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<b>Title:</b>	<b>DPH Privacy and Security Manual</b>
<b>Chapter:</b>	<b>III. Use and Disclosure Policies, Use and Disclosure of Individually Identifiable Health Information</b>
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## **Purpose**

The purpose of the Division of Public Health (DPH) use and disclosure policy is to set forth the requirements under the Health Insurance Portability and Accountability Act (HIPAA) for privacy protections of individually identifiable health information (IIHI) by recognizing circumstances when it is permissible to use IIHI within the Division and when it is permissible to disclose IIHI outside the Division, including certain limitations and protections that must be applied to all health information. This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#), that establishes the NC Department of Health and Human Services (DHHS) Use and Disclosure requirements.

### ***Policy Scope:***

- ***HIPAA covered health care components***
- ***Internal Business Associates***

## **Background**

The final Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule controls the use and disclosure of IIHI. Generally, covered health care components may not use or disclose IIHI except in ways identified in the Privacy Rule or when required or allowed by other federal or state laws. All other uses are prohibited and barriers must be established to prevent any use and disclosure other than those permitted. ‘Use’ and ‘disclosure’ are significant terms that distinguish sharing of information within an organization (use) from releasing information outside the organization (disclosure).

## Policy

### Basic Principle

Covered components within DPH may not use or disclose IIIHI except either:

- As this policy permits or requires or
- As the individual who is the subject of the information authorizes in writing (see DPH Privacy Policy [Use and Disclosure Policies, Authorizations](#)).

This policy applies to covered health care components and internal business associates within the Division, as described later in the Implementation section of this policy.

It should be understood that throughout this policy whenever a ‘client’ is addressed, the client’s ‘personal representative’ (including a guardian) shall be treated the same as the client, when the client is unable to act for him/herself (see DPH Privacy Policy [Client Rights Policies, Personal Representatives](#)).

### Public Health Uses and Disclosures

Health care organizations have a legal and ethical duty to protect the privacy of confidential health information maintained regarding their clients. Patient information that the Division accesses or maintains must be protected from unauthorized use and disclosure. Public health statutes provide for this protection. For example, NC General Statute 130A-12 states that “All records containing privileged patient medical information that are in the possession of the Department or local health departments shall be confidential and shall not be public records pursuant to General Statutes 132-1.” However, “Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations,” as defined by the HIPAA Privacy Rule. These disclosures are allowed unless other laws are more stringent, for example the consent requirements imposed by the Family Education Rights and Privacy Act (FERPA), which requires written permission to disclose any client information.

In addition, North Carolina Communicable Disease statute, NC General Statutes 130A-143 states “All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article (communicable disease) shall be strictly confidential...” with only specific exceptions. Other state statutes guarantee patient confidentiality for specific program information, such as medical information associated with birth certificates, birth defects monitoring, the central cancer registry, data within the State Center for Health Statistics, and client information in Children’s Developmental Evaluation Center (CDSA) records.

There are situations however, when organizations are required to use and/or disclose IIHI, such as whenever state or federal law requires the use or disclosure of health information to specific entities, for specific purposes.

Public health reporting in North Carolina is required by law stated explicitly in NC statute. Client authorization is not necessary for such use and disclosures. Note that public health reporting that is not explicitly required by NC statute is still permitted without client authorization under HIPAA for public health activities.

The North Carolina Attorney General's Office has issued an Advisory Opinion regarding the applicability of HIPAA on the Division and on the use and disclosure of IIHI for public health. A copy of this opinion can be found at the DPH HIPAA web site: <http://www.schs.state.nc.us/hipaa>.

For a summary of the reporting required by law, see "[Disclosures of Protected Health Information \(PHI\) That Are Required by North Carolina Law](#)," Jill Moore, MPH, JD, UNC School of Government, October 2002.

The following guidance documents also provide additional information about the required and permitted uses and disclosures by the Division to fulfill its mandates for protecting the health of North Carolina citizens:

- [CDC HIPAA Public Health Privacy Guidance](#)
- [APHL HIPAA Guide1 for Public Health Labs](#)
- [IOG HIPAA and Public Health](#)

The above material can be found on the DPH HIPAA web site at: <http://www.schs.state.nc.us/hipaa>.

The table at the end of this policy summarizes the DPH programs, their uses and disclosures of IHHI, and the statutory reference. This list is not exhaustive. This policy also includes excerpts from the HIPAA Privacy Regulation related to public health and a letter from the State Health Director to our public health partners summarizing the HIPAA public health exception. It also includes extracts from the HIPAA Privacy Regulation about the applicability of HIPAA to public health reporting and uses and disclosures. This information is available on the DPH HIPAA web site at:

<http://www.schs.state.nc.us/hipaa>.

- [DPH program table](#)
- [DPH Public Health Exemption Memo](#)
- [HIPAA Public Health Citations](#)

Note: While North Carolina law requires the disclosure of certain confidential information or records and while HIPAA permits the disclosure of confidential information for *bona fide* public health activities, there may be federal laws that supersede the state requirements, such as the federal Substance Abuse Regulations. As an example, IHHI contained in Infant Toddler Program patient records is protected by the Family Education Rights and Privacy Act (FERPA) and cannot be released without written consent, with a few limited exceptions.

### **Disclosures Required by HIPAA**

HIPAA requires DPH covered components to disclose IHHI in the following situations:

- To clients specifically when they request access to their health information (although there are exceptions that are identified in this policy), or when they request an accounting of disclosures of their health information (see DPH Privacy Policies Client Rights Policies, Rights of Clients and Use and Disclosure Policies, Accounting of Disclosures) and
- To the Secretary of the United States (US) Department of Health and Human Services (HHS) when undertaking a compliance investigation, review, or enforcement action.

## Uses and Disclosures Permitted by HIPAA

HIPAA permits DPH covered components to use and disclose IIIHI without a client's written authorization for the following purposes or situations:

- To a client (except as required for access and accounting of disclosures)
- Treatment, payment and health care operations  
Notes: the Division has advised it local health department provider partners that a consent to disclose health information for Treatment, Payment, and Health Care Operations is no longer required with the revisions to N.C.G.S. 130A-12, with noted exemptions.

This guidance is found in Memorandum, "New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations," Chris Hoke, Chief, Legal and Regulatory Affairs, NC Division of Public Health, Joy Reed, Head, Technical Assistance, NC Division of Public Health, Jill Moore & Aimee Wall, UNC Institute of Government. and "Frequently Asked Questions About New G.S. 130A-12," Jill Moore & Aimee Wall, UNC School of Government, August 2004.

Other providers, such as community-based organization, should continue to follow guidance for obtaining consent for TPO purposes, as described in the DPH Privacy Policy [Use and Disclosure Policies, Consent for TPO](#)) and under advise from their legal counsel.

