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Objective:

- I. To ensure that protected health information (PHI) is not used or disclosed without the appropriate individual's prior authorization.
- II. To identify exceptions to the objective above, wherein the use or disclosure of PHI may be made without an individual's authorization.

Policy:

- I. Health Information and Privacy Regulations
 - a. THA uses health information as a part of healthcare operations and Medical Management Programs. Health information may be received directly or indirectly from the member, from healthcare providers, business associates, etc. Such information includes, but is not limited to, personal identifying information, physical or mental health status information, and eligibility status information. This information is subject to health information privacy and security requirements (e.g., ORS 192.518-192.526 and HIPAA).
 - b. Additional protections may apply to special protected records; additional Federal or State confidentiality protections are more stringent than HIPAA protections. THA will follow whichever confidentiality requirement is the most protective/stringent. The following types of health information are "special" and are subject to more stringent protection:
 - Substance abuse treatment records (42 CFR Part 2 and ORS 430.399(5));
 - Genetic information (ORS 192.531-192.549);
 - Mental Health and developmental disabilities services information (ORS 179.505);
 - HIV information (ORS 433.045); and
 - Information that is confidential under either program rules or health.
- II. Healthcare Representatives
 - a. Members who are unable authorize the use and disclosure of PHI on their own behalf include:
 - Children under the age of 18 years;
 - Deceased members; and
 - Members who are impaired and require caregiving or other assistance.
 - b. When the member cannot provide authorization or make his/her own decisions, an authorized representative is identified to help him/her make decisions or to make decisions in his/her best interests.
 - A personal representative for a child is usually a parent or legal guardian. If the child is in DHS custody, DHS is the personal representative for the child. If the child is in voluntary custody, the voluntary custody agreement

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must be checked to see who may make the healthcare decisions for the child.

- A representative may be someone who has been identified by the member as a healthcare representative in an advance directive or as a representative to make mental healthcare and treatment decisions in a declaration for mental health treatment.
- A representative may be a legal guardian or a conservator. The court document creating the guardian or conservator will specify whether the guardian or custodian has this authority.
- If the member has died, his/her representative is a person defined in ORS 192.526.
- If THA has substantiated findings to suggest that a member has been or may be subjected to domestic violence, abuse, or neglect by a “personal representative”, it would be considered an abuse, neglect, or endangerment situation in which that representative would not be recognized as a “healthcare representative”.

III. Uses and Disclosures of PHI without Written Authorization

- a. THA may disclose PHI for purposes of payment, treatment, and other healthcare operations.
- b. THA may use or disclose information as necessary for Medical Management Program purposes.
- c. Communication of PHI within THA, internally, is permitted without member authorization in compliance with *THA Policy II-4: Minimum Necessary Information*.
 - Records containing information about alcohol or drug use/treatment, mental health, or vocational rehabilitation will be limited to use and disclosure by the particular program areas and people named on the member authorization form, if applicable.
- d. THA may use or disclose psychotherapy notes under the following circumstances.
 - THA may use or disclose psychotherapy notes to the extent authorized under state law (ORS 179.505) for defense in a legal action or other proceeding brought forth by the member.
 - Disclosure of psychotherapy notes for reasons other than treatment should be tracked in order to provide an accounting of disclosures, unless the member’s identity has been redacted so that the information is de-identified.
- e. If THA has reasonable cause to believe that a child is a victim of abuse or neglect, THA may disclose information as it is consistent with its legal authority. This includes disclosure to appropriate governmental authorities that are authorized by law to receive reports of child abuse or neglect.

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- f. If THA has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, THA may disclose information, as required by law, to a government or regulatory authority that is authorized by law to receive such reports. "Vulnerable person" refers to an adult who is:
- An elderly person;
 - A financially incapable person;
 - An incapacitated person; or
 - A person with disabilities who is susceptible to force, threat, duress, coercion, persuasion, or physical or emotional injury because of his/her physical or mental impairment.
- g. THA may disclose member PHI without authorization for health oversight activities as authorized by law. Oversight activities may include audits; civil, criminal, or administrative investigations, prosecutions, or actions; licensing or disciplinary actions; Medicaid fraud investigations; or other activities necessary for oversight.
- THA conducts audits and reviews of programs, contracts, providers, and licensees that include asking for and receiving individual information about members, participants, or providers. THA can use the information it obtains to carry out its health oversight functions within applicable program confidentiality requirements.
 - THA provides information to health oversight agencies such as DMAP and Providence Health Plan. These programs may request member or participant information. THA can provide that information to the oversight agency if the request is connected with the administration of the THA program, service, or activity that is being reviewed.
- h. Unless prohibited or otherwise limited by Federal or State law, THA may disclose member information without authorization for judicial or administrative proceedings in response to an order of a court, a subpoena, a discovery request, or other lawful process.
- i. For limited law enforcement purposes, to the extent authorized by applicable Federal or State law, THA may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and disclose PHI that may constitute evidence of criminal conduct on THA premises.
- j. THA may disclose member PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
- k. THA may disclose member PHI without authorization to funeral directors as consistent with applicable law and as needed to carry out duties pertaining to the decedent. THA may also disclose PHI prior to, and in reasonable anticipation of, the death.

