

4009.0.0 USES AND DISCLOSURES OF CLIENT OR PARTICIPANT INFORMATION

4009.1.0 Purpose

The purpose of this policy is to specify requirements for authorizing the disclosure of individually identifiable health information and to recognize the standard authorization form, DHS-4000, Authorization to Disclose Health Information, for use by all DHS agencies that serve clients. Any of the following agencies that serve clients must comply with this policy: covered health care components, internal business associates, and non-covered health care components that maintain individually identifiable health information.

4009.2.0 Background

Each DHS agency shall make reasonable efforts to protect individually identifying health information maintained by that agency. Therefore, no DHS agency shall disclose, or be required to disclose, in individually identifiable format, information about any client without that individual's (or personal representative's) explicit authorization, unless for specifically enumerated purposes such as emergency treatment, public health, law enforcement, audit/oversight purposes, or unless state or federal law allows specific disclosures.

4009.3.0 Policy

4009.3.1 General – Individual Authorization

- A. Unless otherwise permitted by the HIPAA Privacy Standards, DHS shall not use or disclose any protected health information without first obtaining a Form DHS-4000 or a HIPAA Compliant Form approved in writing by the DHS HIPAA Privacy Officer authorizing the release and signed by the individual or the individual's personal representative. An authorization permits, but does not require, a DHS agency to disclose individually identifiable health information.
- B. **Exceptions where limited uses or disclosures are allowed without authorization, to the extent not prohibited or otherwise limited by federal or state requirements applicable to the program or activity**

4009.3.2 DHS clients or participants may access their own information, with certain limitations.

4009.3.3 DHS may use or disclose information without an individual's authorization if the law requires such use or disclosure, and the use or disclosure complies with, and is limited to, the relevant requirements of such law.

4009.3.4 Internal communication within DHS is permitted without individual authorization, in compliance with the DHS policy of Minimum Necessary Information.

Note: Alcohol and drug, mental health, and vocational rehabilitation records disclosure may be limited to particular program areas named on the Form

DHS-4000 or approved HIPAA Compliant Form. If such a limitation is noted on the authorization form, disclosure is limited to the parties named.

- 4009.3.5 DHS may disclose information without authorization to another covered entity or a health care provider for the payment activities of the entity that receives the information
- 4009.3.6 DHS may disclose information without authorization to another entity covered by federal HIPAA law and rules for the health care activities of that entity, if:
- A. Both that entity and DHS has or has had a relationship with the individual who is the subject of the information.
 - B. The information pertains to such relationship; and
 - C. The disclosure is for the purpose of:
 - 1. Conducting quality assessment and improvement activities, including: outcome evaluation and development of clinical guidelines, provided that obtaining generalized knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; or
 - 2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance; conducting training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improvement their skills as health care providers; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or
 - 3. Detecting health care fraud and abuse or for compliance purposes.
- 4009.3.7 DHS may use or disclose psychotherapy notes:
- A. For use by the originator of the psychotherapy notes, for treatment purposes.
 - B. In training programs where students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - C. When a health oversight agency uses or discloses in connection with oversight of the originator of the psychotherapy notes; or
 - D. To the extent authorized under state law to defend DHS in a legal action or other proceeding brought by the subject of the notes.
 - E. For investigations by the Secretary of the United States Department of Human Services;
 - F. For the use of Coroners and Medical Examiners;

- G. For Institution Review Board or Privacy Board approval for waiver of authorization for research purposes.

Note: Questions regarding the agency's authority to disclose psychotherapy notes without a valid authorization should be referred to the DHS HIPAA Privacy Officer.

- 4009.3.8 DHS may disclose information for purposes of payment, treatment, and health care operations.
- 4009.3.9 If DHS has reasonable cause to believe that a child is a victim of abuse or neglect, it may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to DHS protective services staff, if appropriate). If DHS receives information as the child protective services agency, it is authorized to use and disclose the information consistent with its legal authority.
- 4009.3.10 Reports and records compiled are confidential and are not accessible for public inspection. However, if DHS receives the information, it will:
 - A. Use and disclose the information consistent with its legal authority as a child protective services agency;
 - B. Subject to applicable law, make available records and reports to:
 1. Any law enforcement agency or a child abuse registry in any other state for the purposes of additional investigations of child abuse;
 2. Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
 3. Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
 4. Such citizen review boards as might be established by the State for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court. Citizen review boards may make such records available to participants in case review;
 5. A court appointed special advocate (CASA) in any juvenile Court proceeding in which it is alleged that a child has been abused or neglected; and
 6. The Child Care Division for certifying, registering or otherwise regulating childcare facilities.
- 4009.3.11 Consistent with applicable law, DHS may make reports and records available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to:
 - A. Administer its child welfare services and is in the best interests of the affected child;

- B. Investigate, prevent or treat child abuse and neglect; or
- C. Protect children from abuse and neglect.
- D. DHS may not disclose the names, addresses or other identifying information about the person who made the report.

