components that are designated as health plans must distribute the NPP to clients:
  - a. To new enrollees, at the time of enrollment; and
  - b. Within 60 calendar days of a material revision to the NPP.

**Note:** Health plan clients must be notified at least once every three years by the

health plan of the availability of the notice and how to obtain it.

4. DSHS health care components that are covered health care providers with a direct treatment relationship with individuals, such as the Child Study and Treatment Center, Western and Eastern State Hospitals and the DDA Residential Habilitation Centers, must:
  - a. Provide the NPP (03-387) to clients the first time service is delivered or document attempts to provide it;
  - b. If the health care provider has a physical service delivery site, then post the NPP in a prominent location so it can be seen and read by clients; and
  - c. Have the NPP available upon request on or after the effective date of a material revision to the NPP.
  - d. Except in an emergency treatment situation, DSHS health care providers must make a good faith effort to obtain written acknowledgment from the client that they received the NPP. If staff is unable to get written acknowledgment from the client, then they must document their efforts.

**E. Clients have the right to request access to PHI**

1. DSHS must promptly comply with HIPAA deadlines and requirements for responses to requests by clients and personal representatives.
  - a. **Receipt of request:** All DSHS employees who receive a request from a client or personal representative for access to PHI in a designated record set must immediately transfer the request to the public records coordinator or other employee authorized to respond for that part of DSHS. [Administrative Policy 5.02](#) sets the procedure and requirements for responses, including the “5-day letter” and how to route requests within DSHS if records are sought from more than one part of the agency.
  - b. **Response deadline:** When a client or the client’s personal representative asks for access to client records that include a designated record set, DSHS employees must grant access on a date within 30 calendar days of the date of receipt of the request. Health care components may extend the response time only once in writing for an additional 30 calendar days and must give the reasons for the delay, and the date when the program will provide the records. (See [45 CFR §164.524\(b\)](#).)
  - c. **Format of response:** If the client or personal representative requests an electronic copy of e-PHI, the public records coordinator must provide access to the PHI from the designated record set in the electronic form and format requested if it is readily producible in that format or in an agreed readable electronic form and format if not available as requested. (See [45 CFR §164.524\(c\)\(2\)](#)).
  - d. **Access by third parties:** If a client’s written and signed request to access records directs the health care component to provide PHI directly to another person, then the public records coordinator must verify that request and seek authorization if possible. If verified, then the public records coordinator must send the PHI directly to the designated person. (See [45 CFR §164.524\(c\)\(3\)\(ii\)](#)). This provision does not

- apply if other laws prohibit this disclosure, such as chemical dependence laws.
- e. **Fees for copies:** The health care component may charge the client or personal representative a reasonable, cost-based fee, limited to staff time for copying, whether in paper or electronic format, supplies to create or produce the copy, and postage if mailed. (See [45 CFR §164.524\(c\)\(4\)](#).)
2. DSHS may deny access to PHI in a designated record set in limited circumstances.
    - a. **Non-reviewable denials of PHI:** A public records officer or coordinator may deny access by a client or personal representative to the following PHI in a designated record set without a right to PHI review:
      - (1) Psychotherapy notes;
      - (2) Records compiled in preparation for or for use in litigation or an administrative proceeding; or
      - (3) Information revealing the identity of someone other than a health care provider who is a witness or complainant who was given a promise of confidentiality or who would be at risk of harm.
    - b. **Reviewable denials of PHI:** A public records coordinator may deny a client or representative access to PHI in a designated record set in the following circumstances:
      - (1) The information is likely to endanger the life or physical safety of the client or another person;
      - (2) The record identifies another person, and disclosure is likely to cause substantial harm to the other person; or
      - (3) The request is made by the client's personal representative, and giving that person access is likely to cause substantial harm to the client or another person.
    - c. **Procedures for denial and review or appeal of client access to PHI** (See [45 §CFR 164.524\(d\)](#))
      - (1) **Denial:** When a public records coordinator denies access to PHI in a designated record set to a client or personal representative, the public records coordinator must notify the client or personal representative in writing, and must explain the reason for denial and the right to contest the denial. The client or personal representative may seek PHI review within 60 calendar days of the denial.
      - (2) **PHI Review:** If the denial of access to PHI in the designated record set is for the reasons under Section E. 2. b. above, then the client is entitled to PHI review. The program's designated health care professional conducts the PHI reviews. The designated health care professional must complete PHI reviews within 60 calendar days of receipt.
      - (3) **Other Appeal Rights:** Clients and personal representatives also have the rights to contest denial or redaction of public records described in [Administrative Policy 5.02, Section C \(14\)](#).

