



Warren County Board of DD Agency Policy

HIPAA, 1.06

1: DEFINITIONS USED IN POLICIES

1.1 Applicable Requirements

Applicable requirements means applicable federal and Ohio law and the contracts between the Warren County Board of Developmental Disabilities 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.

45 CFR §164.402(1).

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

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.

1.4 Covered Entity

Covered entity 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 rules.

1.5 Council of Government (COG)- a group of Warren County Board of Developmental Disabilities or other governmental entities which have entered into an agreement under ORC Chapter 167 and are operating in accordance with that agreement.

1.6 Designated Record Set:

- a. A group of records maintained by or for a covered entity that is:
 - i. The medical records and billing records about individuals maintained by or for a covered health care provider;
 - ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - iii. Used, in whole or in part, by or for the covered entity to make decisions about individuals.



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b. For purposes of this definition, the term *record* means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

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

1.8 HCBS- Medicaid-funded home and community-based services waiver program available to individuals with DD granted to ODJFS by CMS as permitted in §1915c of the Social Security Act, with day-to-day administration performed by DODD.

1.9 Health Care Clearinghouse- a public or private entity, including a billing service, community health management information system or community health information system that does either of the following functions:

- a. Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
- b. Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

1.10 Health Oversight Agency- 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.

1.11 Health Plan- 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.

1.12 HIPAA- the Health Insurance Portability and Accountability Act of 1996, codified in 42 USC §§ 1320 - 1320d-8 and 45 CFR Parts 160 and 164.

1.13 ICF/IID- an intermediate care facility for individuals with intellectual disabilities, certified to provide services to individuals with DD or a related condition in accordance with 42 CFR part 483, subpart I, and administered in accordance with OAC Chapter 5101:3-3.

1.14 ISP- the Individual Service Plan which is a document developed by the ISP team, containing written descriptions of the services and activities to be provided to an individual, which shall conform to the applicable requirements, including, but not limited to OAC §5123:2-02, 5123:2-3-17 and 5123:2-12-03. References to the ISP shall include Individual Plans developed in accordance with OAC §5123:2-15-18.

1.15 Minimum Necessary- A covered entity complies with the minimum necessary requirement if the covered entity releases a limited data set or the minimum information necessary to accomplish the purpose of the disclosure. 42 USC 17935(b)(1)(A).

1.16 MOU- a Memorandum of Understanding between governmental entities which incorporates elements of a business associate contract in accordance with HIPAA rules.

1.17 Personal Representative- a person who has authority under applicable law to make decisions related to health care on behalf of an adult or an emancipated minor, or the parent, guardian, or other person acting in *loco parentis* who is authorized



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under law to make health care decisions on behalf of an unemancipated minor, except where the minor is authorized by law to consent, on his/her own or via court approval, to a health care service, or where the parent, guardian or person acting in *loco parentis* has assented to an agreement of confidentiality between the Warren County Board of Developmental Disabilities and the minor. A court appointed guardian is a legal representative as well as someone with custody through an order of Juvenile or Domestic Relations Court. General or health care powers of attorney, and designation of representative under RC 5126.043(B) are legally recognized documents which do not involve any court. All of these would be sufficient to allow another person to act as a personal representative under HIPAA.

1.18 PHI- Protected Health Information, that is, 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. PHI does not include individually identifiable health information in any of the following:

1. Education records subject to FERPA
2. employment records held by a covered entity in its role as employer
3. Regarding a person who has been deceased for more than 50 years.

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

1.20 Public Health Authority- 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 responsible for public health matters as part of its official mandate.

1.21 TCM- an Ohio State Plan Medicaid service that provides case management, including service coordination, services to eligible individuals with DD in accordance with OAC Chapter 5123.

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

1.23 Unsecured PHI- 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/>. 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 regulations require this guidance to be updated annually. PHI which is secured as specified by the guidance will not be subject to notification in the event there is a breach of the secured PHI.

1.24 Use- 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.

1.25 Workforce Member- employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Warren County Board of Developmental Disabilities, is under the direct control of the Warren County Board of Developmental Disabilities, whether or not they are paid by the Warren County Board of Developmental Disabilities.

2: GENERAL POLICY ON PRIVACY AND CONFIDENTIALITY

2.1 SOURCES



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45 CFR Part 160 and 164 generally
45 CFR 164.502(b)(1) minimum necessary standard
45 CFR 164.502(a)(1)(iii) incidental uses and disclosures
45 CFR 164.504(g) for entities with multiple functions
ORC § 5126.044 Ohio law on confidentiality
OAC § 5123.31 General DD Board confidentiality requirements
OAC § 5123:1-6-01 Access to Confidential Personal Information
OAC § 5123:2-2-01(D) 3(b) Supported Living requirements for confidentiality policies and standards

2.2 GENERAL POLICY

2.2.1 General Principles

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

This policy shall apply whether the Warren County Board of Developmental Disabilities is acting as a covered health care provider or a Health Plan under HIPAA. If the Warren County Board of Developmental Disabilities is acting in more than one capacity, the Warren County Board of Developmental Disabilities 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.

2.2.2 Treatment, payment and health care operations

The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities program.

The Warren County Board of Developmental Disabilities 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.

2.2.3 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.

Determining Workforce Access to PHI: Access to the PHI will be granted based on the individual's role and determined by the each department head of the Board. The Board will identify: A) Those persons or classes of persons, who require access to PHI to carry out their duties, in the workforce, including interns and trainees, will be listed according to job classification with the necessary minimal necessary PHI required for successful job performance to serve the consumers, and 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. Current determinations are as follows:



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<i>Person or Classes of Persons</i>	<i>Categories of PHI Needed</i>
Superintendent	All
Directors	All
Managers	All
Supervisors	All
Therapists	All Early Intervention files
Investigative Agent	All
Developmental Specialists	All Early Intervention files
Service Coordinator	All
Employment Coordinator	All
Behavior Specialists	All
Fiscal Specialist	Relevant billing and programmatic information
Job Coach	Relevant medical and programmatic information
Secretary / Administrative Assistant	All
Employment Developer	Relevant medical and programmatic information
Family Services Coordinator	All
Transition Coordinator	All
Intake Coordinator	All
Maintenance Specialist	Relevant medical and programmatic information
Provider Compliance Specialist	All
Community Inclusion Coordinator	Relevant medical and programmatic information
Community Outreach Coordinator	Relevant medical and programmatic information
Provider Support Specialist	Relevant medical and programmatic information

2.2.4 Incidental Uses and Disclosures

The Warren County Board of Developmental Disabilities may use or disclose PHI incident to a use or disclosure otherwise permitted or required by applicable requirements.

- 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.
- 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 Warren County Board of Developmental Disabilities has applied reasonable safeguards and implemented the minimum necessary standard (see section 2.2.3), where applicable, with respect to the primary use or disclosure.
- An incidental use or disclosure is not permitted if it is a byproduct of an underlying use or disclosure which violates applicable requirements and Warren County Board of Developmental Disabilities procedures.

2.2.5 Changes in Policies and Procedures

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

2.2.6 Mitigation



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The Warren County Board of Developmental Disabilities shall mitigate, to the extent practicable, any harmful effect that is known to the Warren County Board of Developmental Disabilities of a use or disclosure of protected health information in violation of its policies and procedures or the requirements of applicable requirements and Warren County Board of Developmental Disabilities policies and procedures by the Warren County Board of Developmental Disabilities or its business associate.²

The Warren County Board of Developmental Disabilities' duty to mitigate does not alter the Warren County Board of Developmental Disabilities' duty to report breaches as set forth in Module 8: Notice in Event of Breach of Unsecured PHI.

² The Preamble to the final Privacy Rule (65 Fed. Reg. No. 250, Part II, December 28, 2000 p. 82748) clarifies that the HIPAA rule does not define what mitigation policies and procedures must be implemented. Under the interpretation in the Preamble, the DD Board must mitigate harm only when the DD Board has actual knowledge of harm or a breach. The rule does not require the DD Board to eliminate harm unless it is practicable to do so. If, for example, the DD Board inadvertently discloses PHI on an adult individual to the adult's parent without a release, the DD Board can mitigate by notifying the individual of the disclosure and instructing staff that such a disclosure violates the law and DD Board policy.

2.2.7 Prohibition against Retaliation or Intimidation

No office, program, facility or employee of the Warren County Board of Developmental Disabilities 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.

2.2.8 Prohibition against Waiver of Rights

No office, program, facility or employee of the Warren County Board of Developmental Disabilities 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.

2.3 ADMINISTRATION

The Warren County Board of Developmental Disabilities shall conform to the policies and procedures on administration set forth in

Module 3: Administration.

2.4 PERMISSIBLE USES AND DISCLOSURES

The Warren County Board of Developmental Disabilities shall use or disclose PHI only as follows:

- a. In accordance with a release or authorization of the individual in accordance with policy and procedure set forth in Module 4: Authorizations.
- b. To the extent required by law as set forth in Module 5: Uses And Disclosures For Which No Release Or Authorization Is Required.



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2.5 NOTICE

The Warren County Board of Developmental Disabilities shall provide notice to all individuals enrolled with the Warren County Board of Developmental Disabilities in accordance with the policy and procedure set forth in Module 6: Notice.

2.6 INDIVIDUAL RIGHTS

The Warren County Board of Developmental Disabilities shall ensure protection of individual rights to access to PHI, amendment of PHI and accounting of PHI as set forth in Module 7: Individual Rights Related to PHI.

2.7 SAFEGUARDS FOR PHI

The Warren County Board of Developmental Disabilities shall implement safeguards for PHI as set forth in Module 9: Safeguards for PHI.

2.8 COMPLAINTS AND GRIEVANCES

The Warren County Board of Developmental Disabilities shall follow the policies and procedures set forth in Module 10: on Individual Complaints and Grievances.

2.9 SANCTIONS

The Warren County Board of Developmental Disabilities shall impose sanctions as set forth in Section 11: Sanctions when the Warren County Board of Developmental Disabilities is aware that a member of the workforce or Business Associate has violated applicable law or these Warren County Board of Developmental Disabilities procedures.

