



DELAWARE HEALTH AND SOCIAL SERVICES

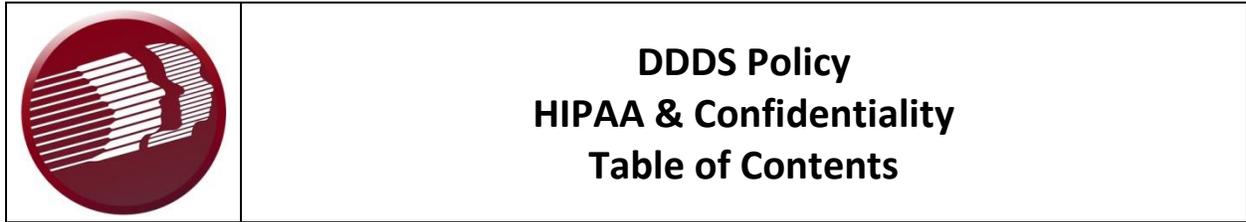
Division of Developmental Disabilities Services

**DDDS Policy:
HIPAA & Confidentiality**

November 1, 2017

	<p>DDDS Policy HIPAA & Confidentiality Revision Table</p>
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Revision Date	Sections Revised	Description of Revision
11/1/2017	All	Origination date
Director's Signature/Date:		<i>Live signature is located in the Office of the Director</i> Effective: 11/1/2017



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1. Purpose

- 1.1 The Division of Developmental Disabilities Services (DDDS) recognizes that maintaining confidentiality is not only a legal requirement, but is also the basis for all relationships, as well as respect of personal privacy. DDDS will conform to all applicable requirements set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, including Electronic Health Care Transaction, Privacy, Confidentiality, and Health Data.
- 1.2 This policy is to be used as a supplement to [DHSS Policy Memorandum Number 5 \(Appendix F\)](#).
- 1.3 This policy replaces:
 - 1.3.1 HIPAA-PHI Accounting and Disclosure Procedures – May 2006
 - 1.3.2 Confidentiality and Release of Information – February 2012

2. Definitions

- 2.1 “Breach” means acquisition, access, use or disclosure in an unauthorized manner which compromises the security or privacy of PHI or ePHI.
- 2.2 “Business Associate” means a person or entity which creates, uses, receives or discloses PHI or ePHI held by a covered entity to perform functions or activities on behalf of the division.
- 2.3 “Confidential” means the entrusting of information to another individual with the understanding that the information will not be disclosed.
- 2.4 “Contracted Provider” means any provider and its employees that are authorized to perform DDDS services.
- 2.5 “Division” means Division of Developmental Disabilities Services.
- 2.6 “Disclosure” means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
- 2.7 “Electronic Protected Health Information (ePHI)” means any Protected Health Information (PHI) in electronic form.
- 2.8 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996.
- 2.9 “Individual” means the person receiving services through DDDS.
- 2.10 “Informed Consent” means the consent of a patient to the performance of health care services by a health care provider who has informed the patient both verbally and in writing, to an

extent reasonably comprehensible to general lay understanding, of the nature of the proposed procedure or treatment and of risks and alternatives to treatment which a reasonable patient would consider material to the decision whether or not to undergo the treatment. The patient must understand the information provided by the health care provider. ([Title 16, Subchapter 55, subsection 5530\(b\)](#)).

- 2.11 “Need to Know” means when it is essential to have information regarding an individual in order to provide necessary service linkage and treatment planning.
- 2.12 “Protected Health Information (PHI)” means individually identifiable health information including demographic data, that relates to:
- A. The individual’s past, present or future physical or mental health condition;
 - B. The provision of health care to the individual; or
 - C. The past, present, or future payment for the provision of health care to the individual, and
 - D. That identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.
- 2.13 “Personally Identifiable Data” means identifiable information relating to the past, present, or future physical or mental health or condition of an individual, provision of health care to an individual or past present or future payment of health care provided to an individual. This includes but is not limited to:
- A. The name of the individual, the individual’s family members,
 - B. The address, phone number, email address of the individual,
 - C. A personal identifier, such as the individual’s date of birth, social security number, or Medicaid/Medicare number,
 - D. A list of personal characteristics or other information which would make it possible to identify the individual with reasonable certainty (full face photos).
- 2.14 “Privacy/Complaints Officer” the designated individual to receive complaints related to the violation of HIPAA in accordance with [45 CFR Section 164.530 \(a\) \(1\) \(ii\)](#).
- 2.15 “Record” means any information or data recorded in any medium, including, but not limited to: photographs, handwritten, electronic, print, tapes, film, microfilm, microfiche and automated data bank.

3. Scope

- 3.1 This policy applies to all DDDS employees, Contracted Providers and its employees, volunteers, researchers and administrative entities.

4. Standards

General

- 4.1 All DDDS employees, Contracted Provider employees, volunteers, and researchers shall sign a DHSS Confidentiality Agreement (Appendix A) upon employment, volunteering, or conducting research.
- 4.2 All DDDS employees, Contracted Provider employees, volunteers, and researchers shall complete an approved State of Delaware HIPAA and Confidentiality training upon employment, volunteering, or conducting research and shall complete a refresher course annually.
- 4.3 All electronic records or communications must be secure in accordance with the Delaware [Department of Technology Information standards](#).
- 4.4 A copy of the HIPAA Privacy notice shall be in a visible place within all DDDS Offices.
- 4.5 The HIPAA Privacy notice shall be distributed annually to the individual by the DDDS Case Manager, Employment Navigator, or Community Navigator during the annual planning conference (Appendix B). Documentation that this was distributing must be documented in the Person Centered Plan.
- 4.6 Nothing in this policy shall be construed to prohibit federal, state, or local officials from having access to confidential records which may be necessary in connection with audits or the enforcement of federal and state laws and regulations which relate to those records.
- 4.7 Privacy does not exist in the world of social media. DDDS cannot control the actions of others with whom individuals may choose to share their information. Content contributed to social media sites could encourage detrimental comments; however DDDS employees, Contracted Provider employees, volunteers and researchers shall uphold all applicable requirements to maintain confidentiality.

Breach

- 4.8 Any DDDS Employee, Contracted Provider employee, individual, volunteer, or researcher who feels that a breach has occurred must notify the Privacy/Complaint officer in writing within 24 hours of being informed of the potential breach by using the approved form (Appendix C).
- 4.9 Common possible breaches of confidentiality include but are not limited to:
 - A. Leaving a log book with health or legal information open for unauthorized eyes.
 - B. Keeping private information in an unlocked cabinet.
 - C. Writing information about two individuals in one document. Exceptions to this shall include investigations of reportable incidents.
 - D. Leaving a computer logged on to a person's file.