- Incidental to an otherwise permitted use and disclosure
- Limited data set [for research, public health, or health care operations (See DPH Privacy Policy [Use and Disclosure Policies, De-Identification of Health Information and Limited Data Sets](#))]
- Facility directories (unless a client opts out of the directory)
- Notification/involvement with family/others
- Disaster relief
- Required by law
- Public Health activities
- Abuse and neglect
- Health oversight activities
- Judicial and administrative proceedings (see DPH Privacy Policy *Administrative Policies, Legal Occurrences*)
- Law enforcement purposes
- To avert serious threat to health/safety
- Specialized government functions
- Workers' Compensation
- Research with Institutional Review Board (IRB) approval (see DPH Privacy Policy *Use and Disclosure Policies, Research*).

DPH covered components must rely on professional ethics and best judgment when deciding which of these permissive uses and disclosures to make.

## Uses and Disclosures Requiring Authorization

An authorization is always required for the following uses and disclosures:

- To anyone, for any reason, that is not for treatment, payment, or health care operations; or otherwise permitted or required by state or federal law/regulation
- If the IIHI to be used or disclosed is psychotherapy notes
- For marketing purposes (see DPH Privacy Policies [Use and Disclosure Policies, Marketing and Fundraising](#)).

## Limiting Uses and Disclosures to the Minimum Necessary

DPH covered components must make reasonable efforts to use, disclose, and request only the minimum amount of IIHI needed to accomplish the intended purpose of the use, disclosure, or request for information, except for the following circumstances:

- Disclosure to or a request by a health care provider for treatment purposes
- Disclosure to a client who is the subject of the information
- Use or disclosure made pursuant to an authorization
- Disclosure to HHS for complaint investigation, compliance review, or enforcement
- Use or disclosure that is required by law
- Use or disclosure required for compliance with other HIPAA rules. (See the DPH Privacy Policy [Use and Disclosure Policies, Minimum Necessary](#).)

## Uses and Disclosures Subject to an Agreed Upon Restriction

Clients may request DPH covered components to restrict all or a portion of their IIHI from specific uses or disclosures. If a DPH covered component agrees to such restrictions, it is required to use and disclose the restricted information only as agreed upon (see DPH Privacy Policy [Client Rights Policies, Rights of Clients](#)).

## Uses and Disclosures of De-Identified Health Information

DPH covered components that have created information that is not individually identifiable do not have to comply with the use and disclosure requirements, provided that:

- Disclosure of a code or other means of de-identification that can be used to re-identify the client, constitutes disclosure of IIHI
- If de-identified health information is re-identified, DPH covered components must use or disclose such re-identified information only in accordance with the use and disclosure requirements in this policy (see DPH Privacy Policy Use and Disclosure Policies, [De-Identification of Health Information and Limited Data Sets](#)).

## Disclosures to Business Associates

DPH covered components may disclose IIHI of clients to a business associate and may allow a business associate to create or receive a client's IIHI on its behalf (see DPH Privacy Policy [Administrative Policies, Business Associates](#)).

## Deceased Individuals

DPH covered components must use and disclose IIHI of a deceased client in the same manner as if the client were still alive.

## Personal Representative

DPH covered components must use and disclose IIHI to a personal representative of a client in the same way as they would to the client, with two exceptions:

- If the client is an un-emancipated minors (under specific circumstances)
- In abuse, neglect, and endangerment situations (see DPH Privacy Policy [Client Rights Policies, Personal Representatives](#)).

## Confidential Communications

DPH covered components must make reasonable efforts to comply with requests from clients to disclose confidential communications by alternative means or methods (see DPH Privacy Policy [Client Rights Policies, Rights of Clients](#)).

## Use and Disclosure Consistent with Notice

DPH covered components must use and disclose IIHI as described in their Notice of Privacy Practices (see DPH Privacy Policy [Client Rights Policies, Notice of Privacy Practices](#)).

## Disclosures by Whistleblowers and Workforce Member Crime Victims

DPH covered components shall not be considered in violation of use and disclosure regulations if a member of its workforce or its business associate discloses IIHI “in good faith” to a health oversight agency or attorney retained by or on behalf of the individual; or if IIHI is disclosed to law enforcement by a workforce member who is a victim of crime, abuse, neglect, or domestic violence (see the DPH Privacy Policy [Administrative Policies, Workforce](#)).

## Food and Drug Administration

DPH covered components may use or disclose individually identifying health information to:

- Collect and report adverse events that are subject to the jurisdiction of the Food and Drug Administration (FDA) as related to the quality, safety, or effectiveness of such FDA-regulated products or activities
- Enable product recalls, repairs, and replacements
- Conduct post-marketing surveillance.

## Communicable Diseases

DPH covered components shall disclose IIHI regarding a client(s) who has been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, according to requirements set forth in Chapter 130A-143 of the NC General Statutes and in the implementing Administrative Rule NCAC 10.41A.

## Employer

DPH covered components may disclose IIHI to an employer about a client who is a member of the employer’s workforce if the employer has requested the covered components conduct an evaluation relating to medical surveillance of the workplace or to evaluate the client for a work-related illness or injury. Information disclosed shall be limited to the work-related illness or injury of the client or to carry out its responsibilities for workplace medical surveillance (see DPH Privacy Policy [Administrative Policies, Workforce](#)).

### **III-3 Implementation**

#### **III-3.1 Applicability to the Division of Public Health**

The following procedures and uses and disclosures identification is in compliance with the HIPAA Privacy Rule and should be considered whenever staff uses IHHI or receives requests to disclose IHHI in their workgroup's possession.

The following DPH workgroups have been designated as Covered Health Care Components and internal Business associates:

- **Covered Health Care Components**
  - State Laboratory of Public Health
  - Children's Developmental Services Agencies (state operated)
  
- **Internal Business Associates**
  - Administrative, Local, and Community Support Section – HSIS Business Liaison
  - Administrative, Local, and Community Support Section – Medicaid Liaison and Reimbursement
  - Administrative, Local, and Community Support Section – Information Technology
  - Women's and Children's Health Section – Children's Special Health Services
  - State Center for Health Statistics

The HSIS Business Liaison has also been identified as a business associate of the local health departments, for whom it performs Medicaid billing services.

