

**ALCOHOL, DRUG ADDICTION AND MENTAL HEALTH SERVICES OF
CUYAHOGA COUNTY BOARD**

POLICY STATEMENT

SUBJECT: GENERAL POLICY ON PRIVACY AND CONFIDENTIALITY

EFFECTIVE DATE: March 27, 2019

PURPOSE:

The purpose of this policy is to describe the ADAMHS Board’s procedures for protecting the privacy of protected health information (PHI) regarding individuals who request, are referred for, or participate in services funded, in part or in whole, by the Board in accordance with Ohio Laws and Administrative Rules, federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), as well as the federal regulations of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C.1320d-1329d-8, and regulation promulgated thereunder, 45 CFR Parts 160 and 164).

POLICY:

GENERAL POLICY ON PRIVACY AND CONFIDENTIALITY

TABLE OF CONTENTS

Article 1: DEFINITIONS USED IN POLICY.....	1
1.1 Applicable Requirements.....	1
1.2 Breach.....	1
1.3 Business Associate (BA)	1
1.4 Covered Entity.....	2
1.5 Disclosure.....	2
1.6 Health Oversight Agency.....	2
1.7 Health Plan.....	2
1.8 HIPAA	2
1.9 PHI	2
1.10 Provider.....	3
1.11 TPO.....	3
1.12 Use.....	3
1.13 Unsecured PHI.....	3
1.14 Workforce Member.....	3
Article 2: POLICY ON PRIVACY AND CONFIDENTIALITY	3
2.1 General Policy	3
Article 3: ADMINISTRATION	8
3.1 Policy on Privacy Officer and Contact Person For Complaints.....	8

3.2 Training of Workforce	8
Article 4: AUTHORIZATION.....	8
4.1 Policy on Authorizations	8
4.2 Procedures for Authorizations	9
Article 5: USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED	13
5.1 Policy on Uses and Disclosures for Which no Release or Authorization is Required.....	13
5.2 Procedures on Uses and Disclosures for Which no Release or Authorization is Required and Disclosure is not Subject to Federal or State SUD Requirements	14
5.3 Procedures on Uses and Disclosures for Which no Release or Authorization is Required and Disclosure is Subject to Federal and/or State SUD Requirements	20
Article 6: NOTICE	21
6.1 Policy on Notices.....	21
6.2 Procedures on Notices	21
Article 7: INDIVIDUAL RIGHTS RELATED TO PHI	25
7.1 Policy on Individual’s Access to PHI.....	25
7.2 Procedures on Individual’s Access to PHI	26
7.3 Policy on Individual’s Right to Request Restrictions.....	27
7.4 Procedures on Individual’s Right to Request Restrictions	27
7.5 Policy on Individual’s Right to Request Amendment of Records of PHI	28
7.6 Procedures on Individual’s Right to Request Amendment of Records of PHI	29
7.7 Policy on Accounting of Disclosures of PHI.....	31
7.8 Procedures on Accounting of Disclosures of PHI	31
7.9 Notification of Breaches of Unsecured PHI.....	32
Article 8: SAFEGUARDS FOR PHI.....	35
8.1 Policy on Safeguards	35
Article 9: INDIVIDUAL COMPLAINTS AND GRIEVANCES.....	36
9.1 Policy on Individual Complaints and Grievances.....	36
9.2 Procedures on Individual Complaints and Grievances	37
Article 10: SANCTIONS	37
10.1 Policy on Sanctions	37
10.2 Procedures on Sanctions	37
Article 11: BUSINESS ASSOCIATES	39
11.1 Policy on Business Associates	39
11.2 Procedure on Business Associates	40
Article 12: DOCUMENT MANAGEMENT.....	44
12.1 Policy on Document Retention	44
12.2 Policy on Document Destruction	45

Article 1: DEFINITIONS USED IN POLICY

1.1 Applicable Requirements

Applicable requirements means applicable federal and Ohio law and the contracts between the ADAMHS Board and other persons or entities which conform to federal and Ohio Law.

1.2 Breach

A breach is the acquisition, access, use, or disclosure of PHI in an unauthorized manner which compromises the security or privacy of the PHI¹. The following types of breaches are expressly excluded from this definition:

- a. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner prohibited by HIPAA;
- b. Any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI at the same Covered Entity or Business Associate and the information is not further disclosed in a manner prohibited by HIPAA; or
- c. A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

1.3 Business Associate (BA)

A Business Associate is a person or entity which creates, uses, receives or discloses PHI held by a covered entity to perform functions or activities on behalf

¹ 45 CFR §164.402

(1)(i) For purposes of this definition, compromises the security or privacy of the PHI means poses a significant risk of financial, reputational, or other harm to the individual.

(ii) A use or disclosure of PHI that is part of a limited data set as defined by § 164.514(e)(2), does not compromise the security or privacy of the PHI.

of the covered entity. The requirements are set forth more fully in 45 CFR 160.103 and in 42 CFR 2.11.

1.4 Covered Entity

Covered entity (CE) means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA privacy rules.

1.5 Disclosure

Disclosure means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

1.6 Health Oversight Agency

Health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

1.7 Health Plan

Health plan means an individual or group plan that provides, or pays the cost of medical care. Health plan includes the following, singly or in combination:

- a. The Medicaid program under title XIX of the Act, 42 U.S.C. § 1396, et seq.
- b. Any other individual or group plan, or combination of individual or group plans, that provides **or pays** for the cost of medical care.

1.8 HIPAA

HIPAA means the Health Insurance Portability and Accountability Act of 1996, codified in 42 USC §§ 1320 - 1320d-8.

1.9 PHI

PHI means individually 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 the past, present or future payment for health care provided to an individual.

1.10 Provider

Provider means a person or entity which is licensed, certified, or accredited to provide services, including but not limited to health care services in accordance with applicable requirements. A Covered Provider is a Health Care Provider who transmits any health information in electronic form.

1.11 TPO

TPO means treatment, payment or health care operations under HIPAA rules.

1.12 Unsecured PHI

Unsecured PHI means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued and made available at <http://www.hhs.gov/ocr/privacy/>.²

1.13 Use

Use means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

1.14 Workforce Member

Workforce Member means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the ADAMHS Board, is under the direct control of the ADAMHS Board, whether or not they are paid by the ADAMHS Board.

Article 2: POLICY ON PRIVACY AND CONFIDENTIALITY

2.1 GENERAL POLICY

² 45 CFR §164.402; The commentary notes that “unsecured PHI can include information in any form or medium, including electronic, paper, or oral form.”
74 Fed. Reg. 42748

The ADAMHS Board shall conform to all requirements for privacy and confidentiality set forth in HIPAA and other applicable law. The ADAMHS Board shall not use or disclose PHI except in accordance with applicable requirements.

This policy shall apply when the ADAMHS Board is acting as a Health Plan under HIPAA. If the ADAMHS Board is acting in more than one capacity, the ADAMHS Board shall be subject to the requirements applicable to that function and shall use or disclose PHI only for purposes related to the function being performed.

2.1.1 Treatment, payment and health care operations

The ADAMHS Board may use PHI for treatment, payment and health care operations without an individual's release or authorization to the extent that such activities occur within the ADAMHS Board program and subject to the minimum necessary standard set forth in this policy.

The ADAMHS Board shall obtain a release or authorization from the individual for any disclosure for treatment, payment or health care operations when such disclosure is to a person or entity which is not otherwise entitled to receive such information under applicable requirements.