2.10 BUSINESS ASSOCIATES

The Warren County Board of Developmental Disabilities shall ensure protection of the use, disclosure and creation of individuals' PHI to other persons or entities performing activities on behalf of the Warren County Board of Developmental Disabilities, by entering into Business Associate agreements or Memorandum of Understanding, as set forth in Module 12: Business Associates.

2.11 DOCUMENT MANAGEMENT

The Warren County Board of Developmental Disabilities shall manage all documents required by Warren County Board of Developmental Disabilities policies and procedures, as set forth in Module 13: Document Management.

3: ADMINISTRATION

3.1 SOURCES

45 CFR 164.530 administration requirements

ORC § 1347 personal information systems

ORC § 5123.046 rights

ORC § 5123.64(A) training in rights

ORC § 5126.34 training standards for reviewing abuse and neglect reports



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OAC § 5123:2-1-02(I)(7) appointment of person responsible for ensuring the safekeeping of records and securing them against loss or use by unauthorized persons.

OAC § 5123:2-3-08 staff training in licensed facilities

OAC § 5123:2-5-01(C)(12) training requirements for adult service workers

OAC § 5123:2-5-02(D) training requirements for SSAs

OAC § 5123:2-5-05(C)(13) training requirements for early intervention workers

OAC § 5123:2-5-07(C) training requirements for investigative agents OAC § 5123:2-6 training requirements for administration of medication OAC § 5123:2-17 complaint resolution; MUIs

3.2 PRE-EMPTION ANALYSIS

Follow current practices in general.

Under HIPAA members of workforce whose functions are affected by a material change in the policies or procedures must be trained within a reasonable period of time after the material change becomes effective. §164.530(b)(2)(c).

3.3 POLICY ON PRIVACY OFFICER AND CONTACT PERSON FOR COMPLAINTS

The Warren County Board of Developmental Disabilities shall designate and document designations of the following:

3.3.1 Privacy Officer

The Warren County Board of Developmental Disabilities shall designate an individual to be the Privacy Officer, responsible for the development and implementation of Warren

County Board of Developmental Disabilities policies and procedures relating to the safeguarding of PHI.

3.3.2 HIPAA Committee

Each program of the Warren County Board of Developmental Disabilities shall have a HIPAA committee that advises and supports the Privacy Officer. The Superintendent shall appoint the HIPAA committee in consultation with the Privacy Officer.

3.3.3 Contact Person or Office

Each facility or program operated by the Warren County Board of Developmental Disabilities 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.

3.4 SAMPLE JOB DESCRIPTION FOR PRIVACY OFFICER General Purpose:

The privacy officer oversees all ongoing activities related to the development, implementation, maintenance of, and adherence to the Warren County Board of Developmental Disabilities' policies and procedures covering the privacy of, and access to, individual health information in compliance with federal and state laws and the Warren County Board of Developmental Disabilities' information privacy practices.

Responsibilities:



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Provides development guidance and assists in the identification, implementation, and maintenance of Warren County Board of Developmental Disabilities information privacy policies and procedures in coordination with Warren County Board of Developmental Disabilities management and administration, the HIPAA Committee, and legal counsel.

Works with Warren County Board of Developmental Disabilities senior management to establish a Warren County Board of Developmental Disabilities-wide HIPAA Committee.

Serves in a leadership role for all HIPAA activities.

Performs initial and periodic information privacy risk assessments and conducts related ongoing compliance monitoring activities in coordination with the entities other compliance and operational assessment functions.

Works with legal counsel and the HIPAA committee to ensure the Warren County Board of Developmental Disabilities has and maintains appropriate privacy and confidentiality consent, authorization forms, and information notices and materials reflecting current Warren County Board of Developmental Disabilities and legal practices and requirements.

Works with legal counsel and HIPAA committee to develop accounting procedures in accordance with HIPAA and other applicable requirements.

Oversees, directs, delivers, or ensures delivery of initial and privacy training and orientation to all employees, volunteers, medical and professional staff, contractors, alliances, business associates, and other appropriate third parties.

Participates in the development, implementation, and ongoing compliance monitoring of all trading partner and business associate agreements, to ensure all privacy concerns, requirements, and responsibilities are addressed.

Establishes with management and operations a mechanism to track access to protected health information, within the purview of the Warren County Board of Developmental Disabilities and as required by law and to allow qualified individuals to review or receive a report on such activity.

Works cooperatively with the applicable Warren County Board of Developmental Disabilities units in overseeing individual rights to inspect, amend, and restrict access to protected health information when appropriate.

Establishes and administers a process for receiving, documenting, tracking, investigating, and taking action on all complaints concerning the Warren County Board of Developmental Disabilities' privacy policies and procedures and, when necessary, legal counsel.

Ensures compliance with privacy practices and consistent application of sanctions for failure to comply with privacy policies for all individuals in the Warren County Board of Developmental Disabilities' workforce, extended workforce, and for all business associates, in cooperation with administration, and legal counsel as applicable.

Files report on breaches in accordance with HIPAA requirements.

Initiates, facilitates and promotes activities to foster information privacy awareness within the Warren County Board of Developmental Disabilities and related entities.

Reviews all system-related information security plans throughout the Warren County Board of Developmental Disabilities' network to ensure alignment between security and privacy practices, and acts as a liaison to the information systems department.



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Works with all Warren County Board of Developmental Disabilities personnel involved with any aspect of release of protected health information, to ensure full coordination and cooperation under the Warren County Board of Developmental Disabilities' policies and procedures and legal requirements.

Maintains current knowledge of applicable federal and state privacy laws and accreditation standards, and monitors advancements in information privacy technologies to ensure Warren County Board of Developmental Disabilities adaptation and compliance.

Serves as information privacy consultant to the Warren County Board of Developmental Disabilities for all departments and appropriate entities.

Cooperates with the Office of Civil Rights and other legal entities in any compliance reviews or investigations.

Works with Warren County Board of Developmental Disabilities administration, legal counsel, and other related parties to represent the Warren County Board of Developmental Disabilities' information privacy interests with external parties (state or local government bodies) who undertake to adopt or amend privacy legislation, regulation, or standard.

Qualifications of Privacy Officer:

Knowledge and experience in information privacy laws, access, release of information, and release control technologies.

Knowledge in and the ability to apply the principles of health information management, project management, and change management.

Demonstrated organization, facilitation, communication, and presentation skills.

3.5 TRAINING OF WORKFORCE

The Warren County Board of Developmental Disabilities shall carry out and document the following training:

1. All current Warren County Board of Developmental Disabilities employees and other workforce members must be trained on applicable policies and procedures relating to PHI as necessary and appropriate for such persons to carry out their functions within the Warren County Board of Developmental Disabilities.
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.

4: AUTHORIZATION

4.1 SOURCES

45 CFR 164.508 – HIPAA requirements for authorizations

45 CFR 164.512(b)(1)(vi) – HIPAA requirement for record of immunization

ORC § 5126.044 – Ohio Statute on confidentiality of records

OAC § 5123:2-1-02(I)(7) – Ohio Rule on confidentiality of records



4.2 PRE-EMPTION ANALYSIS

ORC § 5126.044(B) generally requires a written release prior to disclosure of PHI for treatment purposes of an individual's records maintained by a Warren County Board of Developmental Disabilities. Changes to RC 5126.044 (effective October 16, 2009), have created some confusion about the scope of permissible disclosures for treatment and payment purposes. The new provision states that the *identity* of an eligible individual may be disclosed without the individual's consent, if the identity of the individual is necessary for treatment or payment. RC 5126.044(B)(4). Treatment is defined as "provision, coordination, or management of services provided to an eligible person." Payment is defined as "activities undertaken by a service provider or governmental entity to obtain or provide reimbursement for services to an eligible person." RC 5126.044(A).

A strict construction of the language of statute as amended permits disclosure *only of the identity* of an individual for treatment or payment purposes; the language as currently enacted does not clearly permit release of records or reports on an individual without a written consent for the release.³ Under this construction, state law pre-empts HIPAA since state law will not allow disclosure of PHI other than the individual's identity for treatment or payment purposes without authorization.

ORC § 5126.044(B) pre-empts HIPAA's rule which allows disclosure of PHI to business associates without a consent or authorization. Under state law, an individual must give a written release for disclosures to persons who are not employees of the Warren County Board of Developmental Disabilities.

³ There may be an amendment in the future which will specifically permit release of reports and records on eligible individuals for treatment or payment purposes. Until the statute is changed, however, we believe that the current practice of obtaining consent for release of all information should continue, except for the explicit exceptions in RC 5126.044 (info needed for direct services contracts and for placement on waiting list).

HIPAA pre-empts ORC § 5126.044(B)(3) which allows access to PHI to monitor waiting lists by persons who are not employed by a health oversight agency.

HIPAA pre-empts parts of ORC § 5126.044(C)(3)(b). HIPAA only allows release of PHI to an executor or to a family member involved in the individual's care or payment for health care prior to the individual's death, if the PHI is relevant to such person's involvement.

4.3 POLICY ON AUTHORIZATIONS

In compliance with 45 CFR Part 164 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 Warren County Board of Developmental Disabilities may be used for use or disclosure of PHI in any situation where an authorization or release of information is required.

4.4 PROCEDURES FOR AUTHORIZATIONS

4.4.1 General

- a. In compliance with 45 CFR Part 164 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.

b. 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:

- i. those required by law;
- ii. for public health activities;
- iii. about victims of abuse, neglect or domestic violence;
- iv. for health oversight activities;
- v. for judicial and administrative proceedings;
- vi. for law enforcement purposes;
- vii. for cadaveric organ, eye or tissue donation purposes;
- viii. for research purposes;
- ix. to avert a serious threat to health or safety;
- x. for specialized government functions;
- xi. for workers' compensation;

c. Records of immunization may be disclosed without a formal written authorization, but some form of consent, including oral consent, is required.

d. PHI of deceased individuals is protected to the same extent as that of living individuals. This protection expires 50 years after the death of the individual. In the meantime, PHI may be disclosed to authorized representatives of the decedent, such as an executor or administrator, or to a family member involved in the individual's care or payment for health care prior to the individual's death, if the PHI is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the Covered Entity.

e. A Warren County Board of Developmental Disabilities must obtain an authorization for any disclosure of PHI which is a sale of PHI. The authorization must state that the disclosure will result in remuneration to the covered entity. A "sale" is defined as a disclosure of protected health information by a covered entity or Business Associate, if applicable, where the covered entity or Business Associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information, subject to exceptions in HIPAA Rules.