The following table shows the use and disclosure requirements for these workgroups:

DPH Workgroup	Designation	Uses and Disclosures
State Laboratory of Public Health	Covered Health Care Component	<p>The State Laboratory maintains laboratory test results and associated administrative information about the tests requested by health care providers. CLIA and NC Administrative Code restrict access to these records except by the “authorized submitters” of specimens, as defined by NC Administrative Code.</p> <p>North Carolina General Statutes require the reporting to DPH program areas and the State Laboratory discloses IIHI according to these requirements.</p>
Children’s Developmental Services Agencies	Covered Health Care Component	<p>HIPAA specifically excludes records governed by FERPA from being designated record sets. The CDSA's are subject to FERPA and are excluded from HIPAA privacy requirements. FERPA and IDEA define the requirements for the use and disclosure of identifying information in education records. Client access rights and the records to which clients have access. These requirements are procedures are defined in the Infant Toddler Program Manual.</p>
HSIS Business Liaison	Internal BA of State Lab and CDSA's and external BA of the local health departments	<p>With the Division of Information Resources Management, provides billing services for the covered health care providers. Payment is a disclosure under both HIPAA Privacy Rule and state statute for which a consent or authorization is not required.</p>
Children’s Special Health Services	Internal BA of Division of Medical Assistance	<p>With the DHHS Office of the Controller provides prior approval (authorization) for Medicaid for mobility devices. Prior approval is a decision about the client.</p> <p>CSHS provides medical review of existing DME provider records and supporting medical information to authorize or disallow medical necessity for mobility devices. A medical authorization documenting the decision is created via Purchase of Medical Care Services system based on review of medical necessity. This authorization is sent to the provider. Uses and disclosures of client’s IIHI are defined in the Memorandum of Understanding between DPH and DMA and in the POMCS procedures.</p>

DPH Workgroup	Designation	Uses and Disclosures
State Center for Health Statistics	Internal BA of Division of Medical Assistance	Performs cost analysis and data aggregation services for DMA. . The workgroup does not maintain unduplicated health information. Uses and disclosures for this activity are defined in the Memorandum of Understanding between DPH and DMA.  All other uses and disclosures of health information to which the SCHS has statutory authority to access is defined in NC General Statutes and implementing Administrative Rule.
Information Technology	Internal BA for DPH covered health care components and internal BAs	Workgroup provides data processing and network support functions and does not maintain client records.

For all other DPH program areas and workgroups, the rights of clients are governed by specific program rules and procedures as defined by federal and state laws and program requirements.

The table at the end of this policy summarizes the DPH programs, their uses and disclosures of IHI, and the statutory reference. This policy also includes excerpts from the HIPAA Privacy Regulation related to public health and a letter from the State Health Director to our public health partners summarizing the HIPAA public health exception. It also includes extracts from the HIPAA Privacy Regulation about the applicability of HIPAA to public health reporting and uses and disclosures. This information is available on the DPH HIPAA web site at: <http://www.schs.state.nc.us/hipaa>.

- [DPH program table](#)
- [DPH Public Health Exemption Memo](#)
- [HIPAA Public Health Citations](#)

## Disclosures Required by HIPAA – Client Authorization Not Required

DPH covered components shall disclose IIHI to the client or to the Secretary of the US Department of Health and Human Services without client authorization, as required in this policy as follows:

### 1. Client

Client rights provided by the HIPAA Privacy Rule require covered entities to disclose IIHI to the client who is the subject of the information, unless an entity has a compelling reason not to do so (See DPH Privacy Policy [Client Rights Policies, Rights of Clients](#)).

### 2. HHS Secretary

The HIPAA Privacy Rule requires covered entities to disclose IIHI to the HHS Secretary, when requested, to determine compliance with the HIPAA Privacy Rule. DPH covered components are required to maintain proper records, and upon request of HHS, to submit compliance reports in such time and manner as determined by the HHS Secretary.

During an investigation or compliance review, DPH covered components must cooperate with HHS and the DHHS and DPH Privacy Officials shall be notified of such investigation or compliance review.

- DPH covered components must permit access by HHS during normal business hours to its facilities, books, records, accounts, and other sources of information, including IIHI, that are pertinent to ascertaining compliance with the requirements or investigation of a complaint.
- If HHS determines that serious circumstances exist, the Division must permit access by HHS at any time and without notice.
- If any information required of the Division is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, DHHS agencies must so certify and set forth what efforts it has made to obtain the information.

Variations in requirements specific to disclosure to the Secretary of US HHS include the following:

- Written authorization from the client is not required for such disclosures.
- Disclosures to HHS are not subject to the minimum necessary requirements.
- Disclosures to HHS are required to be accounted for in the Accounting of Disclosures log.

## Uses and Disclosures Permitted by HIPAA – Client Authorization Not Required

DPH covered components shall use and disclose IIHI without client authorization only as permitted or required in this policy, or as required by other federal or state laws and regulations.

Note: Whenever North Carolina General Statutes and other federal regulations are more stringent than the HIPAA privacy rules, the more stringent requirement prevails.

Although client authorization is not required by law or regulation in the following circumstances, each DPH covered component should follow state and federal statutory requirements and also exercise professional judgment in determining whether to seek client involvement when using or disclosing that client's confidential information.

### Treatment Purposes

#### Use

IIHI may be used (i.e., shared among designated staff) within a covered health care component to carry out treatment activities. DPH covered components may use a client's IIHI for its own treatment purposes, including coordination and management of health care services for clients.

- Use of IIHI by the workforce within a covered components for treatment purposes does not require written consent from the client.
- Use of IIHI by the workforce for treatment purposes is not subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the use of IIHI by the workforce for treatment purposes.
- Use of psychotherapy notes requires a written authorization from the client who is the subject of the notes.

## Disclosure

IIHI may be disclosed (e.g., shared with other health care providers or human service agencies) outside a covered health care component to carry out treatment coordination and management between providers and for referrals to other health care providers for treatment purposes, including coordination and management of health care services for clients.

- Disclosure of IIHI by the workforce in an covered component for treatment purposes does not require written authorization from the client.
- Disclosures of IIHI by the workforce in an covered component to another health care provider for treatment purposes are not subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the disclosures of IIHI for treatment purposes.

Note: Refer to the “Information and additional background about the impact of the revised 130A-12 statute can be found in the following guidance memo, “New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations, “ Chris Hoke, Chief, Legal and Regulatory Affairs, NC Division of Public Health, Joy Reed, Head, Technical Assistance, NC Division of Public Health, Jill Moore & Aimee Wall, UNC Institute of Government, for specific requirements for disclosing HIV/AIDS information for treatment purposes.

## **Payment Purposes**

### Use

IIHI may be used (i.e., shared among designated staff) within a covered health care component for payment purposes such as determining or fulfilling the covered component’s for coverage and provision of benefits under a health plan; or to obtain or provide reimbursement for the provision of health care.

- Use of IIHI by the workforce within a DPH covered component for payment purposes does not require written consent from a client.
- Use of IIHI by the workforce within a DPH covered component for payment purposes is subject to the minimum necessary requirement.
- DPH covered components are not required to provide an accounting of the use of IIHI by the workforce within a DPH covered.

## Disclosure

IIHI may be disclosed (e.g., shared with other payers, health care providers, or business associates) outside a covered health care component to carry out payment functions such as eligibility, billing, claims adjustment, and other collection activities.

- Disclosure of IIHI by the workforce outside the covered component for payment purposes does not require written authorization from the client.
- Disclosure of IIHI by the workforce outside the covered component for payment purposes is subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the disclosure of IIHI by the workforce in the covered component for payment purposes.

Note: Refer to the “Information and additional background about the impact of the revised 130A-12 statute can be found in the following guidance memo, “New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations, “ Chris Hoke, Chief, Legal and Regulatory Affairs, NC Division of Public Health, Joy Reed, Head, Technical Assistance, NC Division of Public Health, Jill Moore & Aimee Wall, UNC Institute of Government, for specific requirements for disclosing HIV/AIDS information for billing purposes.