2.1.2 Scope of Disclosure: Minimum Necessary Standard

In general, use, disclosure or requests of records must be limited to the minimum which is reasonably necessary to accomplish the purpose of the use, disclosure or request. The following are exceptions to this general principle:

- a. The minimum necessary standard does not apply to disclosures to the individual.
- b. When an individual has authorized disclosure, the scope of disclosure shall be in accordance with the authorization.
- c. Disclosures required by law or for monitoring purposes shall be made in accordance with the authority seeking the information.

2.1.3 Implementing standard for minimum necessary uses of PHI

- a. ADAMHS Board shall identify those persons or classes of persons, as appropriate, in its workforce who need access to PHI to carry out their duties; and

b. For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.

c. ADAMHS Board shall make reasonable efforts to limit the access of such persons or classes identified above to PHI consistent with the categories described above.

2.1.4 Implementing standard for minimum necessary disclosures of PHI:

a. For any type of disclosure made on a routine and recurring basis, ADAMHS Board will implement procedures that limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure. For all other disclosures, ADAMHS Board will: (a) develop criteria designed to limit the PHI disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought, and; (b) review requests for disclosure on an individual basis in accordance with such criteria.

2.1.5 ADAMHS Board may rely on a requested disclosure as the minimum necessary for the stated purpose when:

a. Making disclosures to public officials that are permitted under this Policy, if the public official provides a written statement that the information requested is the minimum necessary for the stated purpose(s);

b. The information is requested by another CE;

c. The information is requested by a professional who is a member of its workforce or is a business associate of the ADAMHS Board for the purpose of providing professional services to the ADAMHS Board, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or

d. Documentation or representations that comply with the applicable requirements of this Policy have been provided by a person requesting the information for research purposes.

2.1.6 Implementing standard for minimum necessary requests for PHI:

a. ADAMHS Board will limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the

request is made, when requesting such information from other CEs;

b. For a request that is made on a routine and recurring basis, ADAMHS Board will implement procedures that limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made;

c. For all other requests, ADAMHS Board will review the request on an individual basis to determine that the PHI sought is limited to the information reasonably necessary to accomplish the purpose for which the request is made.

2.1.7 Requests for the entire record: For all uses, disclosures, or requests to which the requirements of sections 2.1.2 through 2.1.6 apply, ADAMHS Board will not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

2.1.8 Incidental Uses and Disclosures

The ADAMHS Board may use or disclose PHI incident to a use or disclosure otherwise permitted or required by applicable requirements.

a. An incidental use or disclosure is a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a result of another use or disclosure that is permitted by the Rule.

b. Permissible incidental uses and disclosures are those that occur as a by-product of another permissible or required use or disclosure, as long as the ADAMHS Board has applied reasonable safeguards and implemented the minimum necessary standard, where applicable, with respect to the primary use or disclosure.

c. An incidental use or disclosure is not permitted if it is a byproduct of an underlying use or disclosure which violates applicable requirements and ADAMHS Board procedures.

2.1.9 Changes in Policies and Procedures

- a. The ADAMHS Board shall change its policies and procedures as necessary and appropriate to comply with changes in applicable requirements.
- b. Changes shall apply to existing PHI effective on the date of notice of the change.
- c. The ADAMHS Board shall document material changes in policies and notices which reflect such changes. The ADAMHS Board shall retain such documentation for six years or as otherwise mandated by applicable requirements.

2.1.10 Mitigation

The ADAMHS Board shall mitigate, to the extent practicable, any harmful effect that is known to the ADAMHS Board of a use or disclosure of protected health information in violation of its policies and procedures or the requirements of applicable requirements and ADAMHS Board policies and procedures by the ADAMHS Board or its business associate.

2.1.11 Prohibition against Retaliation or Intimidation

No office, program, facility or employee of the ADAMHS Board shall intimidate, threaten, coerce, discriminate against, or take other retaliatory action against

- a. any individual for the exercise of their rights or participation in any process relating to HIPAA compliance, or
- b. against any person for filing a complaint with the Secretary of the U.S. Department of Health and Human Services, participating in a HIPAA related investigation, compliance review, proceeding or hearing, or engaging in reasonable opposition to any act or practice that the person in good faith believes to be unlawful under HIPAA regulations as long as the action does not involve disclosure of PHI in violation of the regulations.

2.1.12 Prohibition against Waiver of Rights

No office, program, facility or employee of the ADAMHS Board shall require individuals to waive any of their rights under HIPAA as a condition of treatment, payment, and enrollment in a health plan or eligibility for benefits.

Article 3: ADMINISTRATION

3.1 POLICY ON PRIVACY OFFICER AND CONTACT PERSON FOR COMPLAINTS

The ADAMHS Board shall designate and document designations of the following:

3.1.1 Privacy Officer

The ADAMHS Board shall designate an individual to be the Privacy Officer, responsible for the development and implementation of ADAMHS Board policies and procedures relating to the safeguarding of PHI.

3.1.2 Contact Person or Office

The ADAMHS Board shall designate an individual, position title, or office that will be responsible for receiving complaints relating to PHI and for providing information about the office's, facility's, or program's privacy practices.

3.2 TRAINING OF WORKFORCE

The ADAMHS Board shall carry out and document the following training:

1. All ADAMHS Board employees and other workforce members shall be trained on applicable policies and procedures relating to PHI as necessary and appropriate for such persons to carry out their functions within the ADAMHS Board.
2. Each new workforce member shall receive the training as described above within a reasonable time after joining the workforce.
3. Each workforce member whose functions are impacted by a material change in the policies and procedures relating to PHI, or by a change in position or job description, must receive the training as described above within a reasonable time after the change becomes effective.

Article 4: AUTHORIZATION

4.1 POLICY ON AUTHORIZATIONS

In compliance with 45 CFR Part 164, 42 CFR Part 2 and Ohio law, all uses and disclosures of PHI beyond those otherwise permitted or required by law require a signed authorization. An authorization which conforms to procedures adopted by the ADAMHS Board may be used for use or disclosure of PHI in any situation where an authorization or release of information is required.

4.2 PROCEDURES FOR AUTHORIZATIONS

4.2.1 General

In compliance with 45 CFR Part 164, 42 CFR Part 2 and Ohio law, all uses and disclosures of PHI beyond those otherwise permitted or required by law require a signed authorization according to the provisions of this policy. An authorization which conforms to this rule may be used for use or disclosure of PHI in any situation where an authorization is required.

An authorization is required for each individual or entity that is to receive PHI except as provided by federal and Ohio law. Exceptions for requirement for an authorization include the following, as further specified in federal and Ohio law:

- a. those required by law;
- b. for public health activities;
- c. about victims of abuse, neglect or domestic violence;
- d. for health oversight activities;
- e. for judicial and administrative proceedings;
- f. for law enforcement purposes;
- g. those about decedents;
- h. for cadaveric organ, eye or tissue donation purposes;
- i. for research purposes;
- j. to avert a serious threat to health or safety;
- k. for specialized government functions; and
- l. for workers' compensation.