4.4.2 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 4.4.3 of this procedure.
- h. A statement that the potential for information disclosed pursuant to the authorization may be subject to re-disclosure 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 Warren County Board of Developmental Disabilities seeking the authorization will receive either direct or indirect compensation, the authorization must state that the Warren County Board of Developmental Disabilities 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.

4.4.3 Conditioning services on authorization

- a. The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities acting as a covered health care provider may condition the provision of research-related treatment on provision of a valid authorization;
 - ii. The Warren County Board of Developmental Disabilities may condition enrollment for Warren County Board of Developmental Disabilities services or eligibility for Warren County Board of Developmental Disabilities services on provision of an authorization requested by the Warren County Board of Developmental Disabilities prior to an individual's enrollment in the Warren County Board of Developmental Disabilities, if:
 - A) The authorization sought is for determining eligibility for Warren County Board of Developmental Disabilities services or enrollment determinations relating to the individual; and
 - B) The authorization is not for a use or disclosure of psychotherapy notes.
- b. A Warren County Board of Developmental Disabilities 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.
- c. A Warren County Board of Developmental Disabilities cannot condition treatment or payment on an individual's choice with respect to the receipt of fundraising communications.

4.4.4 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 provided there is opportunity to opt out under certain circumstances.
- 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.



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4.4.5 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 Warren County Board of Developmental Disabilities 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;

4.4.6 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.

4.4.7 Verification

- a. *Verification of Recipient.* The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities must document evidence that the individual has designated the personal representative to act on the individual's behalf. The Warren County Board of Developmental Disabilities may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

4.4.8 Document Management

- a. If the entity is seeking the authorization, a copy of the authorization must be provided to the individual.
- b. The Warren County Board of Developmental Disabilities 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.

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

5.1 SOURCES

45 CFR § 164.512

ORC § 2151.421(A) Reports of Child Abuse



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ORC § 2305.51 Disclosures to prevent harm to 3rd parties
ORC § 2317.02(B) and (G) Privilege for physicians, school guidance counselors, licensed social workers and licensed counselors
ORC § 4732.19 Privilege for psychologists ORC § 5123.19 Licensure activities of DODD ORC § 5123.60 OLRs
ORC § 5123.61(C)(1) Duty to report abuse/neglect of persons with DD ORC § 5126.044 Confidentiality for DD Board
ORC § 5126.055 MLAA functions of DD Board
ORC § 5126.31 Case Review and Investigation
OAC § 5123:2-17-02(B) Incidents adversely affecting health/safety
OAC § 5123:2-17-02(D) Reporting MUIs
OAC § 5123:2-3-04 Monitoring of licensed facilities
Ohio Rules of Civil Procedure Rule 45 Procedures for obtaining a subpoena

5.2 PRE-EMPTION ANALYSIS

In general, Warren County Board of Developmental Disabilities should follow current practice except that Warren County Board of Developmental Disabilities must comply with HIPAA requirement for informing individual after disclosure to authority of abuse or neglect, unless exceptions apply. 164.512(c)(2)

There is a question about whether the absence of any of the HIPAA exceptions in ORC § 5126.044 prohibits any of the HIPAA disclosures. Common law, current practice and common sense dictate that the exceptions do exist and that the policies and procedures listed below should be followed.

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

The Warren County Board of Developmental Disabilities may use or disclose PHI without written release or authorization of the individual as follows and as further set forth in the Warren County Board of Developmental Disabilities' procedures:

- a. When required by law.
- b. For public health purposes such as reporting communicable diseases, work-related illnesses, or other diseases and injuries permitted by law; reporting births and deaths, and reporting reactions to drugs and problems with medical devices
- c. To protect victims of abuse, neglect, or domestic violence.
- d. For health oversight activities such as investigations, audits, and inspections.
- e. For judicial and administrative proceedings.
- f. For law enforcement purposes.
- g. For fund raising purposes, provided there is an opportunity to opt out.
- h. For disclosure of immunization with some record of consent
- i. To coroners, medical examiners, and funeral directors.
- j. For organ, eye or tissue donation.
- k. Research.
- l. To reduce or prevent a serious threat to public health and safety.
- m. Specialized government functions.
- n. For workers' compensation or other similar programs if applicable.

5.4 PROCEDURES ON USES AND DISCLOSURES FOR WHICH NO RELEASE OR AUTHORIZATION IS REQUIRED



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The Warren County Board of Developmental Disabilities shall conform to the following procedures in making disclosures for which no release or authorization is required:

5.4.1 When required by law

The Warren County Board of Developmental Disabilities 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 5.4.3, 5.4.5, and 5.4.6.

5.4.2 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.

To the extent that the Warren County Board of Developmental Disabilities receives PHI disclosed under this section in its role as

MLAA, the Warren County Board of Developmental Disabilities may use the PHI to carry out its duties.

5.4.3 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities would be informing a personal representative, and the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities, in the exercise of professional judgment.

5.4.4 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.
- c. To the extent that the Warren County Board of Developmental Disabilities receives PHI disclosed under this section in its role as MLAA, the Warren County Board of Developmental Disabilities may use the PHI to carry out its duties.

5.4.5 For judicial and administrative proceedings

- a. The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities may comply with such legal requests only if:
 - i. The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities shall not respond to a subpoena without review by an attorney to ensure compliance with applicable requirements.

5.4.6 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 Warren County Board of Developmental Disabilities may disclose to a law enforcement official protected health information that the Warren County Board of Developmental Disabilities believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the Warren County Board of Developmental Disabilities.
 - iv. The Warren County Board of Developmental Disabilities providing emergency health care in response to a medical emergency, other than such emergency on the premises of the Warren County Board of Developmental Disabilities, 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.



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- v. If the Warren County Board of Developmental Disabilities 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 5.4.6a.iv does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to section 5.4.3.
- 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 Warren County Board of Developmental Disabilities 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.

5.4.7 Fundraising

- a. The Warren County Board of Developmental Disabilities may use, or disclose to a Business Associate or to an institutionally related foundation, the following protected health information for the purpose of raising funds for its own benefit, without an authorization:
 - i. Demographic information relating to an individual, including name, address, other contact information, age, gender, and date of birth;
 - ii. Dates of health care provided to an individual;
 - iii. Department of service information;
 - iv. Treating physician;
 - v. Outcome information; and
 - vi. Health insurance status.
- b. With each fundraising communication made to an individual, the Warren County Board of Developmental Disabilities shall provide the individual with a clear and conspicuous opportunity to elect not to receive any further fundraising communications.
- c. The Notice of Privacy Practices shall include statements that the Warren County Board of Developmental Disabilities may contact the individual to raise funds for the Covered Entity and the individual has a right to opt out of receiving such communications.

5.4.8 Record of Immunization

The Warren County Board of Developmental Disabilities may provide proof of immunization without a formal written authorization, but some form of consent, including oral consent, is required.

5.4.9 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.

5.4.10 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.

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

The Warren County Board of Developmental Disabilities 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.

5.4.12 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 Warren County Board of Developmental Disabilities 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 5.4.12c 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.

5.4.13 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.

Module 6: NOTICE

6.1 SOURCES

45 CFR 164.520 (HIPAA rules on notice)



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ORC § 1347.08(A)(3) (Personal Information Systems)

6.2 PRE-EMPTION ANALYSIS

HIPAA rules apply.

6.3 POLICY ON NOTICES

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

6.4 PROCEDURES ON NOTICES

6.4.1 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 Warren County Board of Developmental Disabilities, and of the individual's rights and the Warren County Board of Developmental Disabilities' legal duties with respect to the individual's PHI.

6.4.2 When notice is required

- a. The Warren County Board of Developmental Disabilities must provide notice:
 - i. To individuals enrolled in Warren County Board of Developmental Disabilities services;
 - ii. Thereafter, at the time of enrollment, to individuals who are new enrollees;
 - iii. In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation;
 - iv. Within 60 days of a material revision to the notice, to individuals enrolled in Warren County Board of Developmental Disabilities services.
- b. Once every three years, the Warren County Board of Developmental Disabilities shall notify individuals enrolled in Warren County Board of Developmental Disabilities services of the availability of the notice and how to obtain the notice.

6.4.3 Acknowledgment of Notice

- a. Except in an emergency treatment situation, the Warren County Board of Developmental Disabilities 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.

6.4.4 Making Notice Available

- a. The notice shall be available at all sites operated by the Warren County Board of Developmental Disabilities for individuals to request to take with them.
- b. The Warren County Board of Developmental Disabilities shall post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the Warren County Board of Developmental Disabilities to be able to read the notice.



c. Whenever the notice is revised, the Warren County Board of Developmental Disabilities 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.

6.4.5 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities requires prior authorization;
- c. A description, including at least one example, of the types of uses and disclosures that the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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. Those uses or purposes which are subject to more restrictive state requirements.
- g. If applicable, a separate statement that:
 - i. A separate authorization is required for most uses and disclosures of psychotherapy notes; All uses and disclosures for marketing purposes; Disclosures that constitute a sale of PHI.
 - ii. The covered entity may contact the individual to raise funds for the covered entity with clear language allowing the individual to opt out; or
 - iii. A group health plan, or a health insurance issuer or HMO with respect to a group health plan, may disclose protected health information to the sponsor of the plan.
- h. A statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights, as follows:
 - i. To receive notifications of breaches of unsecured protected health information and that such notifications will be sent if any occur;
 - ii. To request restrictions on certain uses and disclosures of protected health information as provided in the rules including a statement that the covered entity is not required to agree to a requested restriction;
 - iii. To require restrictions on certain disclosures of protected health information to a health plan when the individual has paid out of pocket in full for the health care item or service;
 - iv. To receive confidential communications of protected health information as applicable;
 - v. To request that the Warren County Board of Developmental Disabilities use a specific telephone number or address to communicate with the individual
 - vi. To inspect and copy protected health information;
 - vii. To amend protected health information;
 - viii. To receive an accounting of disclosures of protected health information; and
 - ix. To exercise the right of an individual, including an individual who has agreed to receive the notice electronically to obtain a paper copy of the notice from the covered entity upon request.



