

## LOUISIANA HEALTH CARE QUALITY FORUM

<b>POLICY: Confidentiality and Security of Protected Health Information</b>	<b>EFFECTIVE: 10-01-2011</b>
<b>DEPARTMENT: LHCQF; LaHIE</b>	<b>REVISED:</b>

### PURPOSE

To outline the standards used to maintain the confidentiality, privacy and security of individuals' protected health information in accordance with applicable state and federal regulations, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### RESPONSIBILITY

All LHCQF employees involved in the access, use, release or disclosure of an individual's protected health information (PHI). If a business partner has a different policy or contractual requirements, employees are expected to also comply with the business partner's policy or contractual requirements. This policy applies to LHCQF in its role as the business associate of HIPAA defined covered entities.

### PROCESS

#### A. Minimum Requirements

1. Reasonable efforts must be made to use, disclose or request only the minimum amount of PHI to accomplish the intended business objective.
2. Generally, only the narrowest or least amount of PHI is used or disclosed, covering the shortest period of time, to address the business objective for which the information is needed, and no more.
3. In addition, the use of PHI should be by, or disclosure should be to, only that person or those persons with a need-to-know, and who require the PHI to perform their functions or to accomplish a specific business objective.
4. When using or disclosing PHI for the following purposes, there is no minimum necessary requirement:
  - a. Treatment – disclosures to or requests by a healthcare provider for treatment to an individual;
  - b. Individual – permitted or required disclosures to, or requests by, an individual of his/her own information;
  - c. Authorized uses or disclosures – uses or disclosures authorized by an individual;
  - d. U.S. Department of Health and Human Services (HHS) – disclosures to HHS for investigation of HIPAA complaints;
  - e. Required by law – disclosures required by state or federal law; and
  - f. Compliance – uses or disclosures required for compliance with the HIPAA Administrative Simplification Rules.

## LOUISIANA HEALTH CARE QUALITY FORUM

### B. Uses and Disclosures of PHI

1. Uses and disclosures permitted with the individual's authorization:
  - a. An individual's PHI may be used or disclosed with the individual's (or individual's authorized personal representative's) authorization for any purpose. Such authorization from the individual must be documented.
2. Uses and disclosures permitted for payment or healthcare operations purposes that do not require the individual's authorization:
  - a. An individual's PHI may be used or disclosed without the individual's authorization for purposes of conducting the payment activities or healthcare operations of the covered entity when LHCQF is its business associate, or when the PHI is disclosed to LHCQF's business associate. The minimum necessary standard applies to these uses and disclosures.
  - b. The minimum necessary PHI may be disclosed to another covered entity (or at the direction of the covered entity) for the healthcare operations of the other covered entity if the PHI to be disclosed: (i) pertains to the relationship that both LHCQF (or the covered entity) have or had with the individual who is the subject of the PHI; and (ii) the healthcare operations for which the disclosure is being made involves one of the following:
    1. Quality assurance
    2. Competency assurance
    3. Fraud and abuse control
3. Uses and disclosures that require authorization from an individual:
  - a. Except for purposes of treatment, payment activities or healthcare operations, or as otherwise permitted or required by state or federal law, an individual's authorization must be requested prior to the use or disclosure of the individual's PHI.
  - b. An authorization is required to use or disclose PHI for marketing purposes that do not involve:
    - i. Communications about health-related products or services provided by, or included in a plan of benefits, or other value-added health-related products or services offered by the company;
    - ii. Distributing promotional items of nominal value; and
    - iii. Face-to-face communications by the company to the individual.
  - c. Activities requiring an authorization include those involving the use or disclosure of PHI maintained by LHCQF, such as brand name marketing, direct mail or telemarketing for non-health-related products or services (e.g., life

## LOUISIANA HEALTH CARE QUALITY FORUM

insurance, disability, etc.) or newsletters with articles about non-health-related products or services.

- d. An individual's authorization is required prior to the use or disclosure of an individual's psychotherapy notes (defined by HIPAA as notes recorded by a healthcare provider who is a mental health professional documenting or analyzing the contents of a conversation during a private, group or family counseling session and that are separated from the rest of the individual's medical record).

### 4. De-identified health information

- a. There are no minimum necessary or authorization restrictions on the request for, or use or disclosure of, de-identified health information. PHI can be de-identified in one of two ways:

- i. Remove identifiers: if all of the following identifiers of the individual, his/her relatives, his/her employers or his/her household members are removed, and the employee using or disclosing the information has no actual knowledge that the information could be used alone or in combination with other information to identify an individual:
  - Names;
  - All elements of dates (except year) for dates directly related to an individual, including birth date, admission and discharge date, date of death, all ages over 89;
  - Telephone or fax numbers, e-mail addresses;
  - Social security numbers, medical record numbers, health plan beneficiary numbers, account numbers;
  - Certificate-license numbers, vehicle identifiers, device identifiers;
  - Web Universal Resource Locators (URLs), Internet Protocol (IP) address numbers;
  - Biometric identifiers, full face photographic images and any comparable images;
  - All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP code; and
  - Any other unique identifying number, characteristic, or code (except re-identification codes).
- ii. Statistical method: It is determined that the risk is very small that the PHI could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is the subject of the PHI, based on generally accepted statistical and scientific principles and methods.