- E. Allowing family members who are not the legal guardian access to an individual's documents or other information without a proper authorization to release information.
 - F. Speaking about confidential information in front of other people who do not have a need to know such as in the hallway.
- 4.10 The Privacy/ Complaint officer shall complete an investigation of all potential breaches within thirty (30) business days of receiving the notification.
- 4.11 The Privacy/ Complaints Officer shall notify in writing their supervisor, the individual(s) whose information was breached and his or her legal guardian within fifteen (15) business days of the completion of the investigation to any breach. The report shall include:
- A. What information was breached;
 - B. How it effects the individual; and
 - C. Corrective action to prevent it from occurring again.
- 4.12 All final investigations, reports and notifications must be kept on file for six (6) years at the Health Information Management (H.I.M) office.

Request of PHI or e PHI Accounting

- 4.13 DDDS shall honor individuals' approved authorization to request an accounting of disclosure report of PHI and/or ePHI within a six (6) year period of the date on which the accounting was requested, except as specified in [45 CFR, 164.528](#). For example: An individual may request the division to provide details of information released by the division for a six year period from the date that the individual makes the request.
- 4.14 Request for an accounting of disclosure of PHI and or ePHI shall be made in the form of writing and forwarded directly to the Health Records Administrator, Health Information Management Department.
- 4.15 Each accounting of a disclosure shall include the following elements:
- A. The date of the disclosure;
 - B. The name of the entity or person who received the PHI or ePHI; and
 - C. A brief description of the PHI or ePHI that was disclosed.

Release of Information

- 4.16 The following parties shall have access to pertinent and confidential information within the individuals record without the requirement of written authorization if they have a need to know:

- A. Division of Developmental Disabilities Services and/or Contracted Provider employee who is responsible for billing, planning, evaluating or implementation of the individual's Person Centered Plan or programming;
 - B. Consultants participating in the individual's care; Students in clinical affiliation;
 - C. Other Contracted Providers providing active treatment services;
 - D. Representatives of Medicaid or Medicare and/or regulatory bodies whose access is authorized by conditions of program participation or as identified by the applicable Delaware Code;
 - E. To individuals receiving services who are legally able to give informed consent for disclosure of confidential information if released directly to the individual;
 - F. In a bonafide emergency situation posing significant imminent risk to the individual receiving services;
 - G. To authorized State agencies investigating alleged rights violations of abuse, neglect, mistreatment, medication deviation, mistreatment, financial exploitation or significant injury of individuals; and
 - H. To DDDS Business Associates who have a treatment relationship with the individual receiving services.
- 4.17 If confidential information, including access to the electronic record system, is requested DDDS Case Managers, Employment Navigators, Community Navigators, or Contracted Employees shall assist the individual with completing and submitting the approved Release of Information form (Appendix D) to the Health Information Management Department (H.I.M).
- 4.18 The determination of a Surrogate/Personal Representative for a person with no legal guardian or other legal agent shall:
- A. Have documentation of lack of capacity by the attending physician; and
 - B. Meet all requirements set forth in [Delaware Code, Title 16 § 2507](#) (Appendix E).
- 4.19 The determination to have a Supported Decision Maker must meet all requirements set forth in [Delaware Code, Title 16 § 9401A](#) (Appendix F).
- 4.20 DDDS Case Managers, Community Navigators will assist all individuals who wish to pursue items defined in standards 4.17 and/or 4.18 of this policy.
- 4.21 For information on making requests through Delaware's Freedom of Information Act (29 Del.C. §§ 10001 et seq.) please visit the following web site: <http://dhss.delaware.gov/dhss/foia.html>

5. Resources

- 5.1 Community Legal Aid Society, Inc. - <http://www.declasi.org/> or 302-478-8850
- 5.2 Fillable consent forms and the HIPAA Privacy Notice are available on the web: http://dhss.delaware.gov/dhss/ddds/ddds_policy_main.html

6. Appendix A: Confidentiality Agreement



Delaware Health and Social Services

CONFIDENTIALITY AGREEMENT

All Department employees and agents who may have access to any client information have an ethical and a legal obligation to keep confidential all information received from and/or about persons with whom the Department is currently and/or was previously involved or otherwise has knowledge. All Department employees and agents are, therefore, required to sign this Confidentiality Agreement.

I hereby agree that I shall abide by this assurance of confidentiality and acknowledge and agree to the following stipulations:

1. I understand and support the Department's firm commitment to the principle of confidentiality of client information.
2. I understand for the purposes of all Department policies on confidentiality that Department employees and agents should be defined as all current and former employees and agents.
3. I agree to keep confidential all information contained in Department records. In fulfilling my obligation to protect client privacy, I shall adhere to the requirements of federal and state laws, Department policy and the ethical standards of my profession.
4. I shall safeguard from unauthorized disclosure all information retrieved from any computerized client database as well as any password assigned to gain access to a client database.
5. I agree to consult with my immediate supervisor or the next level of management prior to disclosure if there is any question concerning the authority to release specific confidential information.
6. I understand that all information received from and/or about persons currently or previously involved with the Department is the property of the Department and that any such information will be relinquished to the Department upon my termination of employment.
7. I understand that violation of the privacy rights of individuals through unauthorized discussion, disclosure, dissemination, or access to personal information could make me subject to Department disciplinary action as well as civil and/or criminal penalties.

8. I have read and understand all of the above statements.

(DEPARTMENT EMPLOYEE/AGENT SIGNATURE)

(DATE SIGNED)

(WITNESS)

(DATE SIGNED)

7. Appendix B: HIPAA Privacy Notice

HIPAA Privacy Notice



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Developmental Disabilities Services

Revised Date: October 13, 2016

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION.

PLEASE REVIEW IT CAREFULLY.

Our Rights and Responsibilities

- The Delaware Division of Developmental Disabilities Services (DDDS) cares about your privacy. DDDS is required by law to maintain the privacy of your Protected Health Information (PHI), and to give you notice about our privacy practices, our legal duties, and your rights concerning your PHI. DDDS is also required to notify you of any breach of your unsecured PHI.