4.2.2 Elements for Authorization

Content Requirements: Each authorization for the use or disclosure of an individual's PHI shall be written in plain language and shall include at least the following information:

- a. A specific and meaningful description of the information to be used or disclosed;
- b. The name or identification of the person or class of person(s) authorized to make the use or disclosure;
- c. The name or identification of the person or class of person(s) to whom the requested use or disclosure may be made;

- d. Purpose of the disclosure or statement that disclosure is at request of the individual;
- e. An expiration date or expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository.
- f. A statement of the individual's right to revoke the authorization in writing, and exceptions to the right to revoke, together with a description of how the individual may revoke the authorization or make reference to conditions for revocation in the notice.
- g. A statement regarding permissible conditioning of treatment, payment, enrollment or eligibility for benefits on the authorization, as described in section 4.2.3 of this procedure.
- h. A statement that the potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient if the recipient is not subject to federal or state confidentiality restrictions. The information may no longer be protected by this subpart;
- i. If the authorization is for marketing purposes and the ADAMHS Board seeking the authorization will receive either direct or indirect compensation, the authorization must state that the ADAMHS Board will receive remuneration.
- j. The dated signature of the individual, and;
- k. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act on behalf of the individual.
- l. If the authorization is for information protected under SUD state and federal requirements, regarding an individual who is a minor, the signature of the minor is required, unless the minor lacks capacity to make a rational choice.

m. If the authorization is for information protected under SUD state and federal requirements, each disclosure made with the individual's written authorization must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by part 2.

4.2.3 Conditioning services on authorization

a. The ADAMHS Board may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

i. The ADAMHS Board acting as a covered health care provider may condition the provision of research-related treatment on provision of a valid authorization;

ii. The ADAMHS Board may condition enrollment for ADAMHS Board services or eligibility for ADAMHS Board services on provision of an authorization requested by the ADAMHS Board prior to an individual's enrollment in the ADAMHS Board, if:

A) The authorization sought is for determining eligibility for ADAMHS Board services or enrollment determinations relating to the individual; and

B) The authorization is not for a use or disclosure of psychotherapy notes.

b. An ADAMHS Board may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

4.2.4 Combining Authorizations

- a. An authorization which has been improperly combined with another authorization or document is invalid.
- b. An authorization can permit disclosure for more than one purpose except that:
 - i. An authorization for use or disclosure of psychotherapy notes may only be combined with another authorization for use or disclosure of psychotherapy notes, and
 - ii. An authorization for use or disclosure of PHI for research may only be combined with another authorization for use or disclosure of PHI for research.
- c. An authorization which is required as a condition for treatment, payment, enrollment or eligibility for benefits cannot be combined with another authorization.
- d. An authorization cannot be combined with another document such as a notice or consent for treatment.

4.2.5 Right to revoke

- a. An individual may revoke an authorization at any time, provided that the revocation is in writing, except to the extent that:
 - i. The ADAMHS Board has taken action in reliance thereon; or
 - ii. If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.
- b. An authorization which has been revoked is no longer valid.
- c. Upon written notice of revocation, further use or disclosure of PHI shall cease immediately except to the extent that the office, facility, program or employee has acted in reliance upon the authorization or to the extent that use or disclosure is otherwise permitted or required by law;

4.2.6 Invalid authorizations

An authorization is not valid if it has any of the following defects:

- a. the expiration date or event has passed;
- b. the authorization was not filled out completely;
- c. the authorization is revoked;
- d. the authorization lacks a required element; or
- e. the authorization violates requirements regarding compound authorizations.

4.2.7 Verification

a. *Verification of Recipient.* The ADAMHS Board must take reasonable steps to verify the identity of a person receiving protected health information and the authority of any such person to have access to PHI. The ADAMHS Board may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

b. *Verification of Personal Representative.* In accepting an authorization from a personal representative of an individual, the ADAMHS Board must document evidence that the individual has designated the personal representative to act on the individual's behalf. The ADAMHS Board may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

4.2.8 Document Management

- a. If the entity is seeking the authorization, a copy of the authorization must be provided to the individual.
- b. The ADAMHS Board must retain the written or electronic copy of the authorization for a period of six (6) years from the later of the date of execution or the last effective date.

Article 5: USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED

5.1 POLICY ON USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED

5.1.1 The ADAMHS Board may use or disclose PHI which is not subject to state or federal SUD requirements, without written release or authorization of the individual as set forth in section 5.2 of the ADAMHS Board's procedures.

5.1.2 The ADAMHS Board may not use or disclose PHI which is subject to state or federal SUD requirements, without written release or authorization of the individual, except in the event of a medical emergency as follows and as further set forth in section 5.3 of the ADAMHS Board's procedures .

5.2 PROCEDURES ON USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED AND DISCLOSURE IS NOT SUBJECT TO FEDERAL OR STATE SUD REQUIREMENTS

The ADAMHS Board shall conform to the following procedures in making disclosures for which no release or authorization is required:

5.2.1 When required by law

The ADAMHS Board may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law, including, but not limited to the requirements summarized in sections 5.2.3, 5.2.5, and 5.2.6.

5.2.2 For public health purposes

PHI may be used or disclosed to:

- a. A public health authority authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury or disability, reporting vital events, conducting public health surveillance, investigations or interventions;
- b. A public health or other government authority authorized by law to receive reports of child abuse or neglect;
- c. A person subject to the jurisdiction of the Food and Drug Administration (FDA) regarding his/her responsibility for quality, safety or effectiveness of an FDA regulated product or activity, to report adverse events, product defects or problems, track products, enable recalls, repairs or replacements, or conduct post-marketing surveillance;

d. A person who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition.

5.2.3 To protect victims of abuse, neglect, or domestic violence

a. Reports of child abuse

i. Reports of child abuse shall be made in accordance with Ohio law.

ii. The ADAMHS Board may disclose PHI related to the report of abuse to the extent required by applicable law. Such reports shall be made to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

b. Reports of abuse and neglect other than reports of child abuse or neglect.

i. The ADAMHS Board may disclose PHI about an individual believed to be a victim of abuse, neglect, or domestic violence to a governmental authority authorized to receive such reports if:

A) the individual agrees; or

B) The ADAMHS Board believes, in the exercise of professional judgment, that the disclosure is necessary to prevent serious physical harm.

C) If the individual lacks the capacity to agree, disclosure may be made if not intended for use against the individual and delaying disclosure would materially hinder law enforcement activity.

ii. The individual whose PHI has been released must be promptly informed that the report was or will be made unless:

A) doing so would place the individual at risk of serious harm; or

B) the ADAMHS Board would be informing a personal representative, and the ADAMHS Board 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 the ADAMHS Board, in the exercise of professional judgment.

5.2.4 For health oversight activities such as investigations, audits, and inspections

- a. PHI may be used or disclosed for activities related to oversight of the health care system, government health benefits programs, and entities subject to government regulation, as authorized by law, including activities such as audits, civil and criminal investigations and proceedings, inspections, and licensure and certification actions.
- b. Specifically excluded from this category are investigations of an individual that are not related to receipt of health care, or the qualification for, receipt of, or claim for public benefits.

5.2.5 For judicial and administrative proceedings

- a. The ADAMHS Board must always comply with a lawful order, but only in accordance with the express terms of the order.
- b. Subpoena, discovery request or other lawful process: the ADAMHS Board may comply with such legal requests only if:
 - i. The ADAMHS Board receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
 - ii. The ADAMHS Board receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order.
- c. The ADAMHS Board shall not respond to a subpoena without review by an attorney to ensure compliance with applicable requirements.