## **Health Care Operations**

### Use

IIHI may be used (i.e., shared among designated staff) within a covered health care component for health care operation purposes such as conducting quality assessment and improvement activities, business planning and development, business management and administrative activities, student training, and credentialing.

- Use of IIHI by the workforce within a covered component for health care operation purposes does not require written consent from the client.
- Use of IIHI by the workforce for health care operation purposes is subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the use of IIHI by the workforce for health care operation purposes.

## Disclosure

IIHI may be **disclosed** (i.e., shared with entities) outside a covered health care component to carry out health care operation functions such as accreditation, licensure, conducting or arranging for medical review, auditing, or legal services that are necessary to run the organization and to support the core functions of health care treatment and payment.

- Disclosure of IIHI by the workforce in a covered component for health care operation purposes does not require written authorization from the client.
- Disclosure of IIHI by the workforce in a covered component for health care operation purposes is subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the disclosure of IIHI for health care operation purposes.

Note: Refer to the “Information and additional background about the impact of the revised 130A-12 statute can be found in the following guidance memo, “New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations, “ Chris Hoke, Chief, Legal and Regulatory Affairs, NC Division of Public Health, Joy Reed, Head, Technical Assistance, NC Division of Public Health, Jill Moore & Aimee Wall, UNC Institute of Government, for specific requirements for disclosing HIV/AIDS information for health care operations purposes.

### **Uses and Disclosures Permitted by HIPAA – Client Written Authorization Not Required; Opportunity for Client to Agree or Object – Required**

DPH covered components may use or disclose IIHI in certain circumstances, but covered components must allow clients the opportunity to agree, object, or restrict certain uses or disclosures of their IIHI, in advance of the use or disclosure. Such information must be documented in the client’s health record.

- Written authorization from a client is not required for such disclosure.
- Oral agreement or objection by a client is acceptable.
- Disclosures for which a client must have an opportunity to agree or object are subject to the minimum necessary requirements.
- DPH covered components are not required to provide an accounting of the disclosures for which a client must have an opportunity to agree or object.

The following circumstances require DPH covered components to provide clients with the opportunity to agree or object to the use or disclosure of their IIHI:

- Facility directory/emergency situations
- Notification or involvement of family member, other relative, or close personal friend of a client in the client's care or payment related to the client's health care, which has no practical impact with DPH
- Disaster relief purposes.

### **Facility Directory/Lists/Emergency Situations (has no practical impact with DPH)**

HIPAA provides DPH covered components to use the following the following IIHI to maintain a facility directory of clients:

- Client name
- Client location in a facility
- Client condition (in general terms such as good, fair, poor)
- Client's religious affiliation.

The facility directory disclosure has no practical impact at the Division level for covered components, since the Division does not operate facilities. However, the CDSAs will comply with FERPA requirements for facility directories and follow the ITP policies. Local health departments must adhere to their local policies regarding facility directories.

### **Notification/Involvement with Family/Others**

In situations where IIHI of a client is being disclosed to a family member, other relative, or close personal friend of the client and the client is present, the DPH covered component must obtain the client's agreement, provide the client with an opportunity to agree or object to the disclosure, or determine, based on the circumstances and using professional judgment, that the client would not object prior to the disclosure. If the client is not present or is incapacitated and cannot agree or object, staff must use professional judgment to determine what is in the best interest of the client. In such instances, covered components must limit the information being disclosed to that which is directly relevant to the situation.

## Disaster Relief

Use or disclosure of IIHI for disaster relief purposes (e.g., flood, hurricane, terrorism) must be determined based on professional judgment, taking into account the best interest of the client, and the determination that the requirements do not interfere with the ability to respond to the emergency circumstances.

## Uses and Disclosures Permitted by HIPAA – Client Written Authorization Not Required; Opportunity for Client to Agree or Object – Not Required

DPH covered components may use or disclose IIHI without written authorization and without an opportunity for the client to agree, object, or restrict certain uses or disclosures of their IIHI in specific circumstances, as described in the following sections.

### Required by Law

DPH covered components may use and disclose IIHI 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. Legal mandates requiring use or disclosure of individually identifying health information may be based upon federal or state statutes/regulations, board of health rules, court orders, and subpoenas issued by a court or other similar judicial or administrative body.

Examples of uses or disclosures required by law include, but are not limited to, the following:

- The Chief Medical Examiner or a county medical examiner may demand the records of a patient who has died and whose death is under investigation (NCGS 130A-385).
- Local health directors or the State Health Director may demand medical records pertaining to the diagnosis, treatment, or prevention of communicable disease (NCGS 130A-144(b)).
- If a health care provider reports an event that may indicate an illness, condition, or health hazard caused by terrorism to a local health director or the State Health Director, the State Health Director or local health director may demand to see records that pertain to those reports (NCGS 130A-476).
- Physicians must report known or suspected cases or outbreaks of reportable communicable diseases to the local health department (NCGS 130A-135)
- Physicians, local health departments, and DHHS shall, upon request and without consent, release immunization information to schools (public, private, or religious), licensed and registered childcare facilities, Head Start, colleges and universities, health maintenance organizations, and other state and local health departments outside North Carolina [NCGS 130A and 10A NC Administrative Code (AC) 41A].

- Health care providers and administrators of health care facilities must report the following types of wounds/injuries to law enforcement authorities: wounds and injuries caused by firearms; illnesses caused by poisoning; wounds and injuries caused by knives or other sharp instruments if it appears to the treating physician that a criminal act was involved; any other wound, injury, or illness involving grave bodily harm if it appears to the treating physician that criminal violence was involved (NCGS 90-21.20).
- All health care facilities and health care providers must report diagnoses of cancer to the central cancer registry (NCGS 130A-209).
- All hospitals that operate an emergency room on a 24-hour basis are required effective November 1, 2004 to report electronically defined data elements for the state's syndromic surveillance program (NCGS 130A-47, NCGS 131E-214.1(3)).
- State statutes require all live births, fetal deaths, and deaths, including required medical information related to births and medical certification of the cause of death, to be reported to the local registrar in the county where the birth or death occurred. Physicians, hospitals, medical facilities, birthing facilities, funeral directors, medical examiners, and others as specified are required to provide this information (NCGS 130A-90 - 130A-123).
- The following groups that are involved in the review of child deaths may demand any records or information they believe to be relevant to their review: NC Child Fatality Prevention Team, a community child prevention team or local child fatality review team, the NC Child Fatality Task Force. Child Fatality Prevention also encompasses the Fetal and Infant Mortality Review (FIMR) and NC SIDS programs (NCGS 7B Article 14).

Note: Reports made to newspapers or other media regarding birth or death announcements requires authorization.