4009.3.12 DHS may use or disclose information without the written authorization of the individual if it has reasonable cause to believe that an adult is a victim of abuse or neglect (elder abuse, nursing home abuse, or abuse of the mentally ill or developmentally disabled). DHS may disclose protected information to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse or neglect:

- A. If the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law; or
- B. If the individual agrees to the disclosure, either orally or in writing; or
- C. When DHS staff members, in the exercise of professional judgment and in consultation with an appropriate supervisor, believe the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
- D. When the individual is unable to agree because of incapacity, and a law enforcement agency or other public official authorized to receive the report represents that:
 - 1. The protected information being sought is not intended to be used against the individual, and
 - 2. An immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
 - 3. When DHS makes a disclosure permitted above, it must promptly inform the individual that such a report has been or will be made, unless:
 - a. DHS staff members, in the exercise of professional judgment and in consultation with an appropriate DHS supervisor, believe informing the individual would place the individual or another individual at risk of serious harm; or
 - b. DHS staff members would be informing a personal representative and the DHS staff reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the individual, as determined by DHS staff members, in the exercise of their professional judgment and in consultation with an appropriate DHS supervisor.

4009.3.13 DHS may use or disclose information without the individual's written authorization for the purpose of carrying out duties in its role as a health oversight agency. DHS

does not need to obtain an individual's authorization to lawfully receive, use or disclose individual information for oversight activities authorized by law.

- 4009.3.14 DHS may disclose information to a health oversight agency to the extent the disclosure is not prohibited by state or federal law for its oversight activities of:
- A. The health care system
 - B. Government benefit programs for which the information is relevant to eligibility;
 - C. Entities subject to government regulatory programs for which the information is necessary for determining compliance with program standards; or
 - D. Entities subject to civil rights laws for which the information is necessary for determining compliance.
 - E. **Exception:** a health oversight activity for which information may be disclosed does **not** include an investigation or other activity of which the individual is the subject **unless** the investigation or other activity is directly related to:
 - 1. The receipt of health care;
 - 2. A claim to recover public benefits related to health; or
 - 3. Qualifying for or receiving public benefits or services based on the health of the individual.
 - F. If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity is considered a health oversight activity for purposes of this section.
 - G. When DHS is acting as a health oversight agency, DHS may use information for health oversight activities as permitted under this section.
- 4009.3.15 DHS may use or disclose information without the written authorization for the individual when DHS discloses information in a judicial or administrative proceeding subject to the following:
- A. DHS must follow any procedures for responding to subpoenas, discovery requests, or other requests for documents that DHS may have regarding an individual. DHS must not ignore any subpoena or other legal document.
 - B. In general, DHS will respond by appearing before the Court to explain that the information is confidential, or by filing a legal response. DHS will not disclose any confidential information in a court proceeding in which DHS is not a party except as required by law or by a court order.
- 4009.3.16 An administrative hearings officer or administrative law judge lacks legal authority, under Arkansas law, to require or authorize DHS to disclose information about an individual that is confidential under federal or state law. DHS staff should work with hearing officers to ensure that protective orders are used when appropriate in contested case hearings to prevent authorized uses and disclosures of information.

DHS staff will refer any questions or concerns regarding what is required by law, or by a court order, to the DHS HIPAA Privacy Officer, who may then consult with the Office of Chief Counsel (OCC) to resolve the question.

4009.3.17 DHS may use or request information to investigate a grievance or appeal made to DHS about an individual's eligibility or right to benefits or services.

Pursuant to applicable laws and rules, DHS may use or disclose information that DHS has compiled on its own or has received from external sources.

That information may be reviewed by DHS staff and OCC, the providers or health plan involved in the service or action, and may be provided to a hearing officer, to assist DHS in making a decision about the appeal or grievance.