HEALTH INFORMATION RIGHTS

- **Right to Inspect and Copy:** With certain exceptions, you have the right to inspect or copy the PHI that we maintain on you. You must make a request in writing to obtain access to your PHI. Request must be made to: Health Information Management Department 26351 Patriots Way Georgetown, DE 19947. If you request copies we may charge a reasonable, cost based fee for staff time, postage, and printing cost.
- **Right to Amend:** you have the right to request that we amend the PHI that we maintain on you. We may deny your request to amend PHI if: (a) we did not create it and the originator remains available; (b) it is accurate and complete; (c) it is not part of the information that we maintain; or (d) it is not part of the information that you would be permitted to inspect or copy.
- **Right to Confidential Communications:** You have the right to request that we contact you in a specific way or send mail to a different address.
- **Right to Request Restrictions:** You have the right to request restrictions on how we use or disclose PHI.
- **Right to Disclosure Accounting:** You have the right to receive an accounting of the disclosures we have made of your PHI.
- **Breach Notification:** You have the right to be notified by us if there is a breach of your unsecured PHI.
- **Copy of Notice:** You have the right to receive a paper copy of this notice upon request.

YOU DO NOT HAVE TO DO ANYTHING. THIS NOTICE IS JUST FOR YOUR INFORMATION.

To use these rights, a request for inspecting, copying, amending, making restrictions, or obtaining an accounting of your health information must be made in writing to the: Health Information Management Department 26351 Patriots Way Georgetown, DE 19947

Your health information may be used and given by DDDS for treatment, payment and operational needs. We have listed some allowed uses and releases.

- **For Treatment:** We may share information about you to help you get health care. For example, we may tell your doctor about care you get in an emergency room.
- **For Payment:** We may use and share information so the care you get can be billed and paid for. For example, we may ask an emergency room before we pay the bill for your care.
- **For Business Operations:** We may need to use and share information for our business operations. For example, we may use information to review the quality of the care you get.
- **Exceptions.** For certain kinds of records, your permission may be needed even for release for treatment, payment, or business operations.
- **As Required By Law.** We will share information when we are required by law to do so. Examples of such release would be law enforcement or in response to a court order or subpoena. We may also share information to prevent a serious threat to health, safety or other emergencies. We may also share information to allow government agencies to review our activities.
- **With your Permission.** If you give us permission in writing, we may use and share your information. If you give us permission, you have the right to change your mind and take it back. This must be in writing too. We cannot take back any uses already made with your permission.

DDDS has the right to change this notice. A changed notice will be for information we already have as well as information we get in the future. We must follow whatever notice is currently in effect. We will send a new notice to you if the change we make is important. We will also post a copy of the current notice on our website at <http://dhss.delaware.gov/dhss/ddds/>

If you believe your privacy rights have been violated, you may file a complaint by writing to:

Stockley Center
Attention: HIPAA Privacy/Complaints Officer
26351 Patriots Way
Georgetown, DE 19947

Or to:

Region III, Office for Civil Rights, U.S. Department of Health and Human Services, 150 S. Independence Mall West, Suite 372, Public Ledger Building, Philadelphia, PA 19106-3499.

Main Line (215) 861-4441.

Hotline (800) 368-1019.

You will not be penalized for filing a complaint with the federal government.

Si necesita esta noticia en Espanol favor de llamar 1-800-372-2022.

8. Appendix C: Health Information Privacy Complaint Form



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Developmental Disabilities Services

HEALTH INFORMATION PRIVACY COMPLAINT

Person's whose rights where violate:

Your First Name:		Your Last Name:	
Street Address:			
City:	State:	Zip:	
Home Phone Number:	Email Address:		

Are you filing this complaint for someone else? Yes No

If yes, please write your first and last name.

First Name:	Last Name:
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Who (or what agency or organization, e.g., provider) do you believe violated your (or someone else's) health information privacy rights or committed another violation of the Privacy Rule?

Person/ Agency:		
Street Address:		
City:	State:	Zip:
Phone Number:		

When do you believe that the violation of health information privacy rights occurred? List date(s)

According to the HIPAA Privacy notice how and why do you believe your (or someone else's) health information privacy rights were violated, or the privacy rule otherwise was violated? Please be as specific as possible. (Attach additional pages as needed):

Signature

Date (mm/dd/yyyy)

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect DDDS decision to process your complaint.

Do you need special accommodations for DDDS to communicate with you about this complaint?

(check all that apply)

- Braille
- Large Print
- TDD
- Sign Language Interpreter
- Foreign Language (specify language): _____
- Other: _____

Have you filed your complaint anywhere else? If so, please provide the following:

Person/ Agency/ Court:
Dates Filed:
Case Numbers:

Please send all complaints to: **Stockley Center**
 Attention: HIPAA Privacy/Complaints Officer
 26351 Patriots Way
 Georgetown, DE 19947

Filing a complaint with DDDS is voluntary. However, without the information requested, DDDS may be unable to proceed with your complaint. We collect this information under authority of the Privacy Rule issued pursuant to the Health Insurance Portability and Accountability Act of 1996. We will use the information you provide to determine if we have jurisdiction and if so, how we process your complaint. Information submitted on this form is treated confidentially and is protected under the provision of the Privacy Act of 1974.

9. Appendix D: Release of Information Form



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Developmental Disabilities Services

HIPAA COMPLIANT CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION
Pursuant to 45 CFR 164.508

Individual (DDDS Service Recipient):

Name:		Birthdate:
Street Address:		
City:	State:	Zip:

I, or my Legal Guardian, hereby authorizes the Division of Developmental Disabilities Services (DDDS) to disclose my Personal Health Information and/or any other documents that is requested on this consent form to the designee identified below:

Requesting Individual (to whom the information will be sent):

Name:		Relationship:
Street Address:		
City:	State:	Zip:

Specific information to be released:

- Access to my Electronic Case Record (*please select the section(s) that will be available to view*)
 - Case Notes Person Centered Plan (ELP) Incident Reports (GER)
 - Medical Behavior Support Plan Individual Data Form
- Release of my Person Centered Plan (paper form)
- Release of my Medical Record (specify what records will be released below):
- Release of information pertaining to an incident or Reportable Incident (specify what records will be released):

Other: (Please Explain): _____

Reason for the release of information:

- At the request of the individual
- Other: _____

Purpose for the information:

Restrictions to the release: (if applicable):

My signature indicates that I know exactly what information is being disclosed and have had the chance to correct and change the information to make sure it is correct and complete. I am aware that this consent can be revoked in writing at any time.

My signature also means that I have read this form and/or have had it read to me and explained in a language I can understand. All blank spaces have been filled in except for signatures and dates.

I have received a copy of this consent for my records.

This consent ends one year from the date signed unless revoked by me in writing before that time. This consent is effective immediately and shall stay in effect as stated.