5.2.6 For law enforcement purposes

- a. PHI may be disclosed for the following law enforcement purposes and under the specified conditions:
 - i. Pursuant to court order or as otherwise required by law, i.e., laws requiring the reporting of certain types of wounds or injuries; or commission of a felony, subject to any exceptions set forth in applicable law.
 - ii. Decedent's PHI may be disclosed to alert law enforcement to the death if entity suspects that death resulted from criminal conduct.
 - iii. The ADAMHS Board may disclose to a law enforcement official protected health information that the ADAMHS Board believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the ADAMHS Board.
 - iv. The ADAMHS Board providing emergency health care in response to a medical emergency, other than such emergency on the premises of the ADAMHS Board, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
 - A) The commission and nature of a crime;
 - B) The location of such crime or of the victim(s) of such crime; and
 - C) The identity, description, and location of the perpetrator of such crime.
 - v. If the ADAMHS Board believes that a medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, the limitations in the previous section 5.2.6a.iv does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to section 5.2.3.
 - vi. Compliance/Enforcement of privacy regulations: PHI must be disclosed as requested, to the Secretary of Health and Human Services related to compliance and enforcement efforts.

- b. The ADAMHS Board shall not respond to a court order, subpoena, or request for information from law enforcement without review by an attorney to ensure compliance with applicable requirements.

5.2.7 To coroners, medical examiners, and funeral directors

PHI may be disclosed to coroners, medical examiners and funeral directors, as necessary for carrying out their duties.

5.2.8 Organ, eye or tissue donation

PHI of potential organ/tissue donors may be disclosed to the designated organ procurement organization and tissue and eye banks.

5.2.9 To reduce or prevent a serious threat to public health and safety

The ADAMHS Board may disclose PHI as follows, to the extent permitted by applicable law and ethical standards:

- a. PHI may be used or disclosed if the entity believes in good faith
 - i. that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to a person or the public, and disclosure is to someone reasonably able to prevent or lessen the threat, or
 - ii. the disclosure is to law enforcement authorities to identify or apprehend an individual who has admitted to violent criminal activity that likely caused serious harm to the victim or who appears to have escaped from lawful custody.
- b. Disclosures of admitted participation in a violent crime are limited to the individual's statement of participation and the following PHI: name, address, date and place of birth, social security number, blood type, type of injury, date and time of treatment, date and time of death, if applicable, and a description of distinguishing physical characteristics.
- c. Disclosures of admitted participation in a violent crime are not permitted when the information is learned in the course of treatment entered into by the individual to affect his/her propensity to commit the subject crime, or through counseling, or therapy or a request to initiate the same.

5.2.10 Specialized government functions

- a. National Security and Intelligence: PHI may be disclosed to authorized federal officials for the conduct of lawful intelligence, Counterintelligence, and other activities authorized by the National Security Act.
- b. Protective services: PHI may be disclosed to authorized federal officials for the provision of protective services to the President, foreign heads of state, and others designated by law, and for the conduct of criminal investigations of threats against such persons.
- c. The ADAMHS Board may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
 - i. The provision of health care to such individuals;
 - ii. The health and safety of such individual or other inmates;
 - iii. The health and safety of the officers or employees of or others at the correctional institution;
 - iv. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - v. Law enforcement on the premises of the correctional institution; and
 - vi. The administration and maintenance of the safety, security, and good order of the correctional institution.

The provisions of this section 5.2.10c do not apply after the individual is released from custody.

d. Public Benefits: PHI relevant to administration of a government program providing public benefits may be disclosed to another governmental program providing public benefits serving the same or similar populations as necessary to coordinate program functions or improve administration and management of program functions.

5.2.11 For workers' compensation or other similar programs if applicable.

PHI may be disclosed as authorized and to the extent necessary to comply with laws relating to workers' compensation and other similar programs.

5.3 PROCEDURES ON USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED AND DISCLOSURE IS SUBJECT TO FEDERAL AND/OR STATE SUD REQUIREMENTS

The ADAMHS Board shall conform to the following procedures in making disclosures for which no release or authorization is required:

5.3.1 When required by law

The ADAMHS Board may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

5.3.2 To protect victims of abuse, neglect, or domestic violence

a. Reports of child abuse

i. Reports of child abuse shall be made in accordance with Ohio law.

ii. The ADAMHS Board may disclose PHI related to the report of abuse to the extent required by applicable law. Such reports shall be made to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

5.3.3 For health oversight activities such as investigations, audits, and inspections

a. PHI may be used or disclosed for activities related to oversight of the health care system, government health benefits programs, and entities subject to government regulation, as authorized by

law, including activities such as audits, civil and criminal investigations and proceedings, inspections, and licensure and certification actions.

b. Specifically excluded from this category are investigations of an individual that are not related to receipt of health care, or the qualification for, receipt of, or claim for public benefits.

5.3.4 For judicial and administrative proceedings

a. The ADAMHS Board must always comply with a lawful order, but only in accordance with the express terms of the order and only if it is accompanied by a valid subpoena.

b. The ADAMHS Board shall not respond to a court order or subpoena without review by an attorney to ensure compliance with applicable requirements.

5.3.5 For law enforcement purposes

a. PHI may be disclosed for law enforcement purposes only pursuant to court order and a valid subpoena.

b. The ADAMHS Board shall not respond to a court order, subpoena, or request for information from law enforcement without review by an attorney to ensure compliance with applicable requirements.

Article 6: NOTICE

6.1 POLICY ON NOTICES

The ADAMHS Board shall give adequate notice of the uses and disclosures of PHI that may be made by the ADAMHS Board, and of the individual's rights and the ADAMHS Board's legal duties with respect to PHI.

6.2 PROCEDURES ON NOTICES

6.2.1 General

An individual has a right to adequate notice of the uses and disclosures of the individual's PHI that may be made by or on behalf of the ADAMHS Board, and of the individual's rights and the ADAMHS Board's legal duties with respect to the individual's PHI.

6.2.2 When notice is required

- a. The ADAMHS Board must provide notice:
 - i. To individuals enrolled in ADAMHS Board services, at the time of enrollment;
 - ii. Within 60 days of a material revision to the notice, to individuals enrolled in ADAMHS Board services.
- b. Once every three years, the ADAMHS Board shall notify individuals enrolled in ADAMHS Board services of the availability of the notice and how to obtain the notice.

6.2.3 Acknowledgment of Notice

- a. Except in an emergency treatment situation, the ADAMHS Board shall make a good faith effort to obtain a written acknowledgment of receipt of the initial notice provided, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained.
- b. An acknowledgment is not required for:
 - i. revised notices; or
 - ii. Periodic notice on availability of notice and how to obtain notice.

6.2.4 Making Notice Available

- a. The ADAMHS Board shall post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the ADAMHS Board to be able to read the notice.
- b. Whenever the notice is revised, the ADAMHS Board shall make the notice available upon request on or after the effective date of the revision and shall promptly post as required in this paragraph.