If DHS is sued or if a suit is filed on behalf of DHS, OCC will address or respond to legal issues related to the use and disclosure of information. DHS will identify confidentiality issues for discussion with the assigned legal counsel, in consultation with the DHS HIPAA Privacy Officer.

If a court orders DHS to conduct a mental examination (as in accordance with state law or orders DHS to provide any other report or valuation to the court, such examination, report or evaluation shall be deemed to be "required by law" for purposes of HIPAA, and DHS staff will comply with the court order.

If DHS has obtained information in performing its duties as a health oversight agency, public health authority, protective service entity, or public benefit program, nothing in this section supersedes DHS policies that otherwise permit or restrict uses or disclosures. For example, if DHS has obtained individual patient information as a result of an oversight action against a provider, DHS may lawfully use that patient information in a hearing consistent with the other confidentiality requirements applicable to that program, service or activity.

In any case in which federal or state law prohibits or restricts the use or disclosure of information in an administrative or judicial proceeding, DHS shall assert the confidentiality of such confidential information, consistent with DHS policies applicable to the program, service or activity, to the presiding officer at the proceeding. A HIPAA-authorized protective order may not be sufficient to authorize disclosure if it does not address other applicable confidentiality laws.

4009.3.18 DHS may use or disclose information without the written authorization of this individual for law enforcement purposes unless federal or state law prohibits such disclosure.

DHS may disclose information when reporting certain types of wounds or other physical injuries.

DHS may disclose information in compliance with, and limited to the relevant specific requirements of:

1. A court order or warrant, summons or subpoena issued by a judicial officer;

2. A grand jury subpoena; or
3. An administrative request, including administrative subpoena or summons, a civil or authorized investigative demand, or similar lawful process, provided that the information is relevant, material, and limited to a legitimate law enforcement inquiry.

Note: It is imperative to follow DHS procedures for responding to subpoenas, Discovery requests, or other requests for documents that DHS may have regarding an individual. No subpoena or other legal document may be ignored.

Exception: Information regarding mental health, alcohol or drug treatment, and vocational rehabilitation services can be disclosed only on the basis of a court order.

B. DHS may disclose limited protected information upon request of a law enforcement official without authorization for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that the information DHS may thus disclose is limited to:

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and Rh factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death if applicable; and
- A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of beard or mustache, scars, and tattoos. In cases of criminal court commitments, a photograph may be provided.

Exception: DHS may not disclose, for purposes of identification or location, protected health information related to the subject's DNA or DNA analysis, dental records, or typing, samples, or analysis of bodily fluids or tissues, unless ordered to do so by a court or a court approved search warrant.

C. DHS may disclose protected information upon request to a law enforcement official about an individual who is or is suspected to be the victim of a crime, if:

1. DHS is otherwise authorized by law to disclose that information for purposes of an abuse reporting law or for public health or health oversight purposes; or
2. The individual agrees to the disclosure, either orally or in writing; or

3. DHS is unable to obtain the individual's agreement due to incapacity or emergency circumstance, if:
 - a. The law enforcement official represents that such information is needed to determine whether a violation of law by someone other than the victim has occurred and such information is not intended for use against the victim;
 - b. The law enforcement official represents that immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - c. DHS determines that the disclosure is in the best interests of the individual.
- D. DHS may disclose protected information to a law enforcement official about an individual who has died, for the purpose of alerting law enforcement of the death, if DHS suspects that death may have resulted from criminal conduct.
- E. DHS may disclose protected information to a law enforcement official if DHS believes in good faith that the information constitutes evidence of criminal conduct on DHS premises.
- F. DHS may disclose protected information to a law enforcement official if it is necessary for law enforcement authorities to identify or apprehend an individual:
 1. Because of a statement by a person admitting participation in a violent crime that DHS reasonably believes may have caused serious harm to the victim; or
 2. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- G. DHS may disclose limited information without authorization to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of individuals or other inmates.
- H. DHS may disclose individual information without authorization for other specialized government functions, including authorized federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities that federal law authorizes.

4009.3.19 DHS may disclose protected information to a coroner or medical examiner, for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law.

4009.3.20 DHS may disclose individual information without authorization to funeral directors, consistent with applicable law, as needed to carry out their duties regarding the decedent. DHS may also disclose such information prior to, and in reasonable anticipation of, the death.

4009.3.21 DHS may disclose individual information without authorization to Organ procurement organizations or other entities engaged in procuring, banking, or transplantation of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation.