 (Individuals signature or "X") (Date signed) (Witness/Date signed)

 (Individuals guardian, if applicable) (Date signed) (Witness/Date signed)

To be completed if the individual has a guardian:

Guardian Verified: Yes No

Verified by who:

First and Last name:	Relationship to the individual:
Company Name:	Date Verified:

Please send all consents to: Stockley Center
 Health Information Management Department
 26351 Patriots Way
 Georgetown, DE 19947

10 Appendix E: Health Care Surrogate Code

2507 Surrogates.

(a) A surrogate may make a health-care decision to treat, withdraw or withhold treatment for an adult patient if the patient has been determined by the attending physician to lack capacity and there is no agent or guardian, or if the directive does not address the specific issue. This determination shall be confirmed in writing in the patient's medical record by the attending physician. Without this determination and confirmation, the patient is presumed to have capacity and may give or revoke an advance health-care directive or disqualify a surrogate.

(b)(1) A mentally competent patient may designate any individual to act as a surrogate by personally informing the supervising health-care provider in the presence of a witness. The designated surrogate may not act as a witness. The designation of the surrogate shall be confirmed in writing in the patient's medical record by the supervising health-care provider and signed by the witness.

(2) In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act, when permitted by this section, as a surrogate and shall be recognized as such by the supervising health-care provider:

- a. The spouse, unless a petition for divorce has been filed;
- b. An adult child;
- c. A parent;
- d. An adult sibling;
- e. An adult grandchild;
- f. An adult niece or nephew;
- g. An adult aunt or uncle.

Individuals specified in this subsection are disqualified from acting as a surrogate if the patient has filed a petition for a Protection from Abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the patient.

(3) If an adult patient is in an acute care setting or is a client of the Department of Health and Social Services and none of the individuals eligible to act as a surrogate under subsection (b) of this section is reasonably available, an adult, other than a paid caregiver, who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may make health-care decisions to treat, withdraw or withhold treatment on behalf of the patient. Such person shall provide an affidavit to the health-care facility or to the attending or treating physician which includes statements that he or she is:

- a. A close friend of the patient;
- b. Is willing and able to become involved in the patient's health care; and
- c. Has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values and morals.

The affidavit must also recite facts and circumstances that demonstrate such person's familiarity with the patient. End of life decisions involving the withdrawal or withholding of treatment must meet the requirements of this chapter.

(4) Nothing in this section shall be interpreted as limiting the Court of Chancery's authority to appoint a guardian of a person to act as a surrogate under the Court's rules and procedures.

(5) A supervising health-care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under the penalty of perjury stating facts and circumstances sufficient to establish the claimed authority.

(6) A mentally competent patient may at any time disqualify a member of the patient's family from acting as the patient's surrogate by a signed writing or by personally informing the health-care provider of the disqualification.

(7) A surrogate may make a decision to provide, withhold or withdraw a life-sustaining procedure if the patient has a qualifying condition documented in writing with its nature and cause, if known, in the patient's medical record by the attending physician.

(8) A surrogate's decision on behalf of the patient to treat, withdraw or withhold treatment shall be made according to the following paragraphs and otherwise meet the requirements of this chapter:

a. Decisions shall be made in consultation with the attending physician.

b.1. The surrogate shall make a health-care decision to treat, withdraw or withhold treatment in accordance with the patient's individual instructions, if any, and other wishes to the extent known by the surrogate.

2. If the patient's instructions or wishes are not known or clearly applicable, the surrogate's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent the surrogate knows or is able to determine, the surrogate's decision is to take into account, including, but not limited to, the following factors if applicable:

A. The patient's personal, philosophical, religious and ethical values;

B. The patient's likelihood of regaining decision making capacity;

C. The patient's likelihood of death;

D. The treatment's burdens on and benefits to the patient;

E. Reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health care providers or religious leaders.

3. If the surrogate is unable to determine what the patient would have done or intended under the circumstances, the surrogate's decision shall be made in the best interest of the patient. To the extent the surrogate knows and is able to determine, the surrogate's decision is to take into account, including, but not limited to, the factors, if applicable, stated in paragraph (b)(8)b.2. of this section.

(9) In the event an individual specified in paragraph (b)(2) of this section claims that the individual has not been recognized or consulted as a surrogate or if persons with equal decision making priority under

paragraph (b)(2) of this section cannot agree who shall be a surrogate or disagree about a health-care decision, and a patient who lacks capacity is receiving care in a health-care institution, the attending physician or an individual specified in paragraph (b)(2) of this section may refer the case to an appropriate committee of the health-care institution for a recommendation in compliance with this chapter, and the attending physician may act in accordance with the recommendation of the committee or transfer the patient in accordance with the provisions of § 2508(g) of this title. A physician who acts in accordance with the recommendation of the committee is not subject to civil or criminal liability or to discipline for unprofessional conduct for any claim based on lack of consent or authorization for the action.

11 Appendix F: Supported Decision Maker Code:

9404A Presumption of capability.

- (a) All adults are presumed to be capable of managing their affairs and to have capacity unless otherwise determined by the Court of Chancery.
- (b) The manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs.
- (c) Execution of a supported decision-making agreement may not be used as evidence of incapacity and does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement.

[80 Del. Laws, c. 427, § 1.](#);

§ 9405A Supported decision-making agreements.

- (a) An adult may enter into a supported decision-making agreement if all of the following apply:
 - (1) The adult enters into the agreement voluntarily and without coercion or undue influence.
 - (2) The adult understands the nature and effect of the agreement.
- (b) A supported decision-making agreement must include all of the following:
 - (1) Designation of at least 1 supporter.
 - (2) The types of decisions for which the supporter is authorized to assist.
 - (3) The types of decisions, if any, for which the supporter may not assist.
- (c) A supported decision-making agreement may include any of the following:
 - (1) Designation of more than 1 supporter.
 - (2) Provision for an alternate to act in the place of a supporter in such circumstances as may be specified in the agreement.
 - (3) Authorization for a supporter to share information with any other supporter named in the agreement, as a supporter believes is necessary.
- (d) A supported decision-making agreement is valid only if all of the following occur:
 - (1) The agreement is in a writing that contains the elements of the form developed by the Department of Health and Social Services as required under § 9410A(a) of this title.
 - (2) The agreement is dated.
 - (3) Each party to the agreement signed the agreement in the presence of 2 adult witnesses.
- (e) The 2 adult witnesses required by paragraph (d)(3) of this section may not be any of the following:
 - (1) A supporter for the principal.
 - (2) An employee or agent of a supporter named in the supported decision-making agreement.