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- l. THA may disclose member PHI without authorization to organ procurement organizations or to other entities engaged in the procuring, banking, or transplantation of cadaver organs, eyes, or tissue, for the purpose of facilitating transplant.
 - m. THA may disclose member PHI without authorization for research purposes, as specified in *THA Policy II-6: Uses and Disclosures for Research Purposes*.
 - n. To avert a serious threat to health or safety, THA may disclose member information without authorization if:
 - THA believes, in good faith, that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
 - o. THA may disclose member PHI without authorization for other specialized government functions; this may include disclosure to authorized Federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities.
 - p. THA may disclose limited information without authorization to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of other members or inmates.
 - q. In case of an emergency, THA may disclose member information without authorization to the extent needed to provide emergency treatment.
- IV. Limited Disclosures
- a. Limited disclosures may be made to people involved in the member's services or care without written authorization.
 - b. THA members may include another person (a family member, close personal friend, or other person identified by the member) in some involvement with the member's services or care. If the member is available and consents, THA may use or disclose limited/relevant information if one of the following exists:
 - If THA obtains the member's agreement; or
 - If THA reasonably infers from the circumstances, based on the exercise of professional judgment, that the member does not object to the disclosure.
 - c. If the member is not present, or the opportunity to agree or object cannot be provided because of the member's incapacity (as in an emergency circumstance), THA may determine whether the other person may be treated as the member's authorized healthcare representative, under applicable program rules. If so, and if THA determines in the exercise of professional judgment that a disclosure is in the best interests of the member, THA will disclose only the information that is directly relevant to the person's involvement in the member's services or care.

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- d. Disclosure of health information under the above circumstances, except when disclosed in accordance with member authorization or when the member is present, should be tracked in order to provide an accounting of disclosures.

V. Re-Disclosure of Information

- a. Unless prohibited by State and Federal laws, information held by THA and authorized by the member for disclosure may be subject to re-disclosure. Whether or not the information remains protected depends on whether the recipient is subject to Federal or State privacy laws, court protective orders, or other lawful process.
- b. As long as the information obtained under an authorization is being used in a manner consistent with the program and purposes for which the information was provided, the ongoing use of that information is not a re-disclosure; the information may be reused.
- c. Re-disclosure is subject to all of the same requirements of the original disclosure. If the original disclosure required authorization, authorization is again required in order to re-disclose the information for a different purpose or to a different person or program. If a different purpose arises, THA should get a new authorization form for the new use.
- d. Documents received under a specific authorization, such as a psychological evaluation, are limited to use and disclosure within the scope of original authorization. Any further uses or disclosures require separate authorization.
- e. THA may be required to document re-disclosures, including what information was provided, why and to whom. Documenting the identity and authority of the requestor helps THA meet its obligations to monitor how information is being used.

VI. Revocation of Authorization

- a. A member can revoke an authorization for the use and disclosure of PHI at any time. The revocation must be in writing and signed by the member.
 - **Exception:** alcohol and drug treatment participants may orally revoke authorization to disclose information obtained from alcohol and drug treatment programs. Oral authorizations must be documented and maintained in the member's record.
- b. No revocation shall apply to information already released while the authorization was valid and in effect.

VII. Verification of Individual Identity upon an Information Request

- a. THA receives requests for information in many ways. People may verbally ask for information, mail/fax a request form, serve a subpoena on a record custodian, etc. Outside entities like providers, consultants, researchers,

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- contractors, as well as other State agencies and local governments may ask for information.
- b. Information about individuals may not be disclosed without verifying the identity of the person or entity requesting the information and the person's/entity's authority to have access to the information. If the person or entity is not known as having authority to obtain the information, reasonable evidence of authority must be supplied to THA. THA will make reasonable efforts to identify the requestor and their authority. Reasonable evidence of the identity of the requestor should be supplied in the form of the following, including but not limited to:
- Confirmed office contact information;
 - Identification badge;
 - Driver's license;
 - Written statement of identity on agency letterhead; or
 - Similar sufficient evidence to prove that the requestor is who he/she/it represents his/her/itself to be, with authority to request/receive information.
- c. If the requestor fails to supply credible information about his/her/its identity or authority to have access to the information, THA will supply the requestor with a member authorization form and explain that unless THA receives the member's authorization, or unless the requestor provides additional satisfactory proof of identity and authority, no disclosure can be made.

VIII. Denial of Requests for Information

Unless a member has signed an authorization, or the PHI about the member can be disclosed pursuant to this Policy, THA shall deny any request for member PHI.

Attachments: THA Accounting of Disclosures Request
THA Restriction of Use and Disclosures Request
THA Disclosures of Protected Health Information
THA Authorization for Uses and Disclosures of PHI

References: 42 CFR (Part 2)
45 CFR (Parts 164.502(a); 164.508-164.512)
DMAP Policy AS-100-03
Health Share RAE Participation Agreement
ORS 179.505
THC Policy O-97C: Uses and Disclosures of Protected Health Information

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