4009.3.22 To avert a serious threat to health or safety, DHS may disclose individual information without authorization if:

A. DHS believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

B. The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

4009.3.23 In case of an emergency, DHS may disclose individual information without authorization to the extent needed to provide emergency treatment.

The Family Educational Rights and Privacy Act (FERPA) and state Law applicable to student records governs DHS access to, use, and disclosure of student records.

4009.4.0 Client or Participant’s authorization that is not required if they are informed in advance and given a chance to object

4009.4.1 In limited circumstance, DHS may use or disclose an individual’s information without authorization if:

A. DHS informs the individual in advance and the person has been given an opportunity to object.

B. Unless otherwise protected by law, DHS orally informs the individual and obtains and documents the individual’s oral agreement.

4009.4.2 Disclosures are limited to disclosure of health information to a family member, other relative, or close personal friend of the individual, or any other person named by the individual.

Note: For individuals receiving alcohol and drug, mental health, or vocational rehabilitation services, oral permission is not sufficient and written authorization is required.

4009.4.3 Oral permission to use or disclose information for the purposes described in §4009.4 is not sufficient when the individual is referred to or receiving substance abuse treatment services or mental health treatment services, where written authorization for the treatment program to make such disclosures is required.

4009.5.0 Routine and Recurring Disclosure of an Individual’s Information:

4009.5.1 For the purposes of this policy, a “routine and recurring” means the disclosure of records outside DHS, without the authorization of the individual, for a purpose that is compatible with the purpose for which the information was collected. The

following identifies several examples of uses and disclosures that DHS has determined to be compatible with the purposes for which information is collected.

- 4009.5.2 DHS will not disclose an individual's entire medical record unless the request specifically justifies why the entire medical record is needed.
- 4009.5.3 Routine and recurring uses include disclosures required by law. For example, a mandatory child abuse report by a DHS employee would be a routine use.
- 4009.5.4 If DHS deems it desirable or necessary, DHS may disclose information as a routine and recurring use to the Department of Justice for the purpose of obtaining its advice and legal services.
- 4009.5.5 When federal or state agencies – such as the United States Department of Human Services (DHS) Office of Civil Rights, the DHS Office of Inspector General, the State of Arkansas Medicaid Fraud Unit, or the Arkansas Secretary of State – have the legal authority to require DHS to produce records necessary to carry out audit or oversight of DHS programs or activities, DHS will make such records available as a routine and recurring use.
- 4009.5.6 When the appropriate DHS official determines that records are subject to disclosure under the Arkansas Freedom of Information Act, DHS may make the disclosure as a routine and recurring use.

4009.6.0 Non-Routine Disclosure of an Individual's Information

- 4009.6.1 For the purpose of this policy, “non-routine disclosure” means the disclosure of records outside DHS that is not for a purpose for which it was collected.
- 4009.6.2 DHS will not disclose an individual's entire medical record unless the request specifically justifies why the entire medical record is needed, and applicable laws and policies permit the disclosure of all the information in the medical record to the requestor.
- 4009.6.3 Requests for non-routine disclosures must be reviewed on an individual basis in accordance with the criteria set forth in §§4009.3.3 through 4009.3.23.

4009.7.0 Re-Disclosure of an Individual's Information

- 4009.7.1 Unless prohibited by State and Federal laws, information held by DHS and authorized by the individual for disclosure may be subject to re-disclosure and no longer protected by DHS policy. Whether or not the information remains protected depends on whether the recipient is subject to federal or state privacy laws, court protective orders or other lawful process.
- 4009.7.2 Vocational Rehabilitation and Alcohol and Drug Rehabilitation information: Federal regulations (42 CFR part 2 and 34 CFR 361.38) prohibit DHS from making further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

- 4009.7.3 Arkansas law and administrative rules prohibit further disclosure of HIV information.
- 4009.7.4 Arkansas law and administrative rules prohibit further disclosure of Genetics information without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical information is not sufficient for this purpose.
- 4009.7.5 Arkansas law places restrictions on re-disclosure of information regarding clients of publicly funded mental health or developmental disability providers.