(3) Any person who does not understand the type of communication the principal uses, unless an individual who understands the principal's means of communication is present to assist during the execution of the supported decision-making agreement.

(f) A supported decision-making agreement must contain a separate declaration signed by each supporter named in the agreement indicating all of the following:

(1) The supporter's relationship to the principal.

(2) The supporter's willingness to act as a supporter.

(3) The supporter's acknowledgement of the duties of a supporter under this chapter.

(g) A supported decision-making agreement may authorize a supporter to assist the principal to decide whether to give or refuse consent to care within the meaning of Chapter 25 of this title.

(h) A principal or a supporter may revoke a supported decision-making agreement at any time in writing and with notice to the other parties to the agreement.

(i) An authorization in a supported decision-making agreement may be prospectively limited or abrogated, in whole or part, by a judicial determination that the principal lacks the capacity to engage in the making of specific decisions covered by the agreement despite the assistance of a supporter.

[80 Del. Laws, c. 427, § 1.](#);

§ 9406A Supporters.

(a) Except as otherwise provided by a supported decision-making agreement, a supporter may do all of the following:

(1) Assist the principal in understanding information, options, responsibilities, and consequences of the principal's life decisions, including those decisions relating to the principal's affairs or support services.

(2) Help the principal access, obtain, and understand any information that is relevant to any given life decision, including medical, psychological, financial, or educational decisions, or any treatment records or records necessary to manage the principal's affairs or support services.

(3) Assist the principal in finding, obtaining, making appointments for, and implementing the principal's support services or plans for support services.

(4) Help the principal monitor information about the principal's affairs or support services, including keeping track of future necessary or recommended services.

(5) Ascertain the wishes and decisions of the principal, assist in communicating those wishes and decisions to other persons, and advocate to ensure that the wishes and decisions of the principal are implemented.

(b) Except as permitted by regulation promulgated under § 9410A of this title, any of the following are disqualified from acting as a supporter:

(1) A person who is an employer or employee of the principal, unless the person is an immediate family member of the principal.

- (2) A person directly providing paid support services to the principal, with the exception of supported decision-making services, unless the person is an immediate family member of the principal.
 - (3) An individual against whom the principal has obtained an order of protection from abuse or an individual who is the subject of a civil or criminal order prohibiting contact with the principal.
- (c) A supporter is prohibited from doing any of the following:
- (1) Exerting undue influence upon, or making decisions on behalf of, the principal.
 - (2) Obtaining, without the consent of the principal, information that is not reasonably related to matters with which the supporter is authorized to assist under the supported decision-making agreement.
 - (3) Using, without the consent of the principal, information acquired for a purpose other than assisting the principal to make a decision under the supported decision-making agreement.
- (d) A supporter shall act with the care, competence, and diligence ordinarily exercised by individuals in similar circumstances, with due regard either to the possession of, or lack of, special skills or expertise.

[80 Del. Laws, c. 427, § 1.;](#)

§ 9407A Recognition of supporters.

A decision or request made or communicated with the assistance of a supporter in conformity with this chapter shall be recognized for the purposes of any provision of law as the decision or request of the principal and may be enforced by the principal or supporter in law or equity on the same basis as a decision or request of the principal.

[80 Del. Laws, c. 427, § 1.;](#)

§ 9408A Limitation of liability.

A person who in good faith acts in reliance on an authorization in a supported decision-making agreement, or who in good faith declines to honor an authorization in a supported decision-making agreement, is not subject to civil or criminal liability or to discipline for unprofessional conduct for any of the following:

- (1) Complying with an authorization in a supported decision-making agreement based on an assumption that the underlying supported decision-making agreement was valid when made and has not been revoked or abrogated under § 9405A of this title.
- (2) Declining to comply with an authorization in a supported decision-making agreement based on actual knowledge that the agreement is invalid or has been revoked or abrogated under § 9405A of this title.
- (3) Declining to comply with an authorization related to health care in a supported decision-making agreement because the action proposed to be taken under the agreement is contrary to the conscience or good faith medical judgment of the person or to a written policy of a health-care institution that is based on reasons of conscience.

[80 Del. Laws, c. 427, § 1.;](#)

§ 9409A Access to information.

(a) A supporter may assist the principal with obtaining any information to which the principal is entitled, including, with a signed and dated specific consent, protected health information under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g).

(b) The supporter shall ensure all information collected on behalf of the principal under this section is kept privileged and confidential, as applicable; is not subject to unauthorized access, use, or disclosure; and is properly disposed of when appropriate.

[80 Del. Laws, c. 427, § 1.;](#)

12 Appendix F: DHSS Policy Memorandum Number 5



DELAWARE HEALTH AND SOCIAL SERVICES

POLICY MEMORANDUM NUMBER 5

November 8, 2000

SUBJECT: CLIENT CONFIDENTIALITY

I. POLICY STATEMENT PHILOSOPHY

It is the policy of Delaware Health and Social Services to recognize that when a client provides information about himself or herself to the Department, that individual is placing trust in each and every Department employee or agent thereof. Furthermore, this Client Confidentiality Policy is not only a legal requirement but is also written evidence of a commitment or promise to our clients that we will respect their privacy. This policy assures that a Department employee or agent will only have access to individual client information that he or she needs to know. It assures that we will not tolerate any unnecessary release of confidential information by anyone in the Department. It assures that we will educate our employees, agents, clients, and the public concerning the client's right to confidentiality, the client's right to restrict or limit dissemination of confidential information, and the client's right to know the Department's policies and procedures regarding access, disclosure and explanation or correction.

II. PURPOSE

Confidentiality is a highly complex subject. The purpose of this policy is to:

1. Maintain the Department's ethical, professional, and legal obligation to protect clients from undue intrusion of privacy;
2. Safeguard recorded and unrecorded knowledge or information about individuals, while permitting the exchange of information required to provide and monitor quality services;
3. Permit the appropriate use and disclosure of essential oral and written information when such sharing is professionally judged to be in the best interest of the clients in its care, when there is a legitimate need to know, and with appropriate client consent;
4. Ensure that the Department's handling of confidential information is consistent with applicable laws, rules, and recommended professional practice. These applicable laws, regulations, and guidelines can be found in

the Reference Section; and

5. Set forth guidelines and procedures that complement federal and state mandates.

I. SCOPE

This policy applies to all employees within the Department and their facilities, bureaus, offices and other administrative entities. This policy also applies to Department agents including students, volunteers, contractors, foster parents, providers, researchers, or any others such as auditors, who may come in contact with client information.