6.2.5 Required Content of Notice

The notice of privacy practices must be written in plain language and must contain the following elements:

a. The following statement in a header or otherwise prominently displayed: "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".

b. A description, including at least one example, of the types of uses and disclosures that the ADAMHS Board is permitted to make for purposes of treatment, with sufficient detail to place an individual on notice of the uses and disclosures permitted or required. The description should clarify that any disclosure outside of the ADAMHS Board requires prior authorization;

c. A description, including at least one example, of the types of uses and disclosures that the ADAMHS Board is permitted to make for purposes of payment and health care operations, with sufficient detail to place an individual on notice of the uses and disclosures permitted or required;

d. A description of each of the other purposes for which the ADAMHS Board is permitted or required to use or disclose PHI without an individual's consent or authorization, with sufficient detail to place an individual on notice of the uses and disclosures permitted or required;

e. A statement that other uses or disclosures will be made only with the individual's written authorization, and that the authorization may be revoked in accordance with the policy on authorizations;

f. If the ADAMHS Board intends to contact the individual for appointment reminders, treatment alternatives or other health related benefits, a separate statement describing such contacts;

g. A statement of the individual's rights with respect to his/her PHI, and a brief description of how the individual may exercise those rights, including: the right to request restrictions on certain uses/disclosures of PHI, and the fact that the ADAMHS Board does not have to agree to such restrictions; the right to receive confidential communications of PHI; the right to inspect and copy PHI upon written request; the right to amend PHI; the right to receive an accounting of disclosures of PHI, and; the right to

receive a paper copy of the privacy notice (each of the above in accordance with relevant policies);

h. A statement of the ADAMHS Board's duties with respect to PHI, including statements: that the ADAMHS Board is required by law to maintain the privacy of PHI and to provide individuals with notice of its legal duties and privacy policies; that the ADAMHS Board is required to abide by the terms of the currently effective privacy notice;

i. A statement that the ADAMHS Board reserves the right to change the terms of the notice and make the new notice provisions effective for all PHI maintained, along with a description of how the ADAMHS Board will provide individuals with the revised notice;

j. A statement that individuals may complain to the ADAMHS Board and to the Secretary of the U.S. Department of Health and Human Services about privacy rights violations, including a brief statement about how a complaint may be filed and an assurance that the individual will not be retaliated against for filing a complaint;

k. The name, or title, and telephone number of the person or office to contact for further information;

l. The effective date of the notice, which may not be earlier than the date printed or published.

6.2.6 Notice of Revisions

a. When there is a material change to the uses or disclosures, the individual's rights, the ADAMHS Board's legal duties, or other privacy practices described in the notice, the ADAMHS Board shall provide a notice of such change.

b. Notice of material changes shall be made no later than 60 days after the change is effective.

c. The notice shall incorporate all material changes and shall be distributed in accordance with this policy within the time period required in this policy.

d. Except when required by law, a material change to any term may not be implemented prior to the effective date of the notice reflecting the change.

e. The ADAMHS Board is not required to obtain acknowledgment of a revised notice.

6.2.7 Requirements for Electronic Notice

a. If the ADAMHS Board maintains a web site, the notice must be posted on the web site and be made available electronically through the web site.

b. The ADAMHS Board may provide the notice required by this section to an individual by e-mail, if the individual agrees to electronic notice and such agreement has not been withdrawn. If the ADAMHS Board knows that the e-mail transmission has failed, a paper copy of the notice must be provided to the individual. Notice which is provided in accordance with this section and in a timely manner is sufficient to meet HIPAA requirements.

c. The individual who is the recipient of electronic notice retains the right to obtain a paper copy of the notice from an ADAMHS Board upon request.

6.2.8 Documentation

The ADAMHS Board shall retain copies of the notices issued by the ADAMHS Board and any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment. Copies of such notices shall be retained for a period of at least six years from the later of the date of creation of the notice or the last effective date of the notice. Acknowledgments or documentation of good faith efforts to obtain acknowledgment shall be retained for a period of at least six years from the date of receipt.

Article 7: INDIVIDUAL RIGHTS RELATED TO PHI

7.1 POLICY ON INDIVIDUAL'S ACCESS TO PHI

In general, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, subject to any limitations imposed by applicable law.

Information supplied to an individual is not subject to the minimum necessary standard.

7.2 PROCEDURES ON INDIVIDUAL'S ACCESS TO PHI

7.2.1 General

At the request of the individual consumer or the consumer's guardian the ADAMHS Board shall provide the person who made the request access to records and reports regarding the consumer.

On written request, the ADAMHS Board shall provide copies of the records and reports to the consumer or consumer's guardian.

7.2.2 Form of access

The ADAMHS Board shall provide the individual with access to the PHI in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by the ADAMHS Board and the individual.

The ADAMHS Board may allow the individual to inspect the PHI without copies, if the individual agrees to an inspection only.

7.2.3 Summary

The ADAMHS Board may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if both of the following apply:

- a. the individual agrees in advance to such a summary or explanation; and
- b. the individual agrees in advance to the fees imposed, if any, by the ADAMHS Board for such summary or explanation.

7.2.4 Time for response to request for access

The ADAMHS Board shall respond to an individual's request for access not later than 30 days from the date of request.

7.2.5 Fees for copying

The ADAMHS Board may charge a reasonable fee to cover the costs of copying. The ADAMHS Board may waive the fee in cases of hardship.

7.2.6 Other responsibilities

If the ADAMHS Board does not maintain the PHI that is the subject of the individual's request for access, and the ADAMHS Board knows where the requested information is maintained, the ADAMHS Board must inform the individual where to direct the request for access.

7.3 POLICY ON INDIVIDUAL'S RIGHT TO REQUEST RESTRICTIONS

The ADAMHS Board may voluntarily agree to restrict disclosure of information. The ADAMHS Board is not required to agree to such restrictions. If there is such an agreement, the ADAMHS Board shall abide by the terms of the agreement, unless and until the agreement is rescinded in accordance with ADAMHS Board procedures.

An individual may request, subject to conditions set forth in ADAMHS Board procedures, that confidential information be conveyed by the ADAMHS Board to the individual through alternative means or at alternative locations.

7.4 PROCEDURES ON INDIVIDUAL'S RIGHT TO REQUEST RESTRICTIONS

7.4.1 Form of request

Any request for restriction shall be in writing. Such request shall be construed as an objection to disclosure when applicable law gives the individual the opportunity to object to disclosure.

7.4.2 Consideration of request

The ADAMHS Board is not obligated to agree to any requests for restriction.

7.4.3 Procedure upon agreement

If such an agreement is made, the ADAMHS Board shall document the agreement and give notice of such restriction to all employees with access to the individual's PHI and to all business associates or other persons or entities under contract with the ADAMHS Board who have access to the individual's PHI.

7.4.4 Limitations on restrictions

No restriction on use of information shall apply in any of the following circumstances:

- a. Emergencies where disclosure is necessary to prevent serious injury to the individual or others.
- b. When required for investigations by entities with authority to investigate compliance with applicable requirements.
- c. When applicable requirements do not require an authorization or an opportunity to object.

7.4.5 Confidential communications requests

- a. The ADAMHS Board shall permit individuals to request in writing and must accommodate reasonable requests by individuals to receive communications of PHI from ADAMHS Board by alternative means or at alternative locations.
- b. The ADAMHS Board may condition the provision of a reasonable accommodation on:
 - i. When appropriate, information as to how payment, if any, will be handled; and
 - ii. Specification of an alternative address or other method of contact.

7.4.6 Terminating a restriction

The ADAMHS Board may terminate its agreement to a restriction, if:

- a. The individual agrees to or requests the termination in writing;
- b. The individual orally agrees to the termination and the oral agreement is documented; or
- c. The ADAMHS Board informs the individual that it is terminating its agreement to a restriction, except that such termination is only effective with respect to PHI created or received after it has so informed the individual.

7.5 POLICY ON INDIVIDUAL'S RIGHT TO REQUEST AMENDMENT OF RECORDS OF PHI

Subject to the rules set forth in applicable requirements and ADAMHS Board procedures, an individual has the right to have the ADAMHS Board amend PHI

or a record about the individual in a designated record set for as long as the PHI is maintained in the designated record set.