4009.8.0 Revocation of Authorization

- 4009.8.1 An individual can revoke an authorization at any time. Form DHS-4000 or other approved HIPAA Compliant Form allows a client to revoke the authorization at any time, except to the extent that the DHS agency has already taken action based the authorization. The authorization form is to state how the client may revoke an authorization.
- 4009.8.2 Any revocation must be in writing and signed by the individual or their personal representative. In the case of Form DHS-4000, Authorization to Disclose Health Information, page 2 contains the Revocation Section. This section must be completed when revocation of the authorization to disclose protected health information is requested. Legible faxed copies of this form are permissible.
- Exception:** alcohol and drug treatment participants may orally revoke authorization to disclose information obtained from alcohol and drug treatment programs. Oral authorizations must be documented and maintained in the individual's record.
- 4009.8.3 In the case of Form DHS-4000, Authorization to Disclose Health Information, when the signed revocation is received, page 2 must be filed on top of page 1.
- 4009.8.4 Upon receipt of the written revocation or documentation of oral revocation (as noted in Exception), DHS shall immediately cease release of protected health information.
- 4009.8.5 No such revocation shall apply to information already released while the authorization was valid and in effect.

4009.9.0 Verification of Individuals Requesting Information

- 4009.9.1 If the DHS staff member fulfilling the request does not know the person requesting information, no information may be disclosed without verification of the identity of the person requesting the information.
- 4009.9.2 If the requestor is a Provider, the provider must supply its provider identification number and/or telephone number for call back verification.
- 4009.9.3 For all other requestors, reasonable evidence should be supplied in the form of the following:
- Identification badge
 - Driver's license

- Written statement of identity on agency letterhead; or
- Similar proof

4009.10.0 Denial of Requests for Information

Unless an individual has signed an authorization, or the information about the individual can be disclosed pursuant to this Policy, DHS shall deny any request for individual information.

4009.11.0 DHS Standard Authorization

4009.11.1 All DHS agencies shall utilize Form DHS-4000, Authorization to Disclose Health Information, or an approved HIPAA Compliant Form that contains the elements necessary to be considered a valid authorization. The authorization forms are written in plain and simple language that a client or personal representative can easily read and understand, and shall be made available in languages understood by a substantial number of clients served by each agency. At a minimum, the department shall ensure Form DHS-4000 in Spanish translation is available to DHS agencies. Braille authorization forms shall be available from the Division of Services for the Blind, upon request for such format.

4009.11.2 DHS divisions and offices may add their agency's identification information and form number to the authorization forms. Any other alterations to Form DHS-4000 or an approved HIPAA Compliant must be prior approved by the DHS HIPAA Privacy Officer. Each agency is responsible for printing its own authorization forms.

4009.12.0 When An Authorization is Required

4009.12.1 Except as otherwise permitted or required by law and consistent with these policies, DHS shall obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using information about an individual from a third party or disclosing any information about the individual to a third party.

4009.12.2 A signed Form DHS-4000 or approved HIPAA Compliant Form is required in the following situations:

- A. Prior to an individual's enrollment in a DHS administered health plan
- B. If necessary for determining eligibility or enrollment
- C. For the use and disclosure of psychotherapy notes
- D. For disclosures to an employer for use in employment-related determinations
- E. For research purposes unrelated to the individual's treatment
- F. For any purpose in which state or federal law requires a signed Authorization

4009.13.0 Valid Authorization

- 4009.13.1 Requests for Disclosure of Protected Health Information (PHI) must be made utilizing Form DHS-4000 or approved HIPAA Compliant Form. If requests for PHI are received on any other form, the request will be returned to the requesting entity with a copy of the appropriate form.
- 4009.13.2 Uses and disclosures must be consistent with what the individual has authorized on a signed authorization form.
- 4009.13.3 An authorization must be voluntary. DHS may not require the individual to sign an authorization as a condition of providing treatment services, payment for health care services, enrollment in a health plan, or eligibility for health plan benefits, except as noted under Conditioning of an Authorization.
- 4009.13.4 Each authorization form for use or disclosure of an individual's information must be fully completed jointly by the staff member and the individual, whenever possible, with the staff worker taking reasonable steps to ensure that the individual understands why the information is to be used or released.
- 4009.13.5 DHS staff will use the approved authorization forms.
- 4009.13.6 A valid authorization must contain the following information:
- A. A description of the information to be used or disclosed, that identifies the purpose of the information in a specific and meaningful fashion;
 - B. The name or other specific information about the person(s), classification of persons, or entity (i.e., DHS or specified DHS program) authorized to make the specific use or disclosure;
 - C. The name or other specific identification of the person(s), classification of persons, or entity to whom DHS may make the requested use or disclosure;
 - D. A description of each purpose of the requested disclosure (the statement, "at the request of the client" is a sufficient description of the purpose when a client initiates the authorization and does not, or elects not to, provide a statement of the purpose);
 - E. An expiration date or event that relates to the client or the purpose of the use or disclosure. The following statements meet the requirements for an expiration date or an expiration event if the appropriate conditions apply:
 - F. The statement, "end of the research study" or similar language, is sufficient if the authorization is for use or disclosure of individually identifying health information for research.
 - G. The statement, "none" or similar language, is sufficient if the authorization is for the agency to use or disclose individually identifying health information for the creation and maintenance of a research database or research repository.
 - H. Signature of the client and the date of the signature. If a client's personal representative signs the Form DHS-4000 or approved HIPAA Compliant Form, a description of the personal representative's authority to act on behalf