If circumstances occur for which there is any doubt as to our authority to release confidential information and for which this policy does not offer guidance, the Department will obtain the advice of legal counsel prior to releasing the information.

II. DEFINITIONS

- A. Agency: Delaware Health and Social Services or any subdivision within the Department.
- B. Client: any individual named in any record maintained by the Department except employee-related records.
- C. Confidential: the entrusting of information to another individual with the understanding that the information will not be disclosed.
- D. Confidential Information: any item, collection or grouping of information which contains the name of an individual or any identifying number, symbol, other identifying characteristics, or any unique grouping of information which makes the individual as recognizable as if a name had been affixed.
- E. Department: refers to Delaware Health and Social Services as an entity, including all Divisions and the Office of the Secretary.
- F. Department Agent: anyone acting on behalf of the Department.
- G. Disclosure: to communicate, transmit or otherwise convey any data to any individual or organization in any form, either written, verbal or otherwise. This includes the affirmative verification of another person's communication of personally identifying information.
- H. Guardian: any individual who has been appointed as a guardian of the person by a court of competent jurisdiction, and shall include an individual or agency which has been awarded legal custody by a court of competent jurisdiction.
- I. Individual: a natural person, living or dead.

- J. Informed Consent: agreement to an action after understanding what is involved.
- K. Minor: any individual under the age of 18 years.
- L. Need to Know Basis: when it is essential to have information regarding a client in order to provide necessary service linkage and treatment planning. Information obtained for one purpose may not be used for any other unrelated purpose.
- M. Parent: an adoptive or biological parent who has not lost parental rights (i.e., parental rights have not been terminated).
- N. Personally Identifiable Information: information that includes:
 - 1. name; address; or personal identifiers, such as the social security number, certificate number, driver's license number, or date of birth; or
 - 2. a description or composite of personal characteristics, a record number or other information that would make it possible to identify the client or other family member with reasonable accuracy, either directly or by reference to other publicly available information.
- A. Record: any item, collection, grouping, or information that is maintained by a Department agency and contains personally identifiable information, to also include electronic records.
- B. System of Records: a group of any records under the control of any Department agency from which information is retrieved by an identifying name, number, or symbol, to also include electronic records.

I. PROCEDURES

A. Obtaining of Information by the Department

- 1. Accuracy: The Department shall make reasonable efforts to assure accuracy, completeness, relevancy and timely entry for all records. The Department shall maintain in its records only such information as is necessary to accomplish the agency's purpose. All record entries shall be pertinent to the nature of the service and the needs of the client. Divisions shall establish procedures to insure accuracy, completeness, relevancy and timeliness of records.
- 2. Primary Source: Individuals or their legally authorized representatives shall be the primary source of information about themselves and their families. Within the guidelines of this policy and Division procedures, clients shall be invited to be involved in meetings where they are the main subject.

3. Privacy Protection: Client interviews shall be conducted in a manner which provides privacy. Clients shall not be filmed, taped, photographed or observed without their knowledge and written consent, except where permitted by statute or the purpose of civil and/or criminal law enforcement.
4. Each client, patient, and/or resident shall be treated with respect and provided privacy when receiving health or social services. Case discussion, consultation, examination and treatment shall be confidential and conducted discreetly. Persons not directly involved in the service delivery shall not be permitted to be present during discussion, consultation, examination or treatment unless the client has given prior informed consent for such person(s) to be present. Indiscriminate disclosure of information is unethical.
5. Written Consent: When requesting information from sources outside of the Department, written informed consent must be secured from the individual adult to whom the records refer, a minor's parent/guardian, or the legally authorized representative for the individual to whom the records refer except as provided by DHSS policy or state law.
6. Advising Informants About Policy on Confidentiality: Individuals from whom confidential information is elicited shall be informed of the Department's authority, policy and purposes for such collection, and particularly the individual's rights as contained in this policy in a language that is understood by the individual. (Attachment A: Confidentiality Notice to Clients)

A. Safeguarding of Information by the Department

1. Records Ownership: Records are the property of the Department.
2. Record Review: Each Division will establish procedures for safeguarding records.
3. Staff Access to Confidential Information: Department employees and agents shall only access confidential information that they have a legitimate need to know.
4. Confidentiality Training and Agreement: since any Department employee or agent may come into contact with confidential information, all such individuals will be made aware of this policy.
5. Disclosure Accounting: Each Division shall maintain a system of documentation and accountability for any disclosure of confidential information.

6. **Storage:** Written and electronically recorded confidential information shall be stored in a systematic and secure manner, to insure the security and confidentiality of records and to protect against potential threats to their security or integrity.
7. **Retention and Disposal of Records:** All staff shall follow Delaware Code and Department policy regarding record retention and disposal of records.
8. **Record Removal:** Records or parts thereof shall not be removed from Department offices unless prior authorization has been obtained.
9. **Exclusions to Department Ownership of Records:** Client information maintained by the following programs and/or services is not considered to be Department information and shall not be shared either within or outside the Department without prior written consent by the client: HIV/AIDS, ombudsman, alcohol and substance abuse, and sexually-transmitted diseases.

A. Releasing of Information by the Department

1. **Circumstances When Disclosure Is Never Permitted:** Unless requested under a statute, court order, or for criminal or civil law enforcement, the following information may not be disclosed to anyone.
 - a. **Other's Rights:** Information that would violate the confidentiality rights of others, including other family members, without their specific written consent. If it is not possible to remove confidential information that refers to others, and no written consent has been obtained from the affected person(s), a summary which excludes the confidential information shall be provided.
 - b. **Source's Identity:** Reports that would reveal the identity of a source who gave information under promise that their identity would be kept confidential.
 - c. **Sealed Records:** Information concerning termination of parental rights, adoptions and some custody matters are sealed. Individuals wishing to gain such information must petition the Family Court.
2. **Disclosure as Permitted with Informed Written Consent:** The Department shall not disclose or knowingly permit the disclosure of any information, by any means of communication, to any person or other organization except with written informed consent or pursuant to statute or for law enforcement purposes.

a. Consent Form: A consent-for-release-of-confidential information form, at a minimum, must provide:

- (1) the identity of the person about whom the information is being released;
- (2) the identity of the program, unit or facility releasing the information;
- (3) the type of information being requested and the purpose for its use;
- (4) the identity and title of the person requesting the information;
- (5) the time period for which the permission remains in effect;
- (6) a revocation-of-consent statement;
- (7) the signature of the person requesting the information and/or his/her parent or guardian, if appropriate, and the date of request; and
- (8) the signature of the person about whom the information pertains and/or their parent/legal guardian, or their legally authorized representative, and date signed.

