

## Subject: Member Privacy Rights

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### Objective:

- I. To ensure that Health Share/Tuality Health Alliance (THA) members are informed of their privacy rights regarding the use and disclosure of their protected health information (PHI).
- II. To ensure that THA members are informed and understand the process for filing a complaint should they feel that their privacy rights have been violated.

### Policy:

- I. Notice of Privacy Practices

THA will make its *Notice of Privacy Practices* available to each member. The notice describes the responsibility of THA to maintain PHI privacy, the situations in which THA may use or disclose PHI, and member privacy rights.

  - THA will provide all members with the notice upon enrollment. The notice is also available on the [THA Website](#).
  - When there are changes in THA Privacy Practices, THA will revise the *Notice of Privacy Practices* and make the revised notice available to all members via the [THA Website](#) or by other means as required by law.
  - THA will provide additional copies of the *Notice of Privacy Practices* to any person, upon request.
  - THA provider offices will also distribute privacy notices that require patients' signed acknowledgement of receipt.
- II. Member Right to Request PHI Privacy Restrictions
  - a. THA applies applicable confidentiality laws to protect the privacy of member PHI. Nevertheless, THA members have the right to request a restriction on the use or disclosure of their PHI.
    - All restriction requests must be submitted in writing through completion of the *THA Restriction of Use and Disclosures Request form*.
    - THA will document the member restriction request, as well as the reasons for granting or denying the request, in the member file.
    - The member will be informed of the THA decision.
  - b. THA is not obligated to agree to a requested restriction and may deny the request or may agree to a lesser restriction. THA will not agree to restrict uses or disclosures of information under the following conditions:
    - The restriction would adversely affect the quality of the member's care;
    - The restriction would limit or prevent THA from making or obtaining payment for services;
    - The restriction would adversely affect the THA ability to administer programs and services; or

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- The member needs emergency treatment and the restricted protected information is needed to provide such treatment – THA may use or disclose the restricted protected information to a provider for the limited purpose of providing treatment, and once the emergency situation subsides, THA will ask the provider to not re-disclose the information.
- c. THA will honor requests for the restriction of substance abuse treatment PHI according to 42 CFR (part 2).
- d. If a restriction is granted, it is binding for all THA employees and business associates.
  - A restriction agreement will be approved by a supervisor.
  - Steps should be taken to inform all staff and business associates about the restriction, unless disclosure of the existence of the restriction would violate the restriction itself.
- e. THA may terminate its restriction agreement in any of the following situations:
  - The member agrees to or requests termination of the restriction in writing;
  - The member verbally agrees to or requests termination of the restriction, in which case, THA will document the oral agreement or request in the member's file; or
  - THA informs the member in writing that THA is terminating its agreement to the restriction – information that was created or received while an approved restriction was in effect will remain subject to the restriction.

III. Member Right to Receive PHI through Alternative Means or Locations

- a. Members have the right to receive information from THA through specific means, such as mail, email, fax, or telephone, or at alternative locations (e.g., at a work address instead of a home address).
  - The member must be specific about the request to receive information through an alternative means or location.
  - Requests may be made orally or in writing.
    - THA will verify the identity of the requestor.
    - If the member makes the request orally, THA will document the request in the member's file.
    - If the member makes the request in writing, THA will copy the written request into the member's file.
    - The member is not required to explain the basis for the request.
- b. THA will accommodate all reasonable requests by members to receive communications by alternative means or location.
  - THA will notify the member of the request acceptance in the requested alternative manner.
  - THA will update all applicable systems and associate systems to align with the requested method of communication.

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- c. THA may terminate the agreement to an alternate method or location for communication, and must notify the member of the termination and update all applicable systems, if:
  - The member retracts the request;
  - The member agrees to the termination orally or in writing; or
  - THA is unable to contact the member at the location or in the manner requested.
- d. In some cases, sensitive health PHI must be handled with strict confidentiality under state law. For example, PHI about substance abuse treatment, mental health treatment, and certain sexually transmitted diseases, may be subject to specific handling. THA will comply with the most restrictive requirements when deciding whether to share PHI through the requested alternative means or locations.

IV. Member Right to Access PHI

- a. Members have the right to access, inspect, and obtain a copy of their information as it is maintained in THA files or records.
  - All information access requests must be made in writing; the member must complete and sign the *Access to Records Request* form.
- b. The member is only authorized to see information about him or herself; THA will take steps to ensure that information about other people, as it may be included in the member file, is protected.
- c. If a person identified in the member file is a minor child of the member, and the member is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the member may obtain information about the minor.
- d. If the person requesting information is recognized under Oregon law as a guardian or legal custodian of the member and is authorized by Oregon law to have access to the member's information or to act on behalf of the member for making decisions about the member's services or care, THA will release the minor member's PHI to the requestor.
- e. Upon presentation of the Order of Appointment by the Court Appointed Special Advocate (CASA), THA will permit the CASA to inspect and copy any records relating to a child or ward, without the consent of the child, ward, or parents, as defined in ORS 419A.170.
- f. Persons acting under the authority of the system in ORS 192.517(1) to protect and advocate the rights of a member with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the Rights of Members with Mental Illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.) shall have access to member's records, as defined in ORS 192.515 and ORS 192.517.