7.6 PROCEDURES ON INDIVIDUAL'S RIGHT TO REQUEST AMENDMENT OF RECORDS OF PHI

7.6.1 Request for amendment

An individual may request amendment of PHI about the individual held by the ADAMHS Board or a person or entity with which the ADAMHS Board has a business association relationship.

Such request shall be in writing and shall be subject to the requirements set forth in these procedures.

7.6.2 Time for action on request for amendment

The ADAMHS Board must act on a request for amendment no later than 60 days after the date of the request. The ADAMHS Board may extend the time by not more than 30 days if the ADAMHS Board gives the individual written notice of the extension and the reason for the extension.

7.6.3 Acceptance of amendment

If the ADAMHS Board accepts the requested amendment, in whole or in part, the ADAMHS Board must make the appropriate amendment, and inform the individual and other persons or entities who have had access to the information.

7.6.4 Refusal of amendment

a. Notice

If an amendment is denied, the ADAMHS Board must give written notice in plain language which includes the following:

- i. The basis for the denial;
- ii. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
- iii. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the ADAMHS Board provide the individual's request for amendment and the denial with any future disclosures of the

protected health information that is the subject of the amendment; and

iv. A description of how the individual may complain to the ADAMHS Board or the Secretary under the rules. The description must include the name, or title, and telephone number of the contact person or office.

b. Statement of disagreement or correction

The ADAMHS Board must permit the individual to submit to the ADAMHS Board a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The ADAMHS Board may reasonably limit the length of a statement of disagreement.

c. Rebuttal statement

The ADAMHS Board may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the ADAMHS Board must provide a copy to the individual who submitted the statement of disagreement.

d. Future disclosures

i. Records must allow review of the statements of disagreement and rebuttals.

ii. Future disclosures of covered records must include relevant amendments and rebuttals.

iii. If an individual has not submitted a statement of disagreement, the ADAMHS Board must include the following with all subsequent disclosures:

A) The individual's request for an amendment; and

B) The ADAMHS Board's notice of denial.

iv. If the disclosure which was the subject of amendment was transmitted using a standard EDI format, and the format does not permit including the amendment or notice of denial, the ADAMHS Board may separately transmit the information to the recipient of the transaction in a standard EDI format.

7.6.5 Actions on notices of amendment from another ADAMHS Board

The ADAMHS Board that is informed by another ADAMHS Board of an amendment to an individual's protected health information must amend the protected health information in designated record sets.

7.6.6 Designation and Documentation

The Privacy Officer of the ADAMHS Board shall be the person responsible for receiving and processing requests for amendments by individuals and retain the documentation as required by applicable requirements and ADAMHS Board procedures.

7.7 POLICY ON ACCOUNTING OF DISCLOSURES OF PHI

If the ADAMHS Board discloses an individual's identity or releases a record or report regarding an individual, the ADAMHS Board shall maintain a record of when and to whom the disclosure or release was made.

7.8 PROCEDURES ON ACCOUNTING OF DISCLOSURES OF PHI

7.8.1 General

If the ADAMHS Board discloses an individual's identity or releases a record or report regarding an individual, the ADAMHS Board shall maintain a record of when and to whom the disclosure or release was made.

7.8.2 Exceptions

In the event that PHI is not subject to state or federal SUD requirements, the following disclosures are not subject to the accounting requirements:

- a. To carry out treatment, payment and health care operations;
- b. To individuals of protected health information about them;
- c. Incident to a use or disclosure otherwise permitted or required by the HIPAA Privacy Rules;
- d. Pursuant to an authorization;
- e. For the facility's directory or to persons involved in the individual's care or other notification purposes;
- f. For national security or intelligence purposes;
- g. To correctional institutions or law enforcement officials;
- h. As part of a limited data set; or
- i. That occurred prior to the compliance date for the covered entity.

7.8.3 Request for Accounting; fees

An individual requesting an accounting shall do so in writing. The individual's request must state the period of time desired for the accounting, which must be within the six years prior to the individual's request. The first accounting is free but a fee will apply if more than one request is made in a 12-month period.

7.8.4 Content of Accounting

The accounting must be in writing and include the following for each disclosure:

- a. The date of the disclosure;
- b. The name of the entity or person who received the PHI and, if known, the address of such entity or person;
- c. A brief description of the PHI disclosed; and
- d. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure; or, in lieu of such statement:
 - i. A copy of the individual's written authorization under the rules; or
 - ii. A copy of a written request for a disclosure, if any.

7.8.5 Accounting for Multiple Disclosures to Same Recipient

If, during the period covered by the accounting, the ADAMHS Board has made multiple disclosures of PHI to the same person or entity for monitoring purposes or for disclosures required by law, the accounting may be limited, with respect to such multiple disclosures, and include:

- a. The information required by section 7.8.4 for the first disclosure during the accounting period;
- b. The frequency, periodicity, or number of the disclosures made during the accounting period; and
- c. The date of the last such disclosure during the accounting period.

7.8.6 Time for Action on Request for Accounting

The ADAMHS Board must act on an individual's request for accounting no later than 60 days after the date of the individual's request. The ADAMHS Board may extend the time by not more than 30 days if the ADAMHS Board gives the individual written notice of the extension and the reason for the extension.

7.8.7 Designation and Documentation

The Privacy Officer of the ADAMHS Board shall be the person responsible for receiving and processing requests for accountings by individuals and ensure that the ADAMHS Board retains documentation relating to disclosures for at least six years or as otherwise required by applicable requirements and ADAMHS Board procedures.

7.9 NOTIFICATION OF BREACH OF UNSECURED PHI

7.9.1 Notice of Breach to Individuals.

The ADAMHS Board shall, following the discovery of a breach of unsecured PHI, notify each individual whose unsecured PHI has been, or is reasonably believed by the ADAMHS Board to have been, accessed, acquired, used, or disclosed as a result of such breach. The notice will be written in plain language and to the extent possible, will include all of the following:

- a. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
- d. A description of the types of unsecured PHI involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- e. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- f. A brief description of what the ADAMHS Board involved is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and

- g. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, Web site, or postal address.

7.9.2 Other Parties Required to Receive Notice

In addition to providing notice to the individual, the ADAMHS Board must notify the following entities:

- a. Notification to the media. For a breach of unsecured PHI involving more than 500 residents, the ADAMHS Board shall, notify prominent media outlets serving Cuyahoga County. The content of the notice shall be the same as the notice provided to the individual.
- b. Notification to the Secretary of HHS. For a breach of unsecured PHI involving more than 500 residents, the ADAMHS Board shall, notify the Secretary of HHS in the manner specified on the HHS Web site. For breaches of unsecured PHI involving less than 500 individuals, the covered entity shall maintain a log or other documentation of such breaches and, not later than 60 days after the end of each calendar year, provide notice to the Secretary of HHS of breaches occurring during the preceding calendar year, in the manner specified on the HHS Web site.

7.9.3 Timeliness of Notification

- a. In general, the ADAMHS Board must provide the required notice without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.
- b. The ADAMHS Board must delay providing notice if a law enforcement official states to the ADAMHS Board or Business Associate that providing notice would impede a criminal investigation or cause damage to national security. If such statement is in writing and specifies the time for which a delay is required, the ADAMHS Board or Business Associate shall delay such notice for the time period specified by the official. If the statement is made orally, the ADAMHS Board Business Associate shall document the statement, including the identity of the official making the statement, and delay the notice temporarily and no longer than 30 days from the date of the oral statement, unless the law enforcement official submits a written statement during that time.