- a. Voluntary Consent: The consent must be voluntarily given and the client can revoke consent at any time. Individual(s) shall be informed if their decision concerning the release of information will result in denial, change, or termination of services.
- b. Disclosure Not Required: A signed consent for release of information does not require the Department to release information. In the absence of legal counsel, individuals may inadvertently compromise their own due process or other legal protection. Therefore, Department employees and agents shall carefully consider the best interests of the client before complying with a request for information.
- c. Verification of Identity: In the event that the identity of the requesting person cannot be verified, Department employees shall obtain appropriate documentation.
- d. Release Limited to Primary Disclosure: Release of information by the Department shall be limited to that which was specifically generated by the Department or its agents.

- e. Minors: When the individual to whom the record refers is a minor (less than 18 years old), a parent or guardian must sign the consent for release. The exceptions are:
 - (1) If the parent is unable or unwilling, a legal custodian may act on the child's behalf, in his/her best interests and consistent with applicable law.
 - (2) If the program under which the minor is receiving services does not require parental consent in order to provide services, parental consent cannot be requested. In such cases, the minor must always sign the consent for release of information.
 - (3) Information about program attendance or the treatment of a minor age 12 years or older for pregnancy, sexually transmitted diseases, or alcohol abuse may not be released without the written consent of the minor. Parental consent cannot be requested.
 - (4) If the person is an emancipated minor, as defined by state law, parental consent cannot be requested.
- a. Research: Researchers shall follow DHSS policy memoranda and guidelines concerning the protection of human subjects.
- b. Inquiries from Public Officials, the Press or the General Public: Media, press, general public, legislative or other public Officials' requests for information shall be directed according to specific procedure outlined by the Department or Division.
- c. Notice Prohibiting Redisclosure: Whenever a written disclosure of confidential information is made, the disclosure shall be accompanied by a written statement substantially as follows: "This information has been disclosed to you from records whose confidentiality is protected by federal and state laws. You are prohibited from making any further disclosure of this information."

(1) Transmission of Electronic Facsimiles:

When a facsimile of confidential information is transmitted electronically, it shall be accompanied by a cover sheet with the agency's name, address and telephone number and a confidentiality notice reading as follows:

This facsimile (this page and accompanying page[s]) is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged,

confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or the taking of any action in reliance on the contents of this information, may be strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original to us at the above address.

1. Circumstances when Consent to Release is not required: Consent to release information is not required in the following circumstances:
 - a. Medical Emergencies and Public Health or Safety: In medical emergencies or when necessary to protect or warn others of imminent threats to their safety, essential pertinent information shall be revealed.
 - b. State and Federal Laws: State law requires every individual to report suspected abuse to applicable agency(ies) in accordance with state and federal laws.
 - c. Involuntary Receipt of Protective Services: State law permits delivery of adult protective services to a person who lacks the capacity to consent.
 - d. Federal Laws: Federal law requires licensed nursing facilities to report suspected (impaired adult) abuse or neglect to the Division of Long-Term Care Residents Protection, as well as to the Division of Services for Aging and Adults with Physical Disabilities.
 - e. Exchange of Information Among Department Service Providers: Responsible exchange of information among Department employees consistent with the spirit of this policy may occur without written consent when:
 - (1) providing Department services and there is a need to know; or
 - (2) protecting the public health or safety.
- a. Audit or Program Evaluation: Administrative audit or program evaluation does not require signed consent when:
 - (1) clients are identified only for the program being evaluated;
 - (2) no personally identifiable information is disclosed in any reports; and
 - (3) no records are copied or removed unless personally identifiable information is deleted or blocked out so

as to be undecipherable.

- a. Research: A signed consent is not required to provide information for research purposes if:
 - (1) approval is obtained following appropriate state and DHSS policies such as a Human Subjects Review Board clearance; or
 - (2) no records are copied or removed unless personally identifiable information is deleted or blocked out so as to be undecipherable.
- a. CASA: The order that the court issues when appointing a Court Appointed Special Advocate (CASA or guardian ad litem) specifies permission to inspect and/or copy any records relating to the child and his or her family/guardian. However, each order shall be reviewed to determine the CASA authority.
- b. Court Order: Information may be released to comply with a court order, provided that reasonable effort is made to notify the client of the order in advance of compliance; if notification of the client is not in violation of the court order and is in the best interest of the client or the Department.
- c. Disciplinary Proceedings: When necessary, client records may be used to substantiate less than standard job performance or misconduct of Department employees. All identifiable information shall be removed.
- d. Other Exceptions: The law permits some other fairly technical exceptions. For example, after a period of years, certain vital statistics records may become available for public inspection. In cases where uncertainty arises as to whether informed written consent is required, supervisory advice, advice of legal counsel, or a specific court order shall be obtained.
- e. Notification of Client: If information is released under the procedures applying to CASA, court orders, or other technical exceptions, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the person to whom the record refers.

4. Other Considerations

- a. HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Virus); No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following

person(s):

- (1) the subject of the test or the subject's legal guardian;
- (2) any person with a written release (must be signed by the subject or guardian, which is dated and specifies to whom disclosure is authorized and the time period during which the release is effective);
- (3) Department employees or agents who provide patient care or handle specimens of blood, body fluids, or other tissues, and have a medical need to know such information to provide health care;
- (4) Health care workers providing medical care when the test result is necessary for emergency care or treatment;
- (5) the Division of Public Health when part of an official report as may be required by regulation;
- (6) a health facility or provider which procures, processes, distributes or uses blood, human body parts, or semen for the purposes of transplant or donation;
- (7) health facility staff, committee accreditation or oversight review organizations conducting program evaluation;
- (8) pursuant to laws relating to the investigation of child/impaired adult abuse;
- (9) persons allowed access to such information by court order, given certain restrictions; and
- (10) pursuant to laws relating to sexually transmitted diseases and their control.

- a. Sexually Transmitted Diseases (STDs): All information and records held by the Division of Public Health relating to known or suspected cases of STDs, including infection with the virus causing AIDS shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except the following:
 - (1) Release is made of medical or epidemiological information for statistical purposes so that no person can be identified.

(2) Release is made of medical or epidemiological information with the consent of all person(s) identified in the information releases.

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies or state courts to the extent required to enforce the provision of 16 Delaware Code and related rules and regulations concerning the control and treatment of STDs, or as related to child abuse investigations.