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- g. THA must act on a member's request for access no later than 30 days after receiving the request, except in the case of written accounts under ORS 179.505, which must be disclosed within five (5) days.
  - In cases where the information is not maintained or accessible to THA on-site, and does not fall under ORS 179.505, THA must act on the member's request no later than 60 days after receiving the request.
  - If THA is unable to act within these 30-day or 60-day limits, THA may extend this limitation by up to an additional 30 days, subject to the following:
    - THA must notify the member in writing of the reasons for the delay and the date by which THA will act on the request.
    - THA will use only one such 30-day extension to act on a request for access.
- h. If THA grants the member's request, in whole or in part, THA will inform the member of the access decision and provide the requested access.
  - THA will provide the requested information in a form or format requested by the member as long as it is readily producible in that form or format. If not readily producible, THA will provide the information in a readable hard-copy format or other such format as agreed to by THA and the member. If THA does not maintain, in whole or in part, the requested information, THA will inform the member of where to request access.
  - THA may provide the member with a summary of the requested information, in lieu of providing access, or may provide an explanation of the PHI if access had been provided, if:
    - The member agrees in advance; and
    - The member agrees in advance to any fees THA may impose (per "section I", below).
  - THA need only provide the requested information once.
  - THA must arrange with the member for providing the access in a time and place convenient for the member and THA. This may include mailing the information to the member if the member so requests or agrees.
- i. THA may deny the member or member representative request for information access if the information includes:
  - Psychotherapy notes – this is limited to the notes maintained by a mental health professional that are not kept in the official file.
  - Information compiled for use in civil, criminal, or administrative proceedings – this generally refers to THA staff notes and materials that are created in connection with a legal proceeding rather than a case file. If there are legal proceedings in which the Department of Justice is representing THA, THA should consult with the DOJ attorney before providing information to the member or member representative.

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- Information that is subject to the Federal Clinical Labs Improvement Amendments of 1988, or that is exempt, pursuant to 42 CFR 493.3(a)(2) – this includes laboratory test results that the laboratory supplied to the healthcare professional who ordered the test; the healthcare professional is responsible for providing lab results to the member.
  - Information that, in good faith, THA believes may cause harm to the member or to any other person. The THA decision to deny information access under this circumstance must be made by the THA Medical Director or other designated staff, and THA must make a review of the denial available to the member. If the member wishes to have this denial reviewed for a second opinion, the review must be done by a licensed healthcare professional who was not involved in the original denial decision.
  - Documents protected by attorney-client privilege or work-product privilege
  - Information for which release to the member/representative is prohibited by State or Federal laws (e.g., information related to national security matters) – this is rare and should be discussed with the THA Privacy Officer.
- j. If THA denies access to the requested information in whole or in part, THA must:
- Offer the member access to any other requested member information, after excluding the information to which access is denied.
  - Provide the member with a timely written denial. The denial must:
    - Be sent or provided within the time limits specified above;
    - State the basis for the denial, in plain language;
    - If the denial was made to protect the member or another person, explain the member's review rights as specified, above, including an explanation of how the member may exercise these rights; and
    - Provide a description of how the member may file a complaint with THA, and if the information denied is protected health information, how the member may file a complaint with the United States Department of Health and Human Services Office of Civil Rights.
- k. A second opinion review of denial of information access must be provided upon the member's request. The second opinion review will be conducted by a licensed healthcare professional or other designated staff not directly involved in making the original denial decision.
- THA will promptly notify the member in writing of the reviewer's determination; and will take action to carry out that determination.
- l. Fees: at no cost, a member (or legal guardian or custodian) may request a copy of his/her information once every 12 months. If the member requests a copy of the information or a written summary or explanation of the information

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more frequently than once every 12 months, THA may impose a reasonable, cost-based fee, limited to covering the following:

- The copying of the requested information, including the costs of supplies and labor;
- Postage, when the member has requested or agreed to having the information mailed; and
- The preparation of an explanation or summary of the requested information, if agreed to in advance by the member.