### 5. Disclosures permitted for purposes other than treatment, payment or healthcare operations

## LOUISIANA HEALTH CARE QUALITY FORUM

These disclosures do not require an authorization or other permission from the individual, but must meet the minimum necessary requirement and must be reported to LHCQF's Executive Director (or the customer's/covered entity's Privacy Officer) to be tracked for purposes of providing an accounting of disclosures:

- a. Health and safety purposes – disclosures to the extent necessary to avert a serious and imminent threat to an individual's health or safety of others, to a government agency authorized to oversee the healthcare system or government programs or its contractors, or to public health authorities.
- b. Public health activities – as permitted or required by law. For example, disclosures for the purposes of preventing or controlling disease, injury or disability; investigation of reportable diseases; the control of public health hazards; enforcement of sanitary laws; certification and licensure of health professionals and facilities; and review of healthcare that is required by the federal government and other governmental agencies.
- c. Health oversight activities – disclosure of PHI to a health oversight agency for activities authorized by law, such as audits, investigations, inspections, licensure or disciplinary actions, or civil, administrative, or criminal proceedings or actions.
- d. Required by law – PHI may be disclosed if required by law. There is no minimum necessary requirement for these disclosures.
- e. Legal, judicial and administrative proceedings – the minimum necessary PHI may be disclosed in response to a court or administrative order, subpoena, discovery request or other lawful process, in accordance with specified procedural safeguards. Subpoenas received for purposes other than health information management (HIM) routine operations should be referred to the LHCQF Legal Counsel.

### **C. Business Associates**

1. A business associate is a person or entity, other than a LHCQF employee, that performs or assists in performing, a function or activity that involves the use or disclosure of PHI on behalf of LHCQF.
2. LHCQF contracts with business associates and also functions as the business associate of other covered entities.
3. Prior to the disclosure of PHI to a business associate, or prior to the business associate being allowed to create or receive PHI, "satisfactory assurances" will be obtained in the form of a written agreement that the business associate will appropriately safeguard and limit their use and disclosure of the PHI.

## LOUISIANA HEALTH CARE QUALITY FORUM

4. The LHCQF Legal Counsel must review all business contracts to determine whether business associate requirements should be added to the contract.

### D. Individual Rights

Requests for the following individual rights will be coordinated by LHCQF's Executive Director or at the direction of the covered entity's Privacy Officer:

1. Access – Individuals have the right to inspect and obtain a copy of the PHI contained in their designated record set for as long as the information is maintained. Designated record set is defined as a group of records maintained by LHCQF or its business associates, which is used to make treatment decisions about individuals.
2. Amendment – Individuals have the right to request amendment of their PHI and other records contained in their designated record set for as long as the designated record set is maintained. *See Correction Policy*
3. Accounting of disclosure – Individuals have the right to an accounting of the disclosures of PHI that were made after April 14, 2003, for purposes other than treatment, payment or healthcare operations, or other than pursuant to a valid authorization when such authorization is required. It is the responsibility of the Compliance Department (or covered entity's Privacy Office) to ensure that each disclosure made that is not exempted from the accounting requirement is documented. *See Correction Policy*
4. Restriction on use or disclosure – Individuals have the right to request that the use or disclosure of their PHI be restricted, including uses and disclosures made for treatment, payment or healthcare operations. LHCQF does not have an obligation to agree to the request, but if agreed to, LHCQF will comply with the agreement and notify any business associates of such agreement. *See Correction Policy*
5. Confidential communications – Individuals have the right to request that LHCQF use alternative means or alternative locations (street address and/or telephone number) when communicating PHI to them.

### F. Complaint Management

1. Any workforce member who suspects that the privacy or security policies and procedures, the HIPAA privacy or security rules, or other applicable federal or state privacy laws have been violated must report the suspicion to the Executive Director in sufficient detail to permit the matter to be investigated and to prevent or mitigate any deleterious effects.
2. All privacy and security complaints will be fully investigated, and appropriate actions taken, including, but not limited to:
  - i. Technical system modifications;
  - ii. Modifying or expanding audits;
  - iii. Re-educating staff; and/or

## LOUISIANA HEALTH CARE QUALITY FORUM

- iv. Strengthening departmental procedures.
3. Employees that violate the privacy or security policies, the HIPAA privacy or security rules, or other applicable federal or state laws will be subject to disciplinary action as outlined in the LHCQF Employee Manual. The LHCQF Executive Director will act promptly to mitigate, to the extent possible, any harmful effect of improper use or disclosure of PHI.

### **G. Employee Training and Management**

1. Orientation and training
  - a. All new hires are given information on LHCQF's Code of Corporate Conduct and LHCQF's Employee Manual.
  - b. New hires must complete the LHCQF training program, which contains training on HIPAA privacy and security, within 60 days of hire.

2. Access to information
  - a. Workforce members authorized to have access to PHI (and electronic PHI) to perform their job functions shall have access only to that level of information necessary to complete their job functions.

3. Documentation and retention

LHCQF will maintain in written or electronic form for six years from the date of creation or last effective date, whichever is later:

- a. LHCQF's privacy and security policies and each revision of them;
- b. Each request from individuals for access, amendment, disclosure accounting, restriction or confidential communications and all documentation relating to them;
- c. Each complaint related to a real or perceived privacy or security violation and supporting documentation; and
- f. Other documentation requested or required by state or federal law, or this policy.

#### **APPROVAL:**

Cindy Munn  
Executive Director  
Louisiana Health Care Quality Forum