of the client must also be provided including a copy of the legal court document (if any) appointing the personal representative, must also be provided.

4009.13.7 An original authorization form is preferred for disclosure of individually identifiable health information; however, a clear and legible photocopy or facsimile is acceptable.

4009.14.0 Invalid Authorization

An Authorization shall be considered invalid if the document has any of the following deficiencies:

- The expiration date has passed or the expiration event is known to have occurred.
- The Authorization form is not completely filled out.
- The Authorization form does not contain the core elements of a valid authorization.
- The Authorization is known to have been revoked.
- Any information recorded on the Authorization form is known to be false.
- An Authorization for psychotherapy notes is combined with a request for disclosure of information other than psychotherapy notes.

4009.15.0 Compound Authorization

4009.15.1 An authorization for disclosure of individually identifiable health information shall not be combined with any other written legal permission from the client (e.g., Consent for Treatment, Assignment of Benefits); however, research studies that include treatment may combine authorizations for the same research study, including consent to participate in the study.

4009.15.2 An authorization for disclosure of psychotherapy notes may not be combined with any other authorization.

4009.15.3 An authorization that specifies a condition for the provision of treatment, payment, enrollment in a health plan or eligibility for benefits may not be combined with any other authorization.

4009.15.4 An authorization that is required for enrollment in a health plan or to determine eligibility for benefits of the health plan cannot be combined with a voluntary authorization. A required authorization and a voluntary authorization must be separate documents, signed separately.

4009.16.0 Conditioning of Authorization

The provision of treatment, payment, enrollment in a health plan or eligibility for benefits shall not be conditioned on whether or not a client signs an authorization form, Form DHS-4000 or an approved HIPAA Compliant Form, except as follows:

- A. The provision of research-related treatment can be conditioned on authorization of the use or disclosure of individually identifiable health information for such research;
- B. Provision of health care solely for the purpose of creating individually identifiable health information for disclosure to a third party (e.g., physical exam for life insurance); or
- C. Prior to enrollment in a health plan if authorization is for eligibility or enrollment determinations and the authorization is not for disclosure of psychotherapy notes.
- D. A DHS health care provider may condition the provision of research-related treatment on authorization for the use or disclosure of health information for such research; or
- E. Before enrolling the individual in a DHS health plan, DHS can require the individual to sign an authorization if needed to help determine the applicant's eligibility for enrollment and the authorization is not for a use or disclosure of psychotherapy notes; or
- F. DHS and its contracted health care providers can require the individual to sign an authorization before providing health care that is solely for the purpose of creating protected health information for disclosure to a third party. For example, in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by DHS, the evaluator may, as a condition of conducting the evaluation, require the parent to sign an authorization to release the evaluation report (but not the underlying psychotherapy notes) to DHS.

4009.17.0 Retention Period

DHS must document and retain each signed Form DHS-4000 or approved HIPAA Compliant Form for a minimum of six years.

4009.18.0 Contractor Authorizations

The authorization requirements contained in this policy also apply to contractors who perform a service for or on behalf of a DHS agency. Such Contractors are limited to those disclosures permitted in an agreement with the agency. Contractors are responsible for ensuring that policy requirements are enforced with any sub-contractors they may use.

4009.19.0 Department Contact

Any questions concerning DHS Policy Number 4009 should be directed to:

DHS Office of Chief Counsel
P.O. Box 1437 - Slot S260
Little Rock, AR 72203-1437
Telephone: (501) 396-6168