V. Member Right to Make Amendments to PHI

- a. Members have the right to request that THA amend their PHI as it is maintained in THA files.
  - All requests for amendments will be made by having the member complete an *Amendment of Health Record Request* form.
- b. THA must act on the member's request no later than 60 days after receiving the request. If THA is unable to act on the request within 60 days, THA may extend this time limit by up to an additional 30 days, subject to the following:
  - THA must notify the member in writing of the reasons for the delay and must include the date by which THA will act on the receipt; and
  - THA will use only one such 30-day extension per member per year.
  - Prior to any decision to amend a health or medical record, the THA Medical Director and/or the THA Case Manager involved in the member's case shall review the request and any related documentation.
  - Prior to any decision to amend any other information that is not a health or medical record, a THA Case Manager shall review the request and any related documentation.
- c. If THA grants the request in whole or in part, THA must:
  - Make the appropriate amendment to the information or records and document the amendment in the member's file or record;
  - Provide timely notice to the member that the amendment has been accepted, pursuant to the time limitations listed above;
  - Seek the member's agreement to notify other relevant persons or entities with whom THA has shared or needs to share the amended information; and
  - Make reasonable efforts to inform, and to provide the amendment within a reasonable time, to persons named by the member as having received protected information and who thus need the amendment and to persons, including business associates of THA, that THA knows have the protected information that is the subject of the amendment and that may have relied, or could foreseeably rely, on the information.

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- d. THA is not obligated to agree to an amendment and may deny or limit the request if:
    - THA finds the information to be accurate and complete;
    - The information was not created by THA;
    - The information is not part of THA records; or
    - The information would not be available for inspection or access by the member according to applicable laws and regulations.
  - e. If THA denies the requested amendment in whole or in part, THA must:
    - Provide the member with a timely written denial, to be sent within the time limits specified above and that includes the following:
      - A statement of the basis for the denial;
      - An explanation of the member's right to submit a written statement, disagreeing with the denial, including the steps for filing such a statement; and
    - An explanation that if the member does not submit a written statement of disagreement, the member may ask that if THA makes any future disclosures of the relevant health information, THA also includes a copy of the member's original request for amendment and a copy of the THA denial.
  - f. If the member submits a written statement as evidence of disagreement with the THA denial of his/her request to amend health information:
    - THA may enter a THA-written rebuttal of the member's written statement into the member's case record;
    - THA will send or provide a copy of any such written rebuttal to the member;
    - THA will include a copy of the member statement and the THA-written rebuttal, if any, with any future disclosures of the relevant information.
- VI. Member Right to Receive a List (Accounting) of PHI Disclosures
- a. Members have the right to request an accounting of the PHI disclosures that THA has made during any period of time, but not to exceed six years preceding the date of the request.
    - All requests for an accounting of disclosures will be made in writing, using the *Accounting of Disclosures Request* form.
  - b. This right does not apply to disclosures made prior to the effective date of this policy, which is March 31, 2003.
  - c. THA staff members are required to track the disclosures of health information and must list disclosures on the *Disclosures of Protected Health Information* form.
    - Abuse Reports – if THA provides PHI about an individual pursuant to mandatory abuse reporting laws, the disclosure should be tracked.

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- Health and Safety – if THA discloses PHI about an individual in order to avert a serious threat to the health or safety of that individual or to another person, the disclosure should be tracked.
  - Legal Proceedings – THA should track any time that PHI about an individual is disclosed pursuant to a court order and a copy of the court order should be included with the accounting.
  - Law Enforcement Official/Court Orders – PHI about an individual provided to a law enforcement official, pursuant to a court order, should be tracked and a copy of the court order should be included with the accounting.
  - Law Enforcement Official/Deceased Reports – PHI provided to law enforcement or to a medical examiner about a person who has died (for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law) should be tracked.
  - Law Enforcement Official/Warrants – PHI provided to law enforcement in relation to a fleeing felon or to a warrant for arrest should be tracked;
  - Media Reports – PHI provided to the media (e.g., TV, newspaper, etc.) that is not within the scope of an authorization by the individual should be tracked.
  - Public Health Official Reports – PHI about an individual provided by THA administrative staff to a public health official, such as the reporting of disease, injury, or the conduct of a public health study or investigation, should be tracked.
  - Public Records – PHI about an individual that is disclosed pursuant to a Public Record request without the individual's authorization should be tracked.
  - Research – if the member is part of THA healthcare programs internal analysis and PHI is used and disclosed for associated healthcare operations, the PHI uses and disclosures need not be tracked. If the PHI will be used or disclosed for other research purposes, as conducted without authorization (using a waiver of authorization approved by an Independent Review Board), a copy of the research protocol should be kept with the accounting.
- d. Disclosures that are not required to be tracked and accounted for include those that are:
- Authorized by the member;
  - Made prior to the original effective date of this policy, which is March 31, 2003;
  - Made to carry out treatment, payment, and health care operations;
  - Made to the member;
  - Made to persons involved in the member's healthcare;