### Procedural Requirements

Procedural requirements for disclosures required by law include the following:

- Written authorization from the client is not required for such disclosures; however, if authorization is obtained, verbal request and authorization is sufficient.
- Disclosures required by law are subject to the minimum necessary requirements unless the law specifies otherwise.
- DPH covered components are required to provide an accounting of the disclosure required by law.

## Public Health Activities

DPH covered components have developed procedures regarding disclosures for public health activities.

There are specific laws that require information related to public health activities to be disclosed so those laws would fall under the “required by law” provisions noted in the corresponding section above. There are also some laws that permit information related to public health activities to be used or disclosed. DPH covered components may disclose IIIHI related to public health activities to a public health authority when such uses or disclosures are permitted under the law for:

- Prevention and control of disease, injury, and disability
- Communicable disease notification
- Child abuse and neglect reporting
- FDA-regulated product or activity monitoring
- Work-related illness or injury monitoring and workplace medical surveillance.

Public health authorities can include the following organizations and individuals:

- **Federal:** Components and officials of HHS including those within the Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and the FDA. The American Association of Poison Control Centers is acting under a cooperative agreement with the CDC to conduct the toxic exposure surveillance system, thus is functioning as a public health authority.
- **State:** Components and officials of NC DHHS (Division of Public Health), the NC Department of Environment and Natural Resources (DENR), and the NC Department of Agriculture, as well as parallel agencies in other states.
- **Local:** Components and officials of local health departments and boards of health. Other non-traditional public health authorities might include a county sheriff’s office or a private, non-profit organization that is responsible for animal control activities such as rabies control. For child abuse and neglect reporting, the county departments of social services.
- **Other:** An organization performing public health functions under a grant of authority from or contract with a public health agency [45 Code of Federal Regulations (CFR) 164.501] such as universities, community-based organizations, and others, who in these situations are considered public health authorities when performing public health activities.

In addition to public health authorities, DPH covered components may also disclose IIHI to an official of a foreign government agency that is acting in collaboration with a public health authority if the public health authority directs the Division to make such disclosure. For example, if the CDC is collaborating with public health officials in Canada while investigating a disease outbreak, the Division could disclose protected health information to a Canadian government agency if directed to do so by the CDC.

### Prevention and Control of Disease, Injury, and Disability; and Communicable Disease Notification

Examples of uses or disclosures permitted for public health purposes for the “prevention and control of disease, injury, and disability; and communicable disease notification” include, but are not limited to the following:

- Health care providers are permitted to report any event that may indicate an illness, condition, or health hazard caused by terrorism to local health directors or the State Health Director (NCGS 130A-476).
- Medical facilities are permitted to report certain communicable diseases to the local health director (NCGS 130A-137).
- Hospitals and urgent care centers are required to participate in a program for reporting emergency department data to a program established by the State Health Director for public health surveillance purposes (NCGS 130A-476).
- The State Center for Health Statistics is permitted to collect health data for various health-related research purposes on a voluntary basis – they cannot compel mandatory reporting (NCGS 130A-373).

### Child Abuse and Neglect Reporting

Under North Carolina law, any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, or has died as the result of maltreatment must make a report to the department of social services in the county where the child lives or is found (NCGS 7B-301).

### FDA-regulated Product or Activity Monitoring

DPH covered components must disclose IIHI to the FDA when required to do so as related to the quality, safety, or effectiveness of such FDA-regulated products or activities. DPH covered components must ensure staff are aware of such requirements and shall develop a process for ensuring the reporting is handled. Staff must be knowledgeable of such requirement and assured that the disclosure is not in violation of the DPH privacy policies and procedures.

### Work-Related Illness or Injury Monitoring and Workplace Medical Surveillance

DPH covered component physicians, medical facilities, and laboratories are required to report to the Department all cases of specified serious and preventable occupational injuries that occur while working on a farm, as well as specified serious and preventable occupational diseases and illnesses which result from exposure to a health hazard in the workplace. DPH covered components shall ensure procedures are in place to report required injuries, diseases, and illnesses.

DPH covered components shall develop procedures regarding disclosures for “public health activities that may be made to an employer” about an individual who is a member of the employer’s workforce or an individual who is receiving health care at the request of the employer in the following circumstances:

- To conduct an evaluation relating to medical surveillance of the workplace or
- To evaluate whether the individual has a work-related illness or injury.

The IIIHI disclosed must directly relate to the above circumstances. DPH covered components must provide the individual with a written notice that such information is disclosed to an employer, for public health activity purposes.

### Procedural Requirements

Procedural requirements for disclosures for “public health activities” include the following:

- Written authorization from the client is not required.
- Disclosures are subject to the minimum necessary requirements, unless the law specifies otherwise.
- DPH covered components are required to provide an accounting of the disclosures for public health activities.

### **Adult Abuse and/or Neglect Reporting**

Under North Carolina law (Article 6, Chapter 108A), any person having reasonable cause to believe that a disabled adult is in need of protective services must make a report to the director of social services.

In making such disclosure, staff shall promptly inform the client, in the exercise of professional judgment, that such a report has been or will be made, except if a qualified professional believes informing the client would place the client at risk of serious harm; or if it is determined by staff that informing a client’s personal representative would not be in the best interest of the client.

### Procedural Requirements

Procedural requirements for disclosure when reporting “adult abuse and/or neglect” include the following:

- Written authorization from the client is not required.
- IIHI disclosed for such purposes is not subject to the minimum necessary requirements, but professional judgment should be exercised in determining the information that is necessary to meet the purpose.
- DPH covered components are required to provide an accounting of the disclosures for abuse and neglect reporting.

### **Health Oversight Activities**

DPH covered components may disclose IIHI to a health oversight agency for health oversight activities authorized by law, including audits, investigations, inspections, licensure, or disciplinary actions, legal proceedings or actions, or other activities necessary for appropriate oversight of:

- The health care system
- Eligibility programs
- Compliance with program standards
- Compliance with civil rights laws.

Exception: Investigation or other activity in which the client is the subject of the investigation or activity that is not directly related to the client’s health care, claim for benefits or receipt of public services is not considered a health oversight activity.

### Procedural Requirements

Procedural requirements for disclosures related to “health oversight activities” include the following:

- Written authorization from the client is not required.
- Disclosures are not subject to the minimum necessary requirements.
- DPH covered components are required to provide an accounting of the disclosures of healthcare oversight unless the health oversight activity is considered a health care operation. Health care operations may include accreditation, certification, peer review, licensing, or credentialing activities; conducting or arranging for medical reviews (e.g., death reviews); legal services; auditing functions, including fraud and abuse detection and compliance programs; and resolution of internal grievances.

## Judicial and Administrative Proceedings

DPH covered components may disclose IIIHI for judicial or administrative proceedings, as required by NC General Statutes, when the use or disclosure is made in response to:

- Court order
- Administrative tribunal order
- Subpoena
- Discovery request
- Other lawful purpose.

All disclosures made in judicial and administrative proceedings shall be made only after the identity and authority of any person requesting such disclosure has been verified, and the requisite documentation required for the disclosure has been obtained. A subpoena alone is not sufficient reason for disclosing confidential information. Both a subpoena and a court order must be issued to compel disclosure.