- i. If the Warren County Board of Developmental Disabilities intends to contact the individual for appointment reminders, treatment alternatives or other health related benefits, a separate statement describing such contacts;
- j. A statement of the Warren County Board of Developmental Disabilities' duties with respect to PHI, including statements: that the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities is required to abide by the terms of the currently effective privacy notice;
- k. A statement that the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities will provide individuals with the revised notice;
- l. A statement that individuals may complain to the Warren County Board of Developmental Disabilities 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;
- m. The name, or title, and telephone number of the person or office to contact for further information;
- n. The effective date of the notice, which may not be earlier than the date printed or published.

6.4.6 Optional Content of Notice

- a. If the Warren County Board of Developmental Disabilities chooses to impose additional restrictions which are consistent with HIPAA requirements, the policy/procedure manual must require that these be included in the notice.

6.4.7 Notice of Revisions

- a. When there is a material change to the uses or disclosures, the individual's rights, the Warren County Board of Developmental Disabilities' legal duties, or other privacy practices described in the notice, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities is not required to obtain acknowledgment of a revised notice.

6.4.8 Requirements for Electronic Notice

- a. If the Warren County Board of Developmental Disabilities maintains a web site, the notice must be posted on the web site and be made available electronically through the web site.
- b. The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 a Warren County Board of Developmental Disabilities upon request.

6.4.9 Documentation



The Warren County Board of Developmental Disabilities shall retain copies of the notices issued by the Warren County Board of Developmental Disabilities 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.

Module 7: INDIVIDUAL RIGHTS RELATED TO PHI

7.1 SOURCES

45 CFR 164.524(e) individual's right to access PHI
45 CFR 164.524(b) Time limits on response to access
45 CFR 164.524(c) Form of access
ORC § 1347.08(A)(2) individual's right to access records
45 CFR 164.522 individual's right to request restrictions
45 CFR 164.526(f) individual's right to request amendment
ORC § 1347.09 Right to amend records with personal information

45 CFR 164.528(d) individual's right to an accounting of disclosures of PHI ORC § 1347.08 notice of who has access to personal information

7.2 PRE-EMPTION ANALYSIS

7.2.1 Individual's right to access PHI

There is no conflict on the general principle of an individual's right to access PHI. State law pre-empts HIPAA exceptions; there are no limits in state law to an individual's access.

7.2.2 Individual's right to request restrictions

There is no comparable provision in Ohio law.

7.2.3 Individual's right to request amendment

Except as noted, HIPAA and state rules are substantially similar and should be followed. HIPAA requires designation of a person responsible for managing requests for amendment of records with PHI.

HIPAA requirements pre-empt Ohio law in deadline for response to a request to amend a record with PHI. Under HIPAA a DD Board must respond within 60 days of the date of request; a single extension of up to 30 days may be obtained with notice. 164.526 (a), (b) The comparable Ohio section is 90 days to respond. 1347.09(A)(1).

HIPAA notice requirements when there is an amendment are more detailed than Ohio law; HIPAA must be followed. 164.526(c)

7.2.4 Individual's right to an accounting of disclosures of PHI

State law and HIPAA must both be followed. Content of accountings must meet HIPAA requirements.

7.3 POLICY ON INDIVIDUAL'S ACCESS TO PHI



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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.

7.4 PROCEDURES ON INDIVIDUAL'S ACCESS TO PHI

7.4.1 General

At the request of an eligible person or the person's guardian or, if the eligible individual is a minor, the individual's parent or guardian, a county board or entity under contract with a county board shall provide the person who made the request access to records and reports regarding the eligible individual.

On written request, the county board or entity shall provide copies of the records and reports to the eligible person, guardian, or parent.

7.4.2 Form of access

The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities and the individual.

If an individual requests an electronic copy of PHI that is maintained electronically in one or more designated record sets, the Warren County Board of Developmental Disabilities shall provide the individual with access to the electronic information in the electronic form and format requested by the individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual, with the expectation that there would be at least a machine readable form of the record. The Department of HHS considers machine readable data to mean digital information stored in a standard format enabling the information to be processed and analyzed by computer. For example, this would include providing the individual with an electronic copy of the protected health information in the format of MS Word or Excel, text, HTML, or text-based PDF, among other formats. 78 Fed. Reg. 5631.

A hard copy may be provided if the individual decides not to accept any of the electronic formats offered by the Warren County Board of Developmental Disabilities.

An individual may instruct the Warren County Board of Developmental Disabilities to convey electronic versions of PHI to third parties. The request must be made in writing, signed by the individual, and clearly identify the designated person and where to send the copy of the protected health information.

The Warren County Board of Developmental Disabilities may allow the individual to inspect the PHI without copies, if the individual agrees to an inspection only.

7.4.3 Summary

The Warren County Board of Developmental Disabilities 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



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- b. the individual agrees in advance to the fees imposed, if any, by the Warren County Board of Developmental Disabilities for such summary or explanation.

7.4.4 Time for response to request for access

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

7.4.5 Fees for copying

The county board or entity may charge a reasonable fee to cover the costs of copying. The county board or entity may waive the fee in cases of hardship.

7.4.6 Other responsibilities

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

7.5 POLICY ON INDIVIDUAL'S RIGHT TO REQUEST RESTRICTIONS

The Warren County Board of Developmental Disabilities may voluntarily agree to restrict disclosure of information. The DD Board is not required to agree to such restrictions, unless the disclosure is to a health plan and involves PHI related to payment or health care operations and pertains to a health care item or service for which the individual has paid out of pocket in full. If there is such an agreement, the Warren County Board of Developmental Disabilities shall abide by the terms of the agreement, unless and until the agreement is rescinded in accordance with Warren County Board of Developmental Disabilities procedures.

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

7.6 PROCEDURES ON INDIVIDUAL'S RIGHT TO REQUEST RESTRICTIONS

7.6.1 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.

7.6.2 Consideration of request

The Warren County Board of Developmental Disabilities is not obligated to agree to any requests for restriction except that the Warren County Board of Developmental Disabilities must agree to a request to restrict disclosure of PHI to a health plan if the disclosure is for payment or health care operations and pertains to a health care item or service for which the individual has paid out of pocket in full.

7.6.3 Procedure upon agreement



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If such an agreement is made, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities who have access to the individual's PHI.

7.6.4 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.

7.6.5 Confidential communications requests

- a. The Warren County Board of Developmental Disabilities shall permit individuals to request in writing and must accommodate reasonable requests by individuals to receive communications of PHI from Warren County Board of Developmental Disabilities by alternative means or at alternative locations.
- b. The Warren County Board of Developmental Disabilities 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.

7.6.6 Terminating a restriction

The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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.

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

Subject to the rules set forth in applicable requirements and Warren County Board of Developmental Disabilities procedures, an individual has the right to have the Warren County Board of Developmental Disabilities 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.

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

7.8.1 Request for amendment

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

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

7.8.2 Time for action on request for amendment



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

7.8.3 Acceptance of amendment

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

7.8.4 Refusal of amendment

a. Notice

If an amendment is denied, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities must permit the individual to submit to the Warren County Board of Developmental Disabilities a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The Warren County Board of Developmental Disabilities may reasonably limit the length of a statement of disagreement.

c. Rebuttal statement

The Warren County Board of Developmental Disabilities may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities must include the following with all subsequent disclosures:
 - A) The individual's request for an amendment; and
 - B) The Warren County Board of Developmental Disabilities' 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 Warren County Board of Developmental Disabilities may separately transmit the information to the recipient of the transaction in a standard EDI format.

7.8.5 Actions on notices of amendment from another Warren County Board of Developmental Disabilities

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

7.8.6 Designation and Documentation

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

7.9 POLICY ON ACCOUNTING OF DISCLOSURES OF PHI

If the Warren County Board of Developmental Disabilities discloses an individual's identity or releases a record or report regarding an eligible individual without authorization of the individual, the Warren County Board of Developmental Disabilities shall maintain a record of when and to whom the disclosure or release was made.

7.10 PROCEDURES ON ACCOUNTING OF DISCLOSURES OF PHI

7.10.1 General

If the Warren County Board of Developmental Disabilities discloses an individual's identity or releases a record or report regarding an eligible individual, and there is no authorization for such disclosure, the Warren County Board of Developmental Disabilities shall maintain a record of when and to whom the disclosure or release was made.

7.10.2 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.

7.10.3 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.



7.10.4 Accounting for Multiple Disclosures to Same Recipient

If, during the period covered by the accounting, the Warren County Board of Developmental Disabilities 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 7.10.3 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.

7.10.5 Time for Action on Request for Accounting

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

7.10.6 Designation and Documentation

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

7.10.7 Exceptions for Accounting Requirement

The Warren County Board of Developmental Disabilities will not provide accounting for the following disclosures:

- a. To carry out treatment, payment and health care operations, except that PHI maintained electronically is subject to accounting for three years prior to the request;
- 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 Warren County Board of Developmental Disabilities.

Module 8: NOTICE IN EVENT OF BREACH OF UNSECURED PHI

8.1 SOURCES

45 CFR §§ 164.402 – 164.414

8.2 PRE-EMPTION ANALYSIS

HIPAA rules apply.

8.3 POLICY ON NOTICE OF BREACH



In the event of a breach of unsecured PHI, the Warren County Board of Developmental Disabilities shall provide notice of breach in accordance with applicable requirements. Notice shall be provided to the affected individual, the Secretary of HHS and, as required, to the media. The Warren County Board of Developmental Disabilities shall take steps reasonably necessary to ensure that BAs provide notice of such a breach to the Warren County Board of Developmental Disabilities.

8.4 PROCEDURES

8.4.1 Presumption

Any impermissible use or disclosure of protected health information is presumed to be a breach unless the Warren County Board of Developmental Disabilities or Business Associate, as applicable, demonstrates by a risk assessment that there is a low probability that the protected health information has been compromised.