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- Made as part of a limited data set in accordance with the *THA Policy II-7: De-identification of Member PHI and Use of Limited Data Sets*;
  - Made for national security or intelligence purposes; or
  - Made to correctional institutions or law enforcement officials having lawful custody of an inmate.
- e. If, during the time period covered by the request, THA has made multiple disclosures to the same person or entity for the same purpose or as a result of a single written authorization by the member, THA need not list the identical information for each subsequent disclosure to the same person or entity. THA may log the first disclosure made during the time period and add the frequency or number of disclosures made to the same person or entity and the last date of the disclosure made during the requested time period.
- f. THA must act on the member's request for an accounting of disclosures no later than 60 days after receiving the request, subject to the following:
- If unable to provide the accounting within 60 days after receiving the request, THA may extend this requirement by another 30 days. THA must provide the member with a written statement of the reasons for the delay within the original 60-day limit, and inform the member of the date by which THA will provide the accounting.
  - THA will use only one such 30-day extension.
- g. Fees: THA must provide the first requested accounting in any 12-month period without charge. THA may charge the member a reasonable cost-based fee for each additional requested accounting within the 12-month period following the first request, provided that THA:
- Informs the member of the fee before proceeding with any such additional request; and
  - Allows the member an opportunity to withdraw or modify the request in order to avoid the fee or to reduce the fee.
- h. THA must document, and retain in the member's THA case record file, the PHI required to be included in an accounting of disclosures, and send a copy of the written accounting provided to the members.
- i. THA will temporarily suspend a member's right to receive an accounting of disclosures to a health oversight agency or to a law enforcement official for a length of time specified by such agency or official, if:
- The agency or official provides a written statement to THA that such an accounting would be reasonably likely to impede their activities.
  - However, if such agency or official makes an **oral** request, THA will:
    - Document the oral request, including the identity of the agency or official making the request;
    - Temporarily suspend the member's right to an accounting of disclosures pursuant to the request; and

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- Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.

VII. Member Right to File a Complaint Regarding Information Disclosure

- a. Members have a right to submit a complaint if they believe that THA has improperly used or disclosed their PHI, or if they have concerns about the THA Privacy Policies or THA compliance with such policies.
  - THA must give members the specific person or office and address of where to submit complaints:

**Tuality Health Alliance**  
P.O. Box 925  
Hillsboro, OR 97123  
Phone: 503-844-8104  
Toll-Free Phone: 1-800-681-1901  
TTY: 1-800-735-2900  
Fax: 503-681-1927  
Email: [tha.customerservice@tuality.org](mailto:tha.customerservice@tuality.org)

**Compliance Officer**  
**Health Share of Oregon**  
208 SW 5th Ave., Ste. 400  
Portland, OR 97204  
Phone: 503-416-8090  
Toll-Free Phone: 1-888-519-3845  
TTY/TDD: 711

**Governor's Advocacy Office**  
**Oregon Department of Human Services**  
500 Summer St. NE, E17  
Salem, OR 97301-1097  
Toll-Free Phone: 1-800-442-5238  
Fax: 503-378-6532  
Email: [GAO.info@state.or.us](mailto:GAO.info@state.or.us)

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**Privacy Officer**  
**Oregon Department of Human Services**  
500 Summer St. NE, E24  
Salem, OR 97301  
Phone: 1-503-945-5780  
Fax: 1-503-947-5396  
Email: [dhs.privacyhelp@state.or.us](mailto:dhs.privacyhelp@state.or.us)

**Medical Privacy Complaint Division**  
**Office for Civil Rights**  
**U.S. Department of Health and Human Services**  
200 Independence Ave. SW, HHH Building, Room 509H  
Washington, D.C. 20201  
Toll-Free Phone: 1-866-627-7748  
TTY: 1-866-788-4989  
Email: [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

- b. THA will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint.
- c. THA may not require members to waive their rights to file a complaint as a condition of providing of treatment, payment, enrollment in a health plan, or eligibility for benefits.
- d. THA will designate staff to review and determine action on complaints filed with THA. These designated staff will also act when THA is contacted about complaints filed with another agency.
- e. THA will document all complaints, the findings from reviewing each complaint, and THA actions resulting from the complaint, in the member case file. This documentation shall include a description of corrective actions that THA has taken, if any are necessary, or of why corrective actions are not needed.

**References:** 45 CFR (Part 164.522 – 164.528)  
DMAP Policy AS-100-02 Client Privacy Rights  
Health Share RAE Participation Agreement  
THC Policy O-97E: Patient Rights Regarding Medical Information

**Attachments:** THA Notice of Privacy Practices  
THA Access to Records Request  
THA Amendment of Health Record Request  
Accounting of Disclosures Request

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THA Restriction of Use and Disclosures Request  
Special Handling for Confidential Communications

Formulated:	February 2003
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