Refer to the DPH Privacy Policy *Administrative Policies, Legal Occurrences* for specific requirements when responding to lawful requests for IIIHI.

Note: There may be federal or state laws that are more restrictive than the requirements in this policy, in which case the more restrictive would apply.

**Important:** All requests for client information involved in legal proceedings should be reviewed with the Division's representative in the NC Office of the Attorney General. Do not respond without guidance from the Office of the Attorney General.

The following contains guidance for local health department officials regarding subpoenas: "[Responding to Subpoenas for Health Information: Guidance for Local Health Departments](#)," Jill D. Moore, MPH, JD, October 2002, Institute of Government, UNC-CH.

### Procedural Requirements

Procedural requirements for disclosures for "judicial and administrative proceedings" include the following:

- Written authorization from the client is not required.
- Disclosures are subject to the minimum necessary requirements, unless the law (including court orders) specifies otherwise.
- DPH covered components are required to provide an accounting of the disclosures for legal proceedings.

## Law Enforcement Purposes

DPH covered components have developed procedures that ensure staff is knowledgeable about disclosures that may be made for law enforcement purposes. Covered components may disclose IIHI without client authorization for the following law enforcement purposes as applicable:

- A law which requires disclosure such as reporting of wounds;
- Court order, court-ordered warrant, subpoena, or summons;
- Grand Jury subpoena;
- Administrative request including subpoena, summons, or civil or authorized demand; or
- Similar process authorized by law.

A subpoena alone is not sufficient reason for disclosing confidential information. Both a subpoena and a court order must be issued to compel disclosure.

Covered components also disclose limited information for identification and location purposes when requested by a law enforcement official for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. Only the following information may be disclosed:

- Name and address
- Date and place of birth
- Social Security Number
- ABO blood type and Rh factor
- Type of injury
- Date and time of treatment
- Date and time of death, if applicable
- A description of physical characteristics.

Note: There may be federal or state laws that are more restrictive than the requirements in this policy in which case the more restrictive would apply.

## Procedural Requirements

Procedural requirements for disclosures for “law enforcement purposes” detailed in this section include the following:

- Written authorization from the client is not required.
- Exception: IIHI related to DNA; dental records; or typing, samples, or analysis of body fluids or tissue may not be disclosed without client authorization.
- Disclosures are subject to the minimum necessary requirements, unless the law (including court orders) specifies otherwise.
- DPH covered components are required to provide an accounting of the disclosures to law enforcement.

### A. Victims of a Crime

DPH covered components may disclose IIHI in response to a law enforcement official's request for such information about a client who is, or is suspected to be, a victim of a crime if:

- The client agrees to the disclosure
- The covered component is unable to obtain the client's agreement because of incapacity or other emergency circumstances, provided that:
  - a. A violation has occurred
  - b. Enforcement activity would be adversely affected if delayed
  - c. Disclosure is in the best interest of the client.

### B. Crime on Premises

DPH covered components may disclose IIHI to a law enforcement official when staff believes a crime (or threat of crime) has been committed on the premises or against staff. However, information disclosed must be limited to the circumstances and client status, including last known name and address.

### C. Reporting Crime in Emergencies

If staff in a DPH covered component provides emergency health care in response to a medical emergency off site, staff may disclose IIHI to law enforcement officials if such disclosure appears necessary to alert law enforcement to:

- The commission and nature of a crime
- The location and the victim of such crime
- The identity, description, and perpetrator of such crime.

If the covered component believes that the medical emergency off site is the result of abuse or neglect of the individual in need of emergency health care, staff must first use professional judgment to determine if disclosure of IIHI is in the best interest of the individual.

## Avert Serious Threat to Health or Safety

DPH covered components may use and disclose IHI to avert a serious threat to health and safety whenever such use or disclosure is consistent with laws and ethical standards and professional staff believes it is necessary to:

- Prevent or lessen a serious and imminent threat to the health or safety of a person or to the public, and the disclosure is to a person or entity that may reasonably be able to prevent or lessen the threat
- Assist law enforcement to identify or apprehend an individual:
  - Where it appears from all the circumstances that the client has escaped from a correctional institution or from lawful custody
  - Because of a statement by a client admitting participation in a violent crime that staff reasonably believes may have caused serious physical harm to the victim.

Note: Disclosure is NOT permitted if the covered component learned such information when treating, counseling, or providing therapy for such criminal conduct; or if the client requested to be referred for treatment, counseling, or therapy for such criminal conduct.

Information disclosed shall be limited to the client's statement and the following identifying information:

- Name and address
- Date and place of birth
- Social Security number
- ABO blood type and Rh factor
- Type of injury (if applicable)
- Date and time of treatment
- Date and time of death (if applicable)
- A description of distinguishing physical characteristics.

Any DPH covered components that uses or discloses such confidential information as described above shall be presumed to have acted in good faith and the belief is based upon the professional staff's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

DPH covered components are required to provide an accounting of the disclosures for made for above purposes.

## Specialized Government Functions

Unless otherwise prohibited by state or federal law, DPH covered components may use or disclose IIHI for specialized government functions, as long as the identity of the individual representing such function is verified. Functions include:

- The Red Cross, Armed Forces personnel, or other authorized agents of the Armed Forces, if deemed necessary by appropriate military command;
- Authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities;
- Authorized federal officials for the provision of protecting the US President or foreign heads of state;
- Authorized federal officials for national security, which may include any of the agencies listed below.
  - The Office of the Director of the Central Intelligence Agency (CIA)
  - The Office of the Deputy Director of the CIA
  - The National Intelligence Council (and other such offices as the Director may designate)
  - The CIA
  - The National Security Agency
  - The Defense Intelligence Agency
  - The National Imagery and Mapping Agency
  - The National Reconnaissance Office
  - Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs
  - The intelligence elements of the Army, Navy, Air Force, Marine Corps, Federal Bureau of Investigation, Department of the Treasury, and Department of Energy
  - The Bureau of Intelligence and Research of the Department of State
  - Other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community
- The Department of State to make medical suitability determinations regarding required security clearance, mandatory service abroad, or for a family to accompany a Foreign Service member abroad;
- A correctional institution or law enforcement official with lawful custody of an inmate if necessary for the health and safety of such individual, other inmates, officers, or other employees at the correctional institution; and
- Government programs that provide public health benefits and governmental agencies administering such programs.

## Procedural Requirements

Procedural requirements for disclosures for “specialized government functions” include the following:

- Written authorization from the client is not required.
- Disclosures are subject to the minimum necessary requirements, unless the law specifies otherwise.
- DPH covered components are required to provide an accounting of the disclosures for specialized government functions.

## **Workers’ Compensation**

DPH covered components may use or disclose IIHI as authorized by, and to the extent necessary to comply with laws relating to workers’ compensation or other similar programs established by law that provide benefits for work-related injuries or illness without regard to fault.