Article 8: SAFEGUARDS FOR PHI

8.1 POLICY AND PROCEDURES ON SAFEGUARDS

The ADAMHS Board shall establish and maintain policies and procedures not only as part of this Privacy Policy, but also in conjunction with the ADAMHS Board's HIPAA Security Policy.

These policies and procedures will provide guidance in the areas of Administrative, Physical, and Technical Safeguards to help protect the privacy and security of both PHI and electronic PHI from intentional or unintentional unauthorized use or disclosure. These policies and procedures will be defined as either required or addressable in each of the following areas, as in accordance with and defined by the HIPAA Security Matrix:

ADAMHS Board General Policy on Privacy and Confidentiality

Effective Date: March 27, 2019

Page 36

HIPAA Security Matrix

Standards	CFR Sections	Implementation Specification (R) Required (A) Addressable
Administrative Safeguards		
Security Management Process	164.308(a)(1)	Risk Analysis (R) Risk Management (R) Sanction Policy (R) Information System Activity Review (R)
Assigned Security Responsibility	164.308(a)(2)	(R)
Workforce Security	164.308(a)(3)	Authorization and/or Supervision (A) Workforce Clearance Procedure (A) Termination Procedures (A)
Information Access Management	164.308(a)(4)	Isolating Health care Clearinghouse Function (R) Access Authorization (A) Access Establishment and Modification (A)
Security Awareness and Training	164.308(a)(5)	Security Reminders (A) Protection from Malicious Software (A) Log-in Monitoring (A) Password Management (A)
Security Incident Procedures	164.308(a)(6)	Response and Reporting (R)
Contingency Plan	164.308(a)(7)	Data Backup Plan (R) Disaster Recovery Plan (R) Emergency Mode Operation Plan (R) Testing and Revision Procedure (A) Applications and Data Criticality Analysis (A)
Evaluation	164.308(a)(8)	(R)
Business Associate Contracts and Other Arrangement	164.308(b)(1)	Written Contract or Other Arrangement (R)
Physical Safeguards		
Facility Access Controls	164.310(a)(1)	Contingency Operations (A) Facility Security Plan (A) Access Control and Validation Procedures (A) Maintenance Records (A)
Workstation Use	164.310(b)	(R)
Workstation Security	164.310(c)	(R)
Device and Media Controls	164.310(d)(1)	Disposal (R) Media Re-use (R) Accountability (A) Data Backup and Storage (A)
Technical Safeguards		
Access Control	164.312 (a)(1)	Unique User Identification (R) Emergency Access Procedure (R) Automatic Logoff (A) Encryption and Decryption (A)
Audit Controls	164.312(b)	(R)
Integrity	164.312(c)(1)	Mechanism to Authenticate Electronic (A)
Person or Entity Authentication	164.312(d)	(R)
Transmission Security	164.312(e)(1)	Integrity Controls (A) Encryption (A)

Article 9: INDIVIDUAL COMPLAINTS AND GRIEVANCES

9.1 POLICY ON INDIVIDUAL COMPLAINTS AND GRIEVANCES

The ADAMHS Board shall permit individuals to make complaints about the ADAMHS Board’s HIPAA policies and procedures and/or the ADAMHS Board’s compliance with those policies and procedures. The ADAMHS Board shall document all such complaints.

9.2 PROCEDURES ON INDIVIDUAL COMPLAINTS AND GRIEVANCES

9.2.1 The ADAMHS Board shall follow the client rights and grievances procedure to permit individuals to make complaints about the ADAMHS Board's policies and procedures of use or disclosure of PHI and/or the ADAMHS Board's compliance with those policies and procedures.

9.2.2 The Privacy Officer and other persons designated to receive such complaints shall be notified of each such complaint and shall participate in the review of such complaints.

9.2.3 The ADAMHS Board shall inform individuals who have made a complaint under this section of their right to file a complaint with the Secretary of Health and Human Services. Upon request, the Privacy Officer shall assist the individual in filing a complaint with the Secretary of HHS.

9.2.4 The ADAMHS Board shall document all complaints received and the disposition of each complaint, if any.

Article 10: SANCTIONS

10.1 POLICY ON SANCTIONS

The ADAMHS Board shall apply and document application of appropriate sanctions against workforce members who fail to comply with the privacy policies and procedures of the ADAMHS Board or applicable requirements.

Sanctions may not be applied to whistleblowers, certain victims of crime committed by individuals served by the ADAMHS Board or in a manner which would be reasonably construed as intimidation or retaliation.

10.2 PROCEDURES ON SANCTIONS

10.2.1 Sanctions

The ADAMHS Board shall have, apply, and document application of appropriate sanctions against its workforce members who fail to comply with the ADAMHS Board's privacy policies and procedures or the requirements of the privacy regulations;

10.2.2 Exception for whistleblowers

The ADAMHS Board shall not impose sanctions against workforce member or business associate who believes in good faith that the ADAMHS Board has

engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the ADAMHS Board potentially endangers one or more patients, workers, or the public; and the disclosure is to:

- a. A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the ADAMHS Board or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the ADAMHS Board; or
- b. An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

10.2.3 Exception for victims of crime

The ADAMHS Board may not impose sanctions for disclosure of PHI against a member of its workforce who is the victim of a criminal act if the victim discloses PHI to a law enforcement official, provided that:

- a. The protected health information disclosed is about the suspected perpetrator of the criminal act; and
- b. The protected health information disclosed is limited to the following information:
 - i. Name and address;
 - ii. Date and place of birth;
 - iii. Social security number;
 - iv. ABO blood type and Rh factor;
 - v. Type of injury;
 - vi. Date and time of treatment;
 - vii. Date and time of death, if applicable; and
 - viii. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

10.2.4 Other Exception

Sanctions may not be applied in a manner which would be reasonably construed as intimidation or retaliation.

10.2.5 Documentation

The ADAMHS Board shall document the sanctions which have been applied, if any. Documentation shall be maintained for a period of six years from the later of the date of creation or the last effective date.

Article 11: BUSINESS ASSOCIATES

11.1 POLICY ON BUSINESS ASSOCIATES (BA)

11.1.1 General

The ADAMHS Board shall not disclose PHI to any person or entity under contract with the ADAMHS Board without a BA agreement or MOU which conforms to requirements applicable to BA relationships unless such disclosure is otherwise permitted under federal or Ohio law. Additionally, PHI that is subject to federal or state SUD requirements, shall not be disclosed to any person or entity under contract with the ADAMHS Board, unless the person or entity under contract conforms to requirements applicable to a qualified service organization.

11.1.2 Review of existing contracts

The ADAMHS Board shall review all existing contracts and extensions of contracts with any person or entity outside the workforce to determine whether there is a BA relationship under HIPAA.

11.1.3 Conformity to applicable requirements

The ADAMHS Board shall conform to all requirements applicable to BA relationships.

- a. If the ADAMHS Board has a BA relationship with a governmental entity, the ADAMHS Board shall enter into an MOU which meets HIPAA requirements applicable to BA relationships as well as applicable Ohio law.
- b. If there is an existing contract between the BA and the ADAMHS Board, the requirements of HIPAA may be met by an addendum to the contract which includes the elements set forth in section 11.2.4 below.