8.4.2 Definition of a Breach

A breach is the acquisition, access, use, or disclosure of PHI in an unauthorized manner which compromises the security or privacy of the PHI. Compromise of security or privacy means that there is a significant risk of financial, reputational, or other harm to the individual. The following types of breaches are expressly excluded from this definition:

- a. PHI which is secured as specified by the guidance.
- b. 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;
- c. 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
- d. 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.

8.4.3 Definition of 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/>.

8.4.4 Risk Assessment

The Warren County Board of Developmental Disabilities or Business Associate shall conduct a risk assessment to determine whether there is a low probability that data has been compromised. A risk assessment shall document that the following areas have been considered:

- a. The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the protected health information or to whom the disclosure was made;
- c. Whether the protected health information was actually acquired or viewed; and
- d. The extent to which the risk to the protected health information has been mitigated.

8.4.5 Notice of Breach to Individuals



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The Warren County Board of Developmental Disabilities shall, following the discovery of a breach of unsecured PHI, notify each individual whose unsecured PHI has been, or is reasonably believed by the Warren County Board of Developmental Disabilities to have been, accessed, acquired, used, or disclosed as a result of such breach. The notice must be written in plain language and to the extent possible, must 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;
- b. 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);
- c. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- d. A brief description of what the Warren County Board of Developmental Disabilities involved is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
- e. 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.⁴

8.4.6 Method of Notice

The Warren County Board of Developmental Disabilities shall provide notice in one of the following three formats, depending on circumstances:

- a. Written notice.
 - i. Written notification by first-class mail to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail.
 - ii. If the Warren County Board of Developmental Disabilities knows the individual is deceased and has the address of the next of kin or personal representative of the individual, written notification by first class mail to either the next of kin or personal representative of the individual.
- b. Substitute notice.

In the case that contact information is not available, a substitute form of notice reasonably calculated to reach the individual shall be provided. Substitute notice need not be provided in the case in where the individual is deceased.

⁴ 45 CFR §164.404(c)

- i. In the case in which contact information is not available for fewer than 10 individuals, then such substitute notice may be provided by an alternative form of written notice, telephone, or other means.
- ii. In the case in which contact information is not available for 10 or more individuals, then such substitute notice shall:
- iii. Be in the form of either a conspicuous posting for a period of 90 days on the home page of the Web site of the Warren County Board of Developmental Disabilities involved, or conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside; and
- iv. Include a toll-free phone number that remains active for at least 90 days that an individual can call to learn whether the individual's unsecured PHI may be included in the breach.

8.4.5 Additional notice in urgent situations



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In any case deemed by the Warren County Board of Developmental Disabilities to require urgency because of possible imminent misuse of unsecured PHI, the Warren County Board of Developmental Disabilities may, in addition to providing written notice, contact individuals by telephone or other means, as appropriate.

8.4.6 Notice to Secretary of HHS

For a breach of unsecured PHI involving more than 500 residents, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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.

8.4.7 Notice to Media

For a breach of unsecured PHI involving more than 500 residents, the Warren County Board of Developmental Disabilities shall, notify prominent media outlets serving the county. The content of the notice shall be the same as the notice provided to the individual.

8.4.8 Timeliness of Notice

The Warren County Board of Developmental Disabilities shall provide required notices without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

The Warren County Board of Developmental Disabilities shall delay providing notice if a law enforcement official states to the Warren County Board of Developmental Disabilities or its 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 Warren County Board of Developmental Disabilities or its Business Associate shall delay such notice for the time period specified by the official. If the statement is made orally, the Warren County Board of Developmental Disabilities or its 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.

8.4.9 Determination of time of discovery of breach

A breach shall be treated as discovered by the Warren County Board of Developmental Disabilities or Business Associate as of the first day on which such breach is known to the Warren County Board of Developmental Disabilities, or, by exercising reasonable diligence would have been known to the Warren County Board of Developmental Disabilities. The Warren County Board of Developmental Disabilities shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or agent of the Warren County Board of Developmental Disabilities.

When a Business Associate who is not acting as an agent, discovers a breach, the date of discovery for Warren County Board of Developmental Disabilities is the date when the Business Associate notified the Warren County Board of Developmental Disabilities of the breach.

9: SAFEGUARDS FOR PHI

9.1 SOURCES



Warren County Board of DD Agency Policy

HIPAA, 1.06

45 CFR §§ 164.308, 164.310, 164.312

45 CFR § 164.530(c)

ORC § 5126.044 Ohio law on confidentiality

OAC § 5123:2-1-02(I) Safeguard requirements for confidential DD Board records
OAC § 5123:2-4-01(C)(2)(b) General requirements for DD Board confidentiality policies

OAC § 5123:2-3-13(B) Safeguards for records in licensed facilities

9.2 PRE-EMPTION ANALYSIS

HIPAA and Ohio law are consistent.

9.3 POLICY ON SAFEGUARDS

The WCBDD has a duty to protect the confidentiality/general privacy and integrity of confidential medical information as required by law, professional ethics, and accreditation requirements. This policy defines the guidelines and procedures that must be followed for the storage, printing/copying, and general safeguarding of paper, oral and electronic data.

The purpose of this policy is to establish procedures for employees and contractors regarding the use of the Information Services network, including computer hardware and software, computer communications, and to protect the integrity of the Board's data and computer systems and the security and privacy of Protected Health Information (PHI). The policy is necessary to establish appropriate use and prevent misuse of the Board's personal computers (PCs), network servers, associated hardware and software, electronic mail (e-mail), the Internet and on-line services, and the PHI stored on the computer systems. Employees and contractors are expected to exercise good judgment in the use of Board computer systems and will be held accountable for their use and misuse of these public resources, and the data stored on and accessed via the computer systems.

The provisions of this policy shall apply to all Board members, employees, volunteers/interns; contract services employees of all departments of the WCBDD.

DEFINITIONS: (Specific to this policy)

Board Computer(s) - This definition includes, but is not limited to, mainframes, servers, personal computers (PCs), peripherals, laptop and portable computers, standalone workstations and networked PCs wherever the users and equipment may reside. The term "Board computer(s)" includes, but is not limited to, 1) computers and related equipment which are purchased or leased by the Board; or 2) computers owned by third parties, including the State of Ohio, and used or accessed from county premises.

Electronic Mail (E-Mail) - E-Mail is the transmission of memos and messages over electronic networks, including, but not limited to, local area networks, wide area networks and the Internet (also known as the "worldwide web" and the "net").

Information Systems (IS) Department - This is Warren County Data Processing Department and its employees.

On-line Services - On-line services provide subscribers, both free of charge and for a fee, with a variety of reference and information exchange services.

Systems Administrator - The Systems Administrator is the Warren County Data Processing Department.

Protected Health Information (PHI) - Individually identifiable health information relating to the past, present, or future health of a person.

I. GENERAL GUIDELINES

1. Board computers, including software and work product, are considered public resources and are the property of or allocated to The Board of Developmental Disabilities

2. Board computers and computer accounts are to assist employees or contractors in the performance of their jobs. All employees or contractors have the responsibility to use all computer resources and services in an efficient, effective, ethical and lawful manner.



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3. The ability to connect to other computer systems through the network does not imply a right to connect to those systems or to make use of those systems unless specifically authorized by the policy or procedure of the Board.
4. The Board has the right, but not the duty, to monitor any and all aspects of the computer resources and services, including e-mail, to ensure compliance with this policy. This includes the right to perform manual or automated audits.

II. PRIVACY

The Board respects the individual privacy of all personnel. However, such privacy does not extend to the individual's work-related conduct including the use of Board computers, equipment or supplies. Employees or contractors have no expectation of privacy when they use Board computer equipment, including but not limited to, software, files, e-mail and Internet browsing.

III. SYSTEM SECURITY

1. Employees or contractors are expected to be vigilant in maintaining system security. Individuals may not attempt to or break into system security, or exceed authorized limits when accessing any computer networks.
2. The entry or distribution of any self-replicating code, any file which may cause damage to any computer system, or any "computer virus" is prohibited. Diskettes and other electronic media from outside the agency must be scanned for viruses before being used on the Board's computers. This includes media used on home computer systems.
3. No employee or contractor shall login to any system with any identification or password other than that assigned to them except for authorized IS personnel for troubleshooting/testing purposes. Employees or contractors shall not divulge their network or database, or State Assigned passwords to anyone except for authorized IS personnel. All system passwords shall be changed on a periodic basis unless other policies apply to those specific systems.
4. Any work done under an individual's user ID and password shall be assumed to have been done by that person, and any consequences of that work shall fall to the individual, under whose name the work was done, including malicious damage done to files and data, which are the property of the Board.
5. Employees or contractors shall also follow all account authorization processes, login procedures and password protection features established by the IS Department.
6. Any employee or contractor who suspects or detects a breach of security shall immediately notify the System Administrator or an available Supervisor, who shall report the breach to the System Administrator.
7. Each employee or contractor using the system must logoff the system at the end of the individual's workday or whenever the person is not physically in the area of the computer for an extended period of time. Remember, if you do not log off your account, anyone can access your information, e-mail, etc., and all activities shall be recorded under your account name.
8. Employees or contractors shall not attempt to alter or reconfigure the computer equipment, network settings, dial-up connections or printers without authorization from the IS Department. No employee or contractor shall tamper with, or disable any security software installed on a Board computer. This includes, but is not limited to, Internet filtering software, virus software, and auditing software.

IV. USE OF HARDWARE AND SOFTWARE

1. Computer equipment, including hardware and software, is the property and/or the responsibility of the Board and shall remain on Board premises, except with prior authorization. Employees or contractors are to report computer malfunctions and other technical problems to their department head or designee, who shall in turn report the problems to the Information Systems department.
2. Prior to any computer hardware purchases by the Board or one of its components, the IS Department must be notified, to insure the proposed hardware is compatible with the existing infrastructure. The IS Department must oversee the installation of all hardware.
3. The System Administrator shall maintain an accurate record and inventory of all Board owned computer equipment, all allocated equipment, and all persons to whom any hardware has been issued.
4. Computer hardware and software provided by third parties (i.e., employees, customers or vendors) must be approved by the IS Department prior to installation if it is housed on Board property.