## **Research**

DPH covered components may use and disclose IIHI for research purposes when done in accordance with DPH Privacy Policy *Use and Disclosure Policies, Research*, and in accordance with applicable state law and implementing rules.

## **Other Requirements for Use and Disclosure**

### A. De-Identification of IIHI

Health information that does not identify an individual or where there is no reasonable basis to believe that the information can be used to identify an individual is **not** considered IIHI, and therefore does not require privacy protections (see DPH Privacy Policy [De-Identification of Health Information and Limited Data Sets](#) for requirements for de-identifying IIHI).

B. Minimum Necessary (See DPH Privacy Policy [Use and Disclosure Policies, Minimum Necessary](#))

- *Internal Use:* DPH covered components must have written policies and procedures that regulate access to and use of written records and electronic data. Procedures must describe the method(s) for identifying staff classifications and determining the level of access to be afforded each class. Procedures must also specify the methodology for granting and denying access, including access for new hires and requirements when staff leaves the employment.
- *External Disclosure:* DPH covered components must have written policies and procedures that limit the IHI disclosed outside the covered component to the amount reasonably necessary to achieve the purpose of the disclosure. Procedures must specify staff who are designated to disclose confidential information and their responsibilities for ensuring only the minimally necessary information is disclosed.
- *Requests:* DPH covered components must implement procedures that limit any request for information to that which is minimally necessary, including routine and recurring requests. Procedures must distinguish requirements for routine and recurring requests from other requests for specific information. Requests for individually identifying health information as presented in a researcher's documentation or on the representation of an IRB or a Privacy Board may be considered the minimum necessary information requested for research purposes. Disclosures to a financial institution are subject to the minimum necessary requirement and the covered component must make its own assessment of the minimum necessary information required for the financial institution's purpose.
- *Entire Record:* DPH covered components should not use, disclose, or request an entire health record unless specifically justified as necessary to achieve the purpose. Procedures must specify staff responsibilities for ensuring only the minimally necessary information is disclosed from health records. Procedures must also detail the required process when it is determined the entire record must be disclosed.

C. Agreed Upon Restrictions/Confidential Communications

Whenever a DPH covered components agrees with a client to restrict the use or disclosure of specific information or agrees to communicate with a client in a manner that is different from the usual, the covered component must initiate procedures for informing any workforce members who could be in a position to use or disclose that restricted information. Procedures must specify how such information will be communicated to staff and how such disclosures will be monitored.

D. Business Associates (see DPH Privacy Policy [Administrative Policies, Business Associates](#))

- *Internal:* DPH covered health care components that are internal business associates with other covered health care components within DHHS are under the same privacy requirements and therefore do not require a written agreement that protects the confidentiality of the information shared between the two components. DPH covered health care components within DHHS that are internal business associates with other DHHS agencies that are not covered health care components must ensure the DHHS privacy policies apply to the internal business associate who will protect such information as if it were a covered component. Procedures must be written to describe the process used to determine the relationship between the two entities and measures to be taken to ensure the protection of the confidential information shared between the two entities.

**Note:** Most DHHS privacy policies apply to both covered health care components and internal business associates.

- *External:* DPH covered health care components that are business associates with other departments in state government or with contractors/vendors are required to develop procedures for entering into a Business Associate Memorandum of Understanding (for other departments in state government) or a Business Associate Addendum (for DPH contractors/vendors). Procedures must be developed that specify the process, including the development of agreements that are required to ensure the protection of the confidential information shared between the two entities.

E. Deceased Individuals

IIHI generated during the life of a deceased client shall be protected from unauthorized use and disclosure as long as the covered component maintains the information. If an executor, administrator or other person has been authorized by law to act on behalf of a deceased client; such person shall be recognized as a personal representative of that client and shall authorize the use and disclosure of the decedent's IIHI, if required. DPH covered components must develop and implement procedures that address the following disclosures:

- Disclosure to a coroner or medical examiner for identification of a deceased client or to determine cause of death is permitted without authorization. DPH covered components are not required to remove information about persons other than the client before disclosing the record.
- Disclosure of all IIHI, including psychotherapy notes, to a coroner or medical examiner is permitted without client authorization in order to determine cause of death; the minimum necessary requirement is not required in this situation.
- DPH covered components are required to provide an accounting of the disclosures made to a coroner or medical examiner.
- Disclosure to a funeral director, as necessary to carry out their duties with respect to a decedent is permitted without authorization. If necessary, IIHI may be disclosed prior to, and in reasonable anticipation of, the client's death.

- Disclosure to an organ procurement organization or other entities engaged in the procurement, banking, or transplantation of cadaver organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation is permitted without authorization.
- Use and disclosure of IIHI of deceased clients for research purposes is permitted without authorization from a personal representative or an Institution Review Board/Privacy Board provided the following information is obtained from the researcher:
  - Use and disclosure is solely for research on the IIHI of decedents
  - Documentation regarding the decedent's death
  - Representation that the IIHI is necessary for research purposes.

#### F. Personal Representative

A personal representative is any adult who has decision-making capacity and who is willing to act on behalf of a client regarding the use and disclosure of the client's IIHI. This would include an individual who has authority, by law or by agreement from the client receiving treatment, to act in the place of the client such as spouse, adult children, parents, legal guardians, or properly appointed agents (e.g., an individual who has been given a medical power of attorney). Procedures must be developed that address when a personal representative is required and the responsibilities of the covered component when communicating with a personal representative. Procedures must also include communication requirements if the client is an un-emancipated minor or if the client has been abused, neglected, or has been in an endangerment situation and there is some question about the personal representative's involvement in the care of the client (see DPH Privacy Policy [Client Rights Policies, Personal Representative](#) for requirements regarding recognition of a personal representative for a client).

#### G. Notice of Privacy Practices Requirements

As the only health care component with DPH subject to the HIPAA Privacy Regulation, the State Laboratory for Public Health's Notice of Privacy Practices must accurately reflect the covered component's policies and procedures for using and disclosing IIHI. Any change in existing policies or procedures requires a change in the Notice. Procedures have been developed that specify how the Notice is developed, distributed, and updated (see DPH Privacy Policy [Client Rights Policies, Notice of Privacy Practices](#) for specific requirements for developing and distributing the Notice).

## H. Whistleblowers and Workforce Member Crime Victims

A member of a DPH covered component's workforce may use or disclose IIIHI when a staff member or a business associate believes in good faith that the covered component has engaged in conduct that is unlawful, violates professional or clinical standards, or there is potential danger to one or more clients, workers, or the public. Such information may be disclosed to a public health authority, health oversight agency, or healthcare accreditation organization without being a violation of the client's privacy. DPH covered components must develop a procedure for staff to follow when disclosing individually identifying health information.

A member of a covered components' workforce who is the victim of a criminal act may disclose a client's individually identifying health information to a law enforcement officer when that client is the suspected perpetrator of the criminal act. Covered components develop and inform staff of the procedures to follow when disclosing such information.