11.1.4 Annual Review

The ADAMHS Board shall review all contracts with any person or entity outside the workforce at least annually to determine whether there is a BA relationship and whether the contract meets requirements of HIPAA.

11.1.5 Violations

If the ADAMHS Board knows of a pattern or practice of the BA that amounts to a material violation of the agreement, the ADAMHS Board shall attempt to cure the breach or end the violation, and if such attempt is unsuccessful, terminate the agreement, if feasible, and, if not, report the problem to the Office of U.S. Secretary of Health and Human Services.

11.2 PROCEDURE ON BUSINESS ASSOCIATES

11.2.1 Review of existing contracts

- a. The ADAMHS Board shall review all current contracts with any person or entity outside the workforce at least annually to determine whether there is a BA relationship.
- b. If the relationship meets the requirements for a BA, the ADAMHS Board shall determine whether the existing contract with the person or entity meets the requirements for a BA Agreement set forth in these procedures.

11.2.2 Establishing BA Agreements

- a. The ADAMHS Board shall ensure that all contracts with BAs meet requirements set forth in these procedures.
- b. All new contracts with BAs shall incorporate the elements set forth in these procedures.
- c. If there is an existing contract, the BA Agreement requirements may be met through either:
 - i. an addendum which incorporates BA Agreement elements;
or
 - ii. an MOU which incorporates BA Agreement elements, in the event that the other party to the contract is a governmental entity.

d. Only one BA Agreement is required for each BA, regardless of the number of functions which the BA performs on behalf of the ADAMHS Board.

11.2.3 Annual Reviews

a. Each contract between the ADAMHS Board and any person or entity shall be reviewed annually to determine whether BA requirements apply. If there has been a change and a BA Agreement is required, the ADAMHS Board shall not disclose PHI to such person or entity until the BA Agreement requirements are met through revision to the contract or an addendum.

b. When a contract extends into multiple years or automatically renews, the contract must be reviewed each year to evaluate compliance with requirements for BA Agreements. If the contract is with a BA and does not meet BA requirements the contract shall be amended to conform to BA requirements or a BA addendum shall be added.

11.2.4 Required Elements for BA Agreements

Each BA Agreement shall include at least the following elements as applicable:

a. Establish permitted and required uses or disclosures of PHI that are consistent with those authorized for the entity, except that the agreement

i. may permit the BA to use or disclose PHI for its own management and administration if such use or disclosure is required by applicable requirements or the BA obtains reasonable assurance that the confidentiality of the PHI will be maintained; and

ii. may permit the BA to use PHI to provide data aggregation services to the ADAMHS Board relating the ADAMHS Board's health care operations in accordance with applicable requirements.

b. Provide that the BA shall:

i. Not use or disclose the PHI except as authorized under the agreement or required by applicable requirements.

ii. Use appropriate safeguards to prevent unauthorized use or

disclosure.

iii. Report unauthorized uses or disclosures of which the BA is aware to the ADAMHS Board.

iv. Pass on the same obligations relating to protection of PHI created, used or disclosed on behalf of the ADAMHS Board to any subcontractors or agents of the BA.

v. Make PHI available for access by the individual or his/her personal representative, in accordance with applicable requirements.

vi. Make PHI available for amendment, and incorporate any approved amendments to PHI, in accordance with applicable requirements.

vii. Make information available for the provision of an accounting of uses and disclosures in accordance with applicable requirements.

viii. Make its internal practices, books and records relating to PHI created, used or disclosed on behalf of the ADAMHS Board available to the Office of the U.S. Secretary of Health and Human Services for purposes of determining the ADAMHS Board's compliance with HIPAA regulations.

ix. If feasible, return or destroy all PHI created, used or disclosed on behalf of the ADAMHS Board upon termination of contract; if any such PHI is retained, continue to extend the full protections specified herein as long as the PHI is maintained.

x. Authorize termination of the agreement by the entity upon a material breach by the BA.

11.2.5 If the BA is also a Qualified Service Organization subject to 42 CFR 2.11, the Agreement shall also include the following additional elements:

a. Acknowledgement that in receiving, storing, processing or otherwise dealing with any PHI, it is fully bound by 42 CFR Part 2 regulations, and

b. If necessary, the BA shall resist in judicial proceedings any efforts to obtain access to PHI except as permitted by 42 CFR Part 2 regulations.

11.2.6 Permissive Elements of BA Agreement

a. The BA Agreement may permit the BA to use the information received by the BA in its capacity as a BA to the ADAMHS Board, if necessary:

i. For the proper management and administration of the BA; or

ii. To carry out the legal responsibilities of the BA.

b. The BA Agreement may permit the BA to disclose the information received by the business associate in its capacity as a business associate for the purposes described in section 11.2.6a, if the disclosure is required by law; or

i. The business associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

ii. The person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

11.2.7 Elements for MOUs

a. Any agreement between the ADAMHS Board and another governmental entity which meets the requirements of a BA relationship shall be subject to an MOU.

b. The MOU shall include all of the contract elements set forth in the 11.2.4 and may include elements in section 11.2.6, except that termination requirements may be omitted if the BA is another governmental entity and the termination would be inconsistent with the statutory obligations of the entity or the BA under applicable state law.

11.2.8 Violations

If the ADAMHS Board knows of a pattern or practice of the BA that amounts to a material violation of the agreement, the ADAMHS Board shall attempt to cure the breach or end the violation, and if such attempt is unsuccessful, terminate the agreement, if feasible, and, if not, report the problem to the Office of U.S. Secretary of Health and Human Services.

Article 12: DOCUMENT MANAGEMENT

12.1 POLICY ON DOCUMENT RETENTION

12.1.1 Policies, procedures and other documentation required by HIPAA

The ADAMHS Board shall maintain written or electronic copies of all policies and procedures, communications, actions, activities or designations as are required to be documented under ADAMHS Board policies for a period of six (6) years from the later of the date of creation or the last effective date or such longer period that may be required under state or other federal law, or as set forth below.

12.1.2 Records with PHI and financial records

- a. The ADAMHS Board shall retain all claim-related record information and fiscal data for a period of seven years from the date of receipt of payment or for six years after any initiated audit is completed and adjudicated, whichever is longer, and said records shall be available for any partial or full review.
- b. The ADAMHS Board shall retain all records and forms, necessary to fully disclose the extent of services provided and related business transactions for a period of seven years from the date of receipt of payment, or for six years after any initiated audit is completed and adjudicated, whichever is longer.
- c. The ADAMHS Board shall maintain the records necessary and in such form to disclose fully the extent of Medicaid services provided, for a period of six years from the date of receipt of payment or until an initiated audit is resolved, whichever is longer.

12.2 POLICY ON DOCUMENT DESTRUCTION

The ADAMHS Board shall notify an eligible individual, the individual's guardian, or, if the eligible individual is a minor, the individual's parent or guardian, prior to destroying any record or report regarding the eligible individual.

References: ORC 5122.31; Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2); federal regulations of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C.1320d-1329d-8, and regulation promulgated thereunder, 45 CFR Parts 160 and 164)

Supersedes and retires:

General Policy on Privacy and Confidentiality, January 23, 2013

Approved:

/s/ Rev. Benjamin F. Gohlstin, Sr.

/s/ Scott S. Osiecki

Rev. Benjamin F. Gohlstin, Sr.
ADAMHS Board Chair

Scott S. Osiecki
ADAMHS Board Chief Executive Officer

March 27, 2019

March 2022

Approval Date

Review Date