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5. Hardware disposal is the responsibility of the IS department. Prior to disposal, all hard drives will be wiped clean of any data using appropriate software, and reformatted to provide reasonable assurance that data is not retrievable through standard data recovery programs.
6. All software, which is provided by the Board for any individual's use, shall be used for authorized purposes. Excessive personal use of software is prohibited.
7. All software acquired by the Board must be purchased through the IS Department. Software acquisition channels are restricted to ensure that the Board has a complete record of all software that has been purchased. Board users may not duplicate any licensed software or related documentation for use either on Board premises or elsewhere unless the Board is expressly authorized to do so by agreement with the licensor. Unauthorized duplication of software may subject users and/or the Board to both civil and criminal penalties under the United States Copyright Act.
8. Users may not give software to any outsiders including clients, contractors, customers, and others. Board users may use software on local area networks or on multiple machines only in accordance with applicable license agreements.
9. The System Administrator shall oversee the installation of all software to be utilized on Board computer equipment. No software shall be installed on Board computer equipment without the permission of the System Administrator.
10. The Board may evaluate, purchase and install or introduce any software, which an employee or contractor can demonstrate to be relevant to their job duties. Users are encouraged to suggest applicable software that will provide assistance in performing job responsibilities (to their department head). Prior to Board purchase and installation, the System Administrator shall be consulted and the administrative staff shall consider the request and provide a response.
11. The installation of personal, purchased or downloaded entertainment/game software is prohibited.
12. Playing of any games on the computer (including those issued with Microsoft Windows) is prohibited during regular working hours (with the exception of educational games used in classroom situations). Users may play games before or after work hours as long as it does not interfere with work activity (where the individual is recording time as hours worked), or during lunchtime. If game play is determined to be abused by an individual, all games may be removed from the PC.
13. The Administration shall, from time to time and with no requirement to notify, audit computer hardware and software and as a consequence erase or delete software or remove hardware from the information system, which does not conform to the requirements of this policy.
14. Any software which is developed on the Board's property and on the individual's work time, including documents, data, Board-owned applications, templates, macros, routines or programs, is the exclusive property of the Board of Developmental Disabilities and may not be sold, marketed, downloaded or distributed by any entity other than the Board. This includes any work product developed by employees, consultants, private subcontractors or interns.
15. The System Administrator shall not provide support or training to users on the use of personal software.

V. DATA USAGE

1. All data must be stored on the file server to ensure its protection. Files should not be stored on individual computers. Printed information that is considered confidential should never be left on an unattended printer, photocopier, or fax machine unless the device is located in a secure area that is limited to authorized staff.
2. All data access will be controlled by the use of a user id and password. It is the responsibility of the person's immediate supervisor to request necessary security clearance for an individual. The immediate supervisor will forward this request to the Privacy Officer who will verify security clearance and forward the request to the Chief Financial Officer. The Chief Financial Officer will request the appropriate security clearances for the individual user through the IS Department. An individual may not request changes to his/her own accounts. Verbal requests for security changes will not be honored except in an emergency. When a verbal request is received and honored, a follow-up request must be received.
3. It is the responsibility of the immediate supervisor to notify the IS Department as soon as a resignation or other separation notice is received from an employee. This notice must include the separation date so the individual's security will expire on that date.
4. All PHI related information must be stored on a secure drive and will only be accessible to individuals with Security Clearance or the staff members' personal network drive.
5. System backups of all file server data are performed by the Warren County Data Processing Department.



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HIPAA, 1.06

VI. ELECTRONIC MAIL (E-MAIL)

The e-mail system, installed to facilitate effective communication between licensed users, is to be used primarily for Board business. While each user has an individual mailbox and password, the system in its entirety belongs to the Board.

A. Security and Confidentiality

Management's Right to Access Information Users do not have any expectation of privacy using the e-mail system. The Board, through its Administration and System Administrator, reserves the right to review contents of an individual's e-mail communications at any time, for any reason, without prior notification. Users shall also be aware that e-mail messages may be considered public record and are therefore subject to the Board's record retention schedule and possible disclosure to the general public. Users shall not assume that e-mail messages are confidential. Users shall also note that "deletion" of an e-mail message does not necessarily ensure that the message is not later retrievable.

Notice of Confidentiality All e-mail messages containing PHI shall include a notice that the contents of the e-mail is protected and not to be disclosed.

B. Use

Passwords All passwords for any accounts are directly controlled by the IS Department. Users may not intentionally intercept, eavesdrop, record, read, alter, or receive another person's e-mail messages without proper authorization. Other than the System Administrator or specific individuals designated by the Board, an individual shall not use the password of another individual.

Encryption No encryption programs or document level passwords may be used without the express authorization of the Board. If encryption is used, then the method to decipher the encryption shall be recorded and stored and must be made available to the System Administrator prior to use.

Content E-mail shall be written in a businesslike manner that, if disclosed, shall not be embarrassing to the Board, individual, or the receiver. E-mail shall not be used to send insulting, disruptive, or offensive messages to other persons or messages which tend to be harmful to morale. Forbidden e-mail messages include, but are not limited to, profane or vulgar language; discriminatory, insulting, or defamatory remarks; sexually-explicit messages, cartoons, or jokes; solicitation of funds, commercial interests, personal or religious causes, or political campaign materials; any message that encourages violation of the Board's policies, procedures, rules and/or regulations.

Frequency Staff, including contractors, are required to check their e-mail box not less than once every day that they are working on the premises.

C. Deletion of E-mail

Public Records E-mail messages may be considered a public record and subject to public record regulations with respect to inspection and disclosure, and scheduled retention and disposition. Prior to deletion of e-mail messages that may be considered a public document, employees or contractors shall consult with their supervisor, the System Administrator, or designated records retention specialist. Public Record Exception: If e-mail message(s) and any attached document(s) would be confidential by operation of law if in a paper format, then such e-mail message(s) and attached document(s), although public records, are confidential and not subject to public disclosure.

VII. INTERNET ACCESS AND USE OF ONLINE SERVICES 1. Access to the Internet is provided for official Board business. Occasional and incidental personal use may be permitted, subject to the limitations of this policy, and subject to the operational needs of the Board.

2. Users are expected to communicate in a professional manner. Restraint shall be exercised regarding the amount of time spent accessing the Internet.

3. No software, application, plug-in, applet, or executable program (evaluation, revision, update, or otherwise) shall be downloaded from the Internet unless the user receives prior approval from the System Administrator. The Board must adhere to any license and copyright laws associated with downloaded software and data, and ensure that the Board's network is not contaminated with computer viruses.

4. The following is a list of prohibitions but is not exhaustive: Any Internet access for purposes related to partisan political activity is prohibited; accessing or downloading materials which are considered pornographic is prohibited; fund raising, operating a business for personal gain, sending chain letters, gaming and gossip are also prohibited activities.



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- Sending messages likely to result in the loss of recipients' work or systems, or other types of use that could cause congestion of the network or otherwise interfere with the work of others is prohibited.
- The use of the Internet or e-mail to harass employees, vendors, customers and others is prohibited. This includes any insensitive, derogatory, offensive or insulting messages.
- Harassing messages, derogatory comments or other forms of discrimination based upon color, sex, religion, creed or disabilities is against the law and users shall not engage in discriminatory behavior while accessing the Internet.
- The use of aliases while using the Internet is prohibited. Anonymous messages are not to be sent. Also, the impersonation of others, and/or misrepresentation of an employee's job title, job description or position with the Board is prohibited.
- The release of untrue, distorted or confidential information, as defined by Ohio's Sunshine Laws, regarding Board business is prohibited.

5. Management's Right to Access Information: The Board, through its Administration and System Administrator reserves the right to review contents of user's Internet browsing at any time, for any reason, without prior notification. Users shall note that Internet browsing leaves a distinct path on the hard drive. Furthermore, deletion of these paths does not necessarily ensure that the paths shall not be retrievable later. Therefore, individuals shall not assume that Internet browsing is private or confidential. Users are prohibited from changing configurations, modifying or altering the Internet browser tracking system.

This policy is established to ensure that the Board of Developmental Disabilities is in compliance with HIPAA Security Policies. Specifically, safeguarding Protected Health Information (PHI) electronically, on paper and orally. As Board of Developmental Disabilities utilizes the County Data Processing Department for all of its computer support, server location, technology and other support, the County Data Processing Department is cited throughout this policy. Agency procedures will often refer directly to the County Data Processing Department procedures and schedules.

A. INFORMATION SECURITY OFFICER AND SECURITY MANAGEMENT

The Board of Developmental Disabilities will appoint an Information Security Office. The Information Security Office will orchestrate the board's risk management process.

B. DATA BACKUP

The Information Security Office will insure that a robust data back regimen is in place and operational at all times. The Information Security Officer shall work with the Warren County Data Processing advisor to insure that the backup regimen is consistently maintained.

C. DISASTER RECOVERY PLAN AND EMERGENCY MODE OPERATION

Warren County Data Processing Department has develop contingency plans to prepare for system failures, and for procedures for maintaining critical board operation in the event of the system failure. WCBDD will work with Warren County Data Processing Department and follow their procedures.

D. FACILITY SECURITY AND ACCESS CONTROL

All WCBDD employees shall be aware of facility security and access policies to insure only authorized personnel are granted physical access to the facility and its equipment.

E. ANNUAL SECURITY EVALUATION

Annually the Information Security Officer shall request the Warren County Data Processing Department to assist in conduction a technical evaluation of the Board's security policies and procedures, including a revised risk assessment, and update policies as necessary in response to environmental or operational changes affecting the security of electronic protected health information, (PHI).

F. AUDIT CONTROL AND ACTIVITY REVIEW POLICY

System capabilities for maintaining audit trails of system use shall be enabled to permit forensic analysis and periodic activity reviews. Periodic activity reviews should be conducted to identify inappropriate activity so that appropriate corrective action is possible.

G. MALICIOUS SOFTWARE PROTECTION



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All agency computer system will be protected by virus and malicious software protection capabilities. This software will be provided by Warren County Data Processing Department.