**F. Clients have the right to request amendments to PHI**

1. **Form of request:** Clients must request in writing to amend PHI in their designated



record set. Clients must identify whether they request an addition, and/or deletion, to the PHI and must provide a reason for the amendment. Unless other law or policy grants a right to amend any other part of the client record, the right to amend extends only to PHI in the designated record set. ([See 45 CFR §164.526](#))

2. **Response time:** DSHS must act on the request to amend within 60 calendar days of receipt of the request and must inform the client of the decision. If DSHS is unable to decide on the amendment within 60 calendar days, then DSHS may take up to 30 additional calendar days but must inform the client in writing of the reasons for the delay and the date when it will decide.
3. **Authority to Amend:** DSHS employees receiving the client's request for amendment to PHI in a designated record set must refer the request to the entity or provider that created that record. The part of DSHS accepting an amendment must notify other affected administrations and business associates.
4. **Denial of Amendment:**
  - a. **Notice:** DSHS must send written denials of requests for amendment to the client within 60 calendar days of receipt of the request. DSHS must inform clients of the reason for the denial, of the client's right to submit a statement of disagreement, and of the client's right to file a complaint under [Administrative Policy 5.01](#).
  - b. **Reasons for denial:** DSHS may deny requests for amendment for the following reasons: (1) DSHS did not create the record; (2) the PHI or record is not part of the designated record set; (3) the record is not available for inspection; or (4) the information is accurate and complete.
  - c. **Statement of disagreement:** Clients have the right to submit a written statement of disagreement within 30 calendar days of the date of the denial of the request for amendment. If the client does not submit this statement, the client may request that DSHS include a copy of the request for amendment and denial with any future disclosures of the PHI.
  - d. **Rebuttal by DSHS:** DSHS may decide to accept or rebut the client statement of disagreement. DSHS must prepare a written rebuttal statement within 30 calendar days of receipt of the statement, and provide a copy to the client.
5. **Documentation:** If the amendment is accepted, then any changes to the client's PHI in the designated record set must be noted in or linked to that record. If the request for amendment is denied, then documentation must include the request for amendment, the denial of the request, any statement of disagreement and any rebuttal by DSHS. This documentation is included in any future uses and disclosures by the health care component. The documentation relating to amendments must be maintained for six years by the health care component.

**G. Clients have the right to an accounting for certain disclosures of PHI**

1. **Tracked disclosures:** DSHS is not required to track certain disclosures of PHI, such as disclosures to carry out treatment, payment and health care operations; disclosures to clients themselves or with client authorization, disclosures to correctional institutions or law enforcement, or disclosures as part of a limited data set (see [45 C.F.R. §164.528\(a\)](#)) However, DSHS must, at a minimum, document and track other disclosures of PHI made by DSHS health care components and its business associates without client permission as a part of:
  - a. Unauthorized access to or breaches of PHI;
  - b. Information released under a subpoena or order issued by an administrative law or court judge when disclosure is not for health care operations (e.g., when DSHS is a party to the proceeding);
  - c. Records disclosed for research purposes;
  - d. Reporting diseases, injuries, disabilities, and vital events to public health authorities or others allowed to receive this information; and
  - e. Disclosing other information under law that is not exempt from accounting under [45 CFR §164.528\(a\)](#).
2. **Content of accounting:** Upon written request, DSHS must provide a client with the following information about disclosures of PHI that occurred during the six years prior to the date on which the accounting is requested (or such shorter time period at the request of the individual):
  - a. The date of the disclosure;
  - b. The name of the recipient of the information, and the address, if known;
  - c. A brief description of what PHI was disclosed;
  - d. The purpose for the disclosure; and
  - e. The number or frequency of the disclosures and the date of the last disclosure made during the accounting period, if DSHS makes multiple disclosures about a client to the same person or agency.
3. **Research activities:** For research activities where DSHS has disclosed the PHI of more than 50 Clients without authorization, the DSHS human research review section is responsible under [Administrative Policy 12.01](#) to account for the disclosure and may instead provide the information listed in [45 CFR §164.528 \(b\)\(4\)\(i\)](#).
4. **Requests for accounting:** A client may request an accounting on a Request for Records [Form 17-041](#) by indicating the parts of DSHS health care components to include and specifying “accounting of disclosures” in the blank after “the following records” in the client records section or by any other means that indicate the client wants this information.
5. **Responding to requests:** If a client requests an accounting of disclosures, DSHS must provide the accounting within 60 calendar days. If DSHS is unable to provide the accounting within 60 calendar days, then DSHS may take up to 30 additional calendar