(4) Release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; or

(5) Release is made during the course of civil or criminal litigation to a person allowed access to said records by a court order which is issued in compliance with the following provisions:

a. No court of this State shall issue such order unless the court finds that the person seeking the records and information has demonstrated a compelling need for such records which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the subject and the public interest which may be disserved by the disclosure which deters future testing and treatment or which may lead to discrimination.

b. Pleadings pertaining to disclosure of such records shall substitute a pseudonym for the true name of the subject of the records. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

c. Before granting any such order, the court shall provide the subject whose records are in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of such records shall be conducted in camera unless the subject agrees that a hearing is necessary to

the public interest and the proper administration of justice.

e. Upon issuance of an order to disclose such records, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who have access to the information, the purposes for which information shall be used, and appropriate prohibitions on future disclosures.

- (6) No state or local health department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records for a person examined or treated for an STD or HIV infection by the Division of Public Health, or of the existence or contents of such reports received from a private health care professional or private health facility, without the consent of the person examined and treated for such diseases, except where the information in such records is disclosed pursuant to the law.
- a. Alcohol and Other Drug Information: All information maintained by alcohol and drug treatment programs is protected by federal laws. Such information may not be disclosed except under certain conditions as specified in federal law.
 - b. Minors: Information related to the medical examination, consultation, or treatment of a minor for sexually transmitted diseases and pregnancy-related conditions is considered confidential and shall not be released. Three exceptions apply:
 - (1) reporting required by law;
 - (2) child abuse investigation; and
 - (3) mental health records.

C. Providing Clients Access to Their Records

1. Disclosure to Clients:
 - a. Right to Know: Individuals have a right to find out what records are maintained about them, how they will be used, and how they will be shared with others. Individuals have a right to review their records, including disclosure accounting specified in this policy. The only exception to this is that records developed in the investigation of waste, abuse, or fraud are not subject to review.
 - b. Procedures for Accessing Records: An individual or their legally authorized representative (or, in the case of a minor, a parent or guardian) must submit a written request. The requester's identity must be verified and the records shall be reviewed in the presence of a Department professional. The requester may bring a

support person or representative to the review and may take notes or have copies of these records made. A fee may not be charged to search for or retrieve Department records for this purpose. A fee may be charged for copies.

c. Record Review: When an individual reviews Department records, a Department professional shall carry out the review in a manner that protects the confidentiality of other individuals who may be discussed in the record(s). The professional may also help interpret and explain the record(s), answer questions, and monitor the review.

d. Assistance with an Interpreter: If the individual is deaf or blind, has no written language, or speaks in a language other than English, agency personnel may provide a qualified interpreter in the client's native language or in the mode of communication usually used (e.g., sign language, Braille, or oral communication).

e. Disputed Information: When an individual disagrees with information in their record, they may provide a written statement to be included as a permanent part of their record. If the information has been released, the statement must be forwarded.

f. Deleted Information: If information has been deleted from a file and the file subsequently shared with a client, the client shall be informed that deletions have been made and their general nature, so as not to mislead as to completeness. The reasons for such actions shall be documented in the record.

2. When Disclosure to Client is not Permitted: The following information may not be disclosed, unless required by a subpoena or a valid court order.
 - a. Protected Information: Disclosure is not permitted when such disclosure would violate the confidentiality rights of others; when disclosure would reveal the identity of a source of information protected by confidentiality; or when disclosure involves records sealed by the Court, such as termination of parental rights, adoptions and some custody matters.
 - b. Disclosure Could Result in Harm to Client: If direct access to certain sensitive information is perceived to be potentially harmful, supervisory guidance shall be sought to determine an appropriate course of action. Information which could result in harm shall not be voluntarily released. The basis for any decision to refuse access to information shall be documented. In such cases, the person shall be advised that such information may be disclosed to a qualified professional chosen by him or her if requested in writing.
 - c. Information Relevant to Anticipated Civil Action or

Law Enforcement: Information compiled in reasonable anticipation of a civil action or proceeding or for enforcement of criminal laws shall not be released except as directed by the Attorney General's office.

I. NONCOMPLIANCE

Failure to comply with any of the provisions of this policy and its procedures in any form could result in specific civil, criminal, and/or Department penalties.

II. IMPLEMENTATION

- A. Any part of this policy which is found to be in conflict with federal or state laws shall be null and void; all other parts shall remain operative.
- B. The Division of Management Services (Human Resources) shall be responsible for maintaining this policy and its revisions.
- C. The Division of Management Services (Human Resources) shall be responsible for developing training guidelines for the Divisions.
- D. This policy will become effective upon issuance.

[Signed]

11/08/00

Gregg C. Sylvester, M.D. Date

Secretary

I. REFERENCES

A. Federal Laws and Rules Governing Confidentiality:

Federal Privacy Act of 1974 (Public Law 93-579, 5 U.S.C. 552(a); 7 U.S.C. 2011-2031; 20 U.S.C. 1232(g); 21 U.S.C. 872(c); 42 U.S.C. 242a(a), (k), 290 dd-2, 290 ee-3, 290 ff-3, 602, 603, 606, 607, 611, 1302, 1306(a), 1320b-7; Individuals with Disabilities Act (P.L. 102-119); P.L. Section 1902(a)(7) of the Social Security Act; Section 11(e)(8) of the Food Stamp Act of 1977.

B. Federal Regulations and Policies Concerning Confidentiality:

7 CFR 272.1(c); 21 CFR 1316.21; 42 CFR Part 2, part 431 subpart F; 45 CFR 205.50, 303.21; 56 CFR 117; Rehabilitation Services Manual (U.S. Department of Education, Office of Special Education and Rehabilitation services Administration).

C. Delaware Code, Regulations and Policies Concerning Confidentiality:

Section 972(b) of Title 10; Sections 707, 708, 726(b), 924, 925 and 1111 of Title 13; Section 4111 of Title 14; Sections 903, 905(b), 908, 1153(d)(e)(f),

3107 through 3112, 33121(f); 3122, 3123(b), 3126, 3127, 9113 of Title 16; Section 5161, Subchapter V (Mental Health Patients Bill of Rights) of Title 16; Chapters 7, 11 (Subchapter I), and 12 of Title 16; Section 3913 of Title 24; Sections 705(a), 4707(e), 4709, 5806(f)(g), 9001(b), 9003(6)(16) of Title 29; Sections 381 Article III(b)(c), 5203 Article VII(a) of Title 31; Delaware Uniform Rules of Evidence, Rule 503(a)(b)(c); Delaware Merit System Rules; DHSS Policy Memoranda 52, 55, 57, 58, 60, Guidelines for Deciding If Review by Human Subjects Review Board is Necessary.