H. SECURITY AWARENESS PROGRAM

The Board will conduct an ongoing security awareness program to train and refresh staff on the Board's security policies. Priority topics shall include recognizing and avoiding malicious software, avoiding "social engineering" ploys, using passwords effectively, and adhering to workstation use policies.

I. DEVICE AND MEDIA DISPOSAL AND RE-USE

Electronic storage media and devices shall be cleaned of protected health information and other confidential information prior to disposal and/or re-use. This will be done by the Warren County Data Processing Department.

J. TECHNICAL SAFEGUARDS

Technical Safeguards will be employed as necessary to maintain the integrity of data, and to insure the security of data during transmission. These safeguards will be provided by Warren County Data Processing Department

K. EMPLOYEE SYSTEM ACCESS AND TERMINATION PROCEDURES

System access will be granted to employees in a manner consistent with the HIPAA Privacy laws and other state regulations, including specific policies for access control, granting access to new staff and staff with assignment changes, handling staff termination, password selection, maintenance and use, and access to the system in the event of an emergency.

L. BUSINESS ASSOCIATE CONTRACTS

WCBDD will obtain satisfactory assurance that Business Associates will appropriately safeguard PHI by maintaining appropriate HIPAA Business Associate agreements.

M. PASSWORD, WORKSTATION/SERVER USE AND SECURITY

Each staff member is responsible for understanding and following the policies regarding workstation use and security.

N. PORTABLE COMPUTING DEVICES

Data on laptops should be encrypted and various security measures should be employed. Employee owned portable-computing devices will not contain any PHI of enrolled individuals.

O. SECURITY INCIDENT RESPONSE AND REPORTING

The Warren County Data Processing Department, in conjunction with the Board of Developmental Disabilities will monitor all electronic information systems for breaches of security, mitigate harmful effects of security incidents to the extent practicable, and document any such security incidents and their outcome.

P. REPORTING OF PRIVACY/SECURITY VIOLATIONS, SANCTIONS FOR STAFF VIOLATIONS OF PRIVACY/SECURITY PRACTICES, AND MITIGATION

Confidentiality of individual information is taken very seriously at the county board. Employees are prohibited from improperly using or disclosing confidential consumer information as detailed in various board policies. Such improper uses include but are not limited to curiosity, malicious purpose, or financial gain. In addition, employees are expected to comply with all policies involving HIPAA mandated computer security. Employees who violate these policies will be subjected to disciplinary actions as prescribed in policy.

Q. ASSISTIVE TECHNOLOGY

The Warren County Board of DD will assist all staff members and enrolled individuals in obtaining any assistive technology/devices necessary to successfully complete their job responsibilities/duties.

VIII. FAXING

1. Fax machines shall be located in areas where public access is limited, and where the public cannot easily see fax contents.
2. A cover page with a notice that the content of the fax is protected and not to be disclosed shall accompany all fax documents containing PHI. The cover page shall also contain instructions for an errant recipient requesting that the fax be shred and The Board of Developmental Disabilities be notified immediately of the error.
3. Confidential information shall never be left unattended on a fax machine.

VIOLATION OF POLICY

Any suspected violations of this policy shall be reported immediately to Administration and the System Administrator.



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Violations of the policy may result in disciplinary action up to and including termination, and/or appropriate legal action according to the Board's disciplinary policy.

DISSEMINATION AND TRAINING

Every user shall receive appropriate training on the INFORMATION SERVICES COMPUTER USAGE policy annually. Each user, upon receipt of the policy and training, shall be required to sign a Statement of Understanding.

PRINTING AND COPYING PHI

1. PHI in hardcopy format must be disposed of in accordance with Records Retention Policy.
2. Printed versions of PHI should not be copied indiscriminately or left unattended and open to compromise.
3. Printers, copiers and/or fax machines used for printing of PHI should be in a secure, non-public location. If the equipment is in a public location, the information being printed or copied is required to be strictly monitored.
4. PHI printed to a shared printer should be promptly removed.
5. Media and hardcopy containing PHI must have access controls during transportation and disposal

STORAGE OF PROTECTED HEALTH INFORMATION

1. Outside of regular working hours, WCBDD personnel must clean desks and working areas such that all PHI is properly secured, unless the immediate area can be secured from unauthorized access.
2. When PHI is being released through teleconference or video feed, WCBDD personnel must treat the protection of PHI in the same manner as PHI recorded on paper, thereby securing access to the teleconference or video to authorized personnel only.
3. When not in use, PHI must always be protected from unauthorized access. When left in an unattended room, such information must be appropriately secured.
4. If PHI is to be stored on the hard disk drive or other internal components of a personal computer or PDA (Personal Digital Assistant), it must be protected by either a password or encryption. Unless encrypted, when not in use, this media must be secured from unauthorized access.
5. If PHI is stored on diskettes, CD-ROM or other removable data storage media, it cannot be commingled with other electronic information.

ORAL COMMUNICATIONS

Discussions concerning individuals/staff members should be done in a private area and discussions must be limited to "need to know" information for purposes of providing the best services. The general policy is that staff and business associates may use and disclose Protected Health Information only for treatment, payment, and health care operations. Incidental or overheard conversations are not to be shared or repeated.

10: INDIVIDUAL COMPLAINTS AND GRIEVANCES

10.1 SOURCES

45 CFR 164.530(d) HIPAA complaint procedures

ORC § 5123.64(A) requires establishment of a complaint procedure

OAC § 5123:2-1-12 administrative resolution of complaints involving the programs, services, policies, or administrative practices of a county board or the entities acting under contract with a county board

10.2 PRE-EMPTION ANALYSIS

Follow current procedures. Individuals must be permitted to file complaint with the Secretary of HHS or the Ohio Attorney General as well as local complaints.



10.3 POLICY ON INDIVIDUAL COMPLAINTS AND GRIEVANCES

The Warren County Board of Developmental Disabilities shall permit individuals to make complaints about the Warren County Board of Developmental Disabilities' HIPAA policies and procedures and/or the Warren County Board of Developmental Disabilities' compliance with those policies and procedures. The Warren County Board of Developmental Disabilities shall document all such complaints.

10.4 PROCEDURES ON INDIVIDUAL COMPLAINTS AND GRIEVANCES

- a. The Warren County Board of Developmental Disabilities shall follow the Administrative Resolution of Complaints/Due Process policy to permit individuals to make complaints about the Warren County Board of Developmental Disabilities' policies and procedures of use or disclosure of PHI and/or the Warren County Board of Developmental Disabilities' compliance with those policies and procedures.
- b. 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.
- c. The Warren County Board of Developmental Disabilities 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 and/or the Ohio Attorney General. Upon request, the Privacy Officer shall assist the individual in filing a complaint with the Secretary of HHS and/or the Ohio Attorney General.
- d. The Warren County Board of Developmental Disabilities shall document all complaints received and the disposition of each complaint, if any. Documentation shall be maintained in accordance with Section 13: Document Management.

Module 11: SANCTIONS

11.1 SOURCES

42 USC 1320d-5 HIPAA penalties for failure to comply

45 CFR 164.530(e)

45 CFR 164.502(j)(1) Disclosures by Whistleblowers

45 CFR 164.502(j)(2) Disclosures by Workforce Members who are Victims of a Crime

No equivalent Ohio requirements on sanctions for breach of privacy requirements. Ohio common law imposes liability for breach of confidentiality. See *e.g. Biddle v. Warren Gen. Hosp.* 86 Ohio St.3d 395, 715 N.E.2d 518 (1999).

ORC § 4113.52 Right of employee to report violations of law in workplace

11.2 POLICY ON SANCTIONS

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

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



11.3 PROCEDURES ON SANCTIONS

11.3.1 Sanctions

All division directors/supervisors are responsible for enforcing this policy. Individuals who violate this policy will be subject to the appropriate and applicable disciplinary process, up to and including termination or dismissal.

11.3.2 Exception for whistleblowers

The Warren County Board of Developmental Disabilities shall not impose sanctions against workforce member or business associate who believes in good faith that the Warren County Board of Developmental Disabilities has engaged in conduct that is

unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities; 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.

11.3.3 Exception for victims of crime

The Warren County Board of Developmental Disabilities 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.

11.3.4 Other Exception

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

11.3.5 Documentation

The Warren County Board of Developmental Disabilities shall document the sanctions which have been applied, if any. Documentation shall be maintained in accordance with Module 13: Document Management.



Module 12: BUSINESS ASSOCIATES

12.1 SOURCES

45 CFR § 160.103 – HIPAA definition of business associate

42 USC § 17934(a) Requirement that BA conform to all privacy standards applicable to the DD Board

45 CFR § 164.502(e) – HIPAA requirements on disclosure to business associates

45 CFR § 164.504(e) – HIPAA requirements for contracts with business associates

45 CFR § 164.532 – HIPAA Transition requirements for business associates

45 CFR § 164.410 Duty of BA to give notice of breach

ORC § 5126.044 – Ohio Statute on confidentiality of records

12.2 PRE-EMPTION ANALYSIS

12.2.1 Business Associate Agreements

HIPAA requires a business associate agreement with any person or entity that is not a member of the Warren County Board of Developmental Disabilities' workforce and is receiving or creating PHI on behalf of the Warren County Board of Developmental Disabilities in order to perform TPO activities or tasks on behalf of the Warren County Board of Developmental Disabilities. Similar agreements are required for subcontractors of the BA. The BA Agreement must meet the requirements of 45 CFR 164.504(e). Under HIPAA, if a BA Agreement is in place, the BA or subcontractor of the BA, may receive and use PHI from the Warren County Board of Developmental Disabilities without consent or an authorization.

Ohio law requires a contract between a Warren County Board of Developmental Disabilities and its consultants, contract employees and any other persons or entities hired to perform activities or tasks on behalf of the Warren County Board of Developmental Disabilities. Under Ohio law, having a contract, even one which meets the HIPAA BA requirements, does not alter the requirements for a release prior to disclosure of PHI.