days but must inform the client in writing of the reasons for the delay and the date when it will provide the accounting.

If the client requests an accounting of all DSHS health care component disclosures, then the request must be referred to the appropriate designated privacy coordinator to route the request to other health care components that have designated record sets for the client. Business associates must also be contacted to determine if they have made any disclosures that are required to be tracked. The accounting must include disclosures that are required to be tracked for the past six years.

6. **Cost of accounting:** DSHS must provide the accounting without charge in response to a client's first request within 12 months. If a client requests additional accountings within the 12-month period, then DSHS may charge for the costs of the accounting as provided in E(1)(e) above so long as the client is informed of the fee in advanced. ([45 CFR §164.528\(c\)\(2\)](#))
7. **Documentation:** DSHS must document and retain accountings of disclosures for a minimum of six years. The documentation relating to requests for an accounting must be retained for six years.

#### H. **Clients have the right to request that DSHS restrict uses and disclosures of PHI**

1. **Requests for restrictions:** A Client may request that DSHS restrict how it uses and discloses the client's PHI. However, HIPAA allows DSHS to deny that request. DSHS finds that restrictions on use and disclosure of PHI would generally be administratively burdensome and would unduly impede DSHS operations. DSHS will not grant restrictions to use and disclosure of PHI under HIPAA except in extenuating circumstances approved by the division director or designee.
2. **Effect of restrictions:** If a restriction is granted, then the division director or designee must inform other parts of DSHS that have client records. Any restrictions granted must follow the procedures and standards set forth in HIPAA in [45 CFR §164.522 \(a\)](#).

#### I. **Clients have the right to request alternative means for communications of PHI**

1. **Requests:** DSHS allows clients to request that any communication of PHI be through alternative means (for example, by phone call instead of by mail) or to alternative locations (for example, to client's place of employment instead of to client's home address). HIPAA requires DSHS to grant reasonable requests for alternative means of communication. Clients may also request or consent to receive communications in an unsecured format as long as they are notified of the unsecured nature of the communication. For example, clients may request to receive information in an unencrypted format. ([See 45 CFR §164.522\(b\)](#))

2. **Documentation:** DSHS programs may require that requests for alternative communications be made in writing or must document the requests, if they are not made in writing. The documentation relating to requests for alternative communication must be maintained for six years.

**J. Different standards may apply to give additional rights concerning patient and other special records held by DSHS**

1. **Programs affected:** DSHS state health care institutions also provide access to the client designated record set, which is equivalent to health care information as defined in the Health Care Information Act, [Chapter 70.02 RCW](#). Other state and federal laws include different requirements that grant greater Client rights and protections for records about services or treatment depending on the nature and content of the record. For example, [42 CFR Part 2](#) provides for special protections for chemical dependency or substance abuse information.
2. **Applicable law:** To the extent that a law applying to specific kinds of records provides greater rights of access, shorter time frames and additional rights not stated in this policy, the laws applying to those records or that part of DSHS, as specified in the policies or rules of the facility or program, govern client rights concerning patient or other special records.

<sup>1</sup> Updated hyperlink to forms picker rather than specific form since form order may change in directory