Both HIPAA requirements and Ohio law must be followed – HIPAA requires business associate agreements and Ohio law requires contracts and under some circumstances, authorizations as well for disclosure to BAs. The need for authorization or releases is discussed in section 12.2.2.

BAs and subcontractors are subject to the same sanctions as Warren County Board of Developmental Disabilities for violations of HIPAA requirements.

12.2.2 Disclosure of PHI to the Business Associate

Under HIPAA if a business associate agreement is in effect, no authorization is required from the individual.

Ohio law requires authorizations from individuals prior to the release of any PHI to any person or entity that is not an employee of the Warren County Board of Developmental Disabilities. Ohio law does not clearly state whether the definition of Warren County Board of Developmental Disabilities employee includes consultants and other such individuals performing tasks and activities on behalf of a Warren County Board of Developmental Disabilities.



12.2.3 Creation of PHI by the Business Associate

HIPAA permits a business associate to create PHI on behalf of the Warren County Board of Developmental Disabilities. Ohio law addresses disclosure of confidential information, but not use or creation of PHI. HIPAA rules should therefore be followed.

12.3 IDENTIFYING WHO IS A BUSINESS ASSOCIATE

A "business associate" (BA) is a person or entity that performs certain functions, activities or provides services that involve the use or disclosure of PHI on behalf of a Warren County Board of Developmental Disabilities. The term is explained in 45 CFR 160.103.

A member of the Warren County Board of Developmental Disabilities' workforce is not a BA.

A covered provider, health plan, or health care clearinghouse can be a BA of a Warren County Board of Developmental Disabilities, but only when carrying out activities on behalf of the Warren County Board of Developmental Disabilities which involve use or disclosure of PHI.

BA requirements apply equally to subcontractors of BAs when the subcontractors are assisting the BA in carrying out BA functions.

Business associate functions and activities include, but are not limited to: claims processing, billing or administration; data analysis, processing or administration; utilization review; quality assurance; and SSA activities or MUI investigations if not done by Warren County Board of Developmental Disabilities workforce.

Business associate services include but are not limited to: legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; and financial.

A BA is an agent of the Warren County Board of Developmental Disabilities when the Warren County Board of Developmental Disabilities has the right to control the conduct of the BA in the course of the BA's functions on behalf of the Warren County Board of Developmental Disabilities.

Most COG functions carried out on behalf of Warren County Board of Developmental Disabilities are BA activities.

Examples of Business Associate Relationships.

A CPA firm whose accounting services to the Warren County Board of Developmental Disabilities involve access to protected health information.

An attorney whose legal services to the Warren County Board of Developmental Disabilities involve access to protected health information.

A consultant that performs utilization reviews for the Warren County Board of Developmental Disabilities.

A health care clearinghouse that translates a claim from a non-standard format into a standard transaction on behalf of the Warren County Board of Developmental Disabilities and forwards the processed transaction to a payer.

An entity under contract with the Warren County Board of Developmental Disabilities to carry out MUI investigations.



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A COG which manages IO waiver contracts for member Warren County Board of Developmental Disabilities.

An accreditation organization (such as CARF or JCAHO) for a program of the Warren County Board of Developmental Disabilities if the accreditation organization reviews PHI as part of the accreditation process.

Examples of relationships which are not Business Associates

A contract between the Warren County Board of Developmental Disabilities and a Provider of services which bills Medicaid under its own Provider number, such as a provider of psychological, speech, OT or PT services.

A contract between the Warren County Board of Developmental Disabilities and any Provider with a contract subject to ORC § 5126.034, such as a Provider of waiver or supported living services which bills Medicaid under its own Provider number.

Transactions between the Warren County Board of Developmental Disabilities and the DODD for payment purposes.

Transfer of information to the DODD's Individual Data System (IDS) from the Warren County Board of Developmental Disabilities.⁶

Accreditation activities by DODD under ORC §5126.081. Accreditation by DODD is a health oversight activity; DODD can access PHI without consent or authorization of the individual.

⁶ Note that, while this transaction does not require a BA Agreement, under ORC § 5126.044 a release is necessary for disclosure of PHI for payment purposes.

12.4 POLICY ON BUSINESS ASSOCIATES

12.4.1 General

The Warren County Board of Developmental Disabilities shall not disclose PHI to any person or entity under contract with the Warren County Board of Developmental Disabilities or subcontractor of a BA, 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. Individuals should generally provide proper authorization prior to disclosure to a BA or subcontractor.

12.4.2 Review of existing contracts

The Warren County Board of Developmental Disabilities 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.

12.4.3 Conformity to applicable requirements

The Warren County Board of Developmental Disabilities shall conform to all requirements applicable to BA relationships.

a. If the Warren County Board of Developmental Disabilities has a BA relationship with a COG or other governmental entity, the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities, the requirements of HIPAA may be met by an addendum to the contract which includes the elements set forth in section 12.5.4 below.



12.4.4 Annual Review

The Warren County Board of Developmental Disabilities 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.

12.4.5 Violations

If the Warren County Board of Developmental Disabilities knows of a pattern or practice of the BA that amounts to a material violation of the agreement, the Warren County Board of Developmental Disabilities 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.

12.5 PROCEDURE ON BUSINESS ASSOCIATES

12.5.1 Review of existing contracts

- a. The Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities shall determine whether the existing contract with the person or entity meets the requirements for a BA Agreement set forth in these procedures.
- c. The Warren County Board of Developmental Disabilities shall require BAs to demonstrate that any contracts between the BA and subcontractor meet requirements of HIPAA rules if the contract involves PHI and BA functions.

12.5.2 Establishing BA Agreements

- a. The Warren County Board of Developmental Disabilities shall ensure that all contracts with BAs and contracts between BAs and subcontractors involving PHI, meet requirements set forth in these procedures.
- b. All new contracts with BAs or subcontractors 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 COG or another 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 Warren County Board of Developmental Disabilities.

12.5.3 Annual Reviews

- a. Each contract between the Warren County Board of Developmental Disabilities 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 Warren County Board of Developmental Disabilities 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.

12.5.4 Required Elements for BA Agreements



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Each BA Agreement, including BA agreements between a BA and subcontractor which involves PHI, shall include at least the following elements as applicable. The BA agreement or MOU should specify the degree to which the Warren County Board of Developmental Disabilities has control over the implementation of the BA functions:

- 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 Warren County Board of Developmental Disabilities relating the Warren County Board of Developmental Disabilities' health care operations in accordance with applicable requirements.
- b. Provide that the BA shall:
 - i. Conform to all HIPAA requirements which apply to the Warren County Board of Developmental Disabilities.
 - ii. Not use or disclose the PHI except as authorized under the agreement or required by applicable requirements.
 - iii. Use appropriate safeguards to prevent unauthorized use or disclosure.
 - iv. Report unauthorized uses, disclosures or other breaches of which the BA is aware to the Warren County Board of Developmental Disabilities without unreasonable delay but not later than 30 days after discovery of the breach.
 - v. Pass on the same obligations relating to protection of PHI created, used or disclosed on behalf of the Warren County Board of Developmental Disabilities to any subcontractors or agents of the BA.
 - vi. Make PHI available for access by the individual or his/her personal representative, in accordance with applicable requirements.
 - vii. Make PHI available for amendment, and incorporate any approved amendments to PHI, in accordance with applicable requirements.
 - viii. Make information available for the provision of an accounting of uses and disclosures in accordance with applicable requirements.
 - ix. Make its internal practices, books and records relating to PHI created, used or disclosed on behalf of the Warren County Board of Developmental Disabilities available to the Office of the U.S. Secretary of Health and Human Services for purposes of determining the Warren County Board of Developmental Disabilities' compliance with HIPAA regulations.
 - x. If feasible, return or destroy all PHI created, used or disclosed on behalf of the Warren County Board of Developmental Disabilities 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.
 - xi. Authorize termination of the agreement by the entity upon a material breach by the BA.

12.5.5 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 Warren County Board of Developmental Disabilities, 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 12.5.5a, if the disclosure is required by law; or



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- 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.

12.5.6 Elements for MOUs

- a. Any agreement between the Warren County Board of Developmental Disabilities and another governmental entity which meets the requirements of a BA relationship shall be subject to an MOU.
- b. The MOU shall include all the contract elements set forth in the 12.5.4 and may include elements in section 12.5.5, 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.

12.5.7 Violations

If the Warren County Board of Developmental Disabilities knows of a pattern or practice of the BA that amounts to a material violation of the agreement, the Warren County Board of Developmental Disabilities 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.

13: DOCUMENT MANAGEMENT

13.1 SOURCES

45 CFR § 164.530(J)

ORC § 5126.044 (General records of DD Board) OAC § 5123:2-7-12(L) (ICFs/IID)

OAC § 5101:3-40-01 (ISPs for IO Waiver)

OAC § 5123:2-9-04, 2-9-06, and 2-3-13 (Waiver records) OAC § 5123:2-3-19 (HCBS waivers for licensed providers)

13.2 PRE-EMPTION ANALYSIS

State law requires notice prior destruction of an individual's records which contain PHI. There is no comparable requirement in HIPAA.

13.3 POLICY ON DOCUMENT RETENTION

13.3.1 Policies, procedures and other documentation required by HIPAA

The Warren County Board of Developmental Disabilities shall maintain written or electronic copies of all policies and procedures, communications, actions, activities or designations as are required to be documented under Warren County Board of Developmental Disabilities 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.

13.3.2 Records with PHI and financial records



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- a. The Warren County Board of Developmental Disabilities shall retain all Medicaid-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 Warren County Board of Developmental Disabilities shall retain all records and forms, including, but not limited to ISPs, 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 Warren County Board of Developmental Disabilities shall retain financial, statistical; and medical records supporting the cost reports or claims for services rendered to residents of ICFs/MR for the greater of seven years after the cost report is filed; if ODHS issues an audit report in accordance with rule 5101:2-7-12(L)1 of the Administrative Code, or six years after all appeal rights relating to the audit report are exhausted.
- d. The Warren County Board of Developmental Disabilities shall maintain the records necessary and in such form to disclose fully the extent of HCBS waiver 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.

13.4 POLICY ON DOCUMENT DESTRUCTION

The Warren County Board of Developmental Disabilities 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.