Such use and disclosure does not violate the HIPAA Privacy Rule; however, DPH covered components are responsible for ensuring its workforce is knowledgeable about such matters (see DPH Privacy Policy [Administrative Policies, Workforce](#) for specific privacy requirements that staff must follow).

## Fundraising

DHHS agencies may use or disclose IIIHI to a business associate or related foundation for the agency's own fundraising purposes if the information is limited to demographic information and dates of health care provided and specified conditions are met. No other information such as the client's diagnosis and treatment is allowed to be used or disclosed without specific authorization from the client or the client's personal representative (see the DPH Privacy [Policy Use and Disclosure Policies, Marketing and Fundraising](#) for more specific requirements).

## Identification Badges

While employee identification badges serve an important function within the Division, wearing an identification badge while accompanying a client off premises could be considered disclosure of confidential information. Such disclosure could be an embarrassment to the client or cause the client to feel his right to privacy has been compromised. Therefore, it is recommended that whenever an employee accompanies a client outside the premises, the employee's badge not be visible to the public (see DPH Privacy Policy [Administrative Policies, Privacy Safeguards](#)).

## Use and Disclosures – Client Authorization Required

Client authorization is **required** in the following circumstances:

- Any use or disclosure (unless allowed without authorization, as specified in this policy)
- Psychotherapy notes
- For marketing purposes.

### Any Use or Disclosure

Authorization allows for the use and disclosure of IIHI, as specified by a client, but a client may revoke authorization at any time. DPH covered components shall ensure that a properly written and signed authorization by the client or the client's personal representative is created prior to requesting individually identifying health information from another entity. Likewise, DPH covered components must ensure that a properly written and signed authorization is received prior to responding to requests for disclosure of a client's IIHI. Exceptions to this requirement are specified in this policy.

In order to be considered valid, authorizations sent or received by DPH covered components must contain specific elements and be written in plain language. An authorization may contain other elements or information in addition to the required elements; provided that such additional elements or information are not inconsistent with the required elements (see DPH Privacy Policy [Use and Disclosure Policies, Authorizations](#) for authorization requirements and the required DHHS Authorization Form to be used by all DHHS divisions and offices).

DPH covered component procedures must include acceptable responses to requests for IIHI without an accompanying authorization from the client. If the covered component can find no provision in state or federal law that allows such disclosure, staff should request that the requestor provide the legal authority that allegedly permits or requires the disclosure of confidential information.

### Client Photographs

DPH workgroups that take photographs of clients for identification purposes must obtain the client's consent prior to photographing. Photographs of clients may not be displayed in the facility or released outside of the Division without client authorization. DPH programs can develop their own consent forms allowing the photograph(s) to be taken. A sample consent form for client photographs can be found by using the following link: [DPH Permission to Tape Record/Photograph](#).

If there is a need to disclose the photograph(s), **authorization must** be obtained prior to disclosure.

## Psychotherapy Notes

Psychotherapy notes are notations that capture a therapist's impressions about a client and contain details of conversations during a private counseling session or a group, joint, or family counseling session. Such notes are considered the therapist's personal notes and are not maintained in the client's health record, but are maintained separately by the therapist.

In most cases, including disclosure to another health care provider for treatment, payment or health care operations, psychotherapy notes can only be released with client authorization. However, authorization for the use or disclosure of psychotherapy notes is not required in the following circumstances:

- For use by the originator for treatment
- For use in education programs including residency or graduate training programs
- To defend a legal action brought by a client
- For purposes of HHS determining compliance with the HIPAA Privacy Rules
- As otherwise required by law
- By a health oversight agency for a lawful purpose related to oversight of a psychotherapist
- To a coroner or medical examiner for the purpose of identifying a deceased client, determining a cause of death, or other duties as required by law
- To law enforcement in instances of permissible disclosure related to a serious or imminent threat to the health or safety of a person or the public.

A client's right to request access to his/her health care records does not apply to psychotherapy notes maintained by a psychotherapist. The client's psychotherapist or physician must use professional judgment in determining whether a client should have access to psychotherapy notes.

## Marketing

Marketing involves communication about a product or service that encourages the purchase or use of a product or service. The following communications are NOT considered marketing:

- Describing a product or service provided by the Division or its public health partners
- Reviewing treatment with a client
- Discussing case management or coordination of care
- Recommending alternative treatments.

Division employees are not allowed to use or disclose a client's PHI for marketing purposes without the authorization of the client who is the subject of the information, or the client's personal representative. This prohibition includes the disclosure, use, or selling of prescription drug patterns and the disclosure to any non-affiliated third party for use in telemarketing, direct mail marketing, or other marketing through e-mail to the client without client authorization.

Any marketing arrangement between the Division and any other entity whereby the Division discloses confidential information to the other entity requires client authorization. If marketing is expected to result in direct or indirect remuneration to the Division from a third party, the remuneration must be stated in the authorization presented to the client for signature.

**Exception:** Client authorization for marketing is not required when communication with the client is in the form of:

- Face-to-face communication made by the Division with the client
- When a promotional gift of nominal value is provided by the Division

(See the DPH Privacy Policy [Use and Disclosure Policies, Marketing and Fundraising](#) for specific requirements for marketing.)

## Verification

Division staff must obtain proper identification of all individuals, including clients, prior to allowing access to confidential information. The Division procedures for establishing the authority and verifying the requestor is for the requestor to formally make the request in writing on official letterhead. The State Laboratory has developed specific procedures and mechanisms to confirm the identity of individual's requesting laboratory test results.

Knowledge of a person includes:

- A person known by staff
- A phone or fax number known by staff
- An address known by staff
- A place of business known by staff.

Where documentation, statements, or representations, whether oral or written, from the individual requesting IIHI is a condition of disclosure, DPH staff must obtain such documentation or representations prior to disclosing the requested information.

When the person requesting individually identifying health information is a public official or a person acting on behalf of a public official, the following procedures may be followed:

- If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status is sufficient.
- If the request is made in writing, the request should be on the appropriate government letterhead.
- If the request is made by a person who is acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of the agency such as contract for services, Memorandum of Understanding, or purchase order, that establishes that the person is acting on behalf of a public official.

Verification of the authority of a public official or a person acting on behalf of a public official may be managed in the following manner:

- A written statement of the legal authority under which the information is requested, or if a written statement would be impracticable, an oral statement of such legal authority
- If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.

DPH covered components must establish procedures for disclosing IIHI that is required by law.

Disclosures to the HHS Secretary for compliance purposes requires staff to verify the identity of the requestor and their authority to access such IIHI, as would be required for any other law enforcement or oversight agency request for disclosure.

**Exception:** If there is an imminent threat to safety, it is permissible to disclose confidential health information to prevent or lessen a serious or imminent threat to the health or safety of a person or the public if disclosure is made to a person reasonably able to prevent or lessen the threat. Under such circumstances, reasonable reliance on verbal representations is acceptable.

DPH staff is required to verify the identity of anyone who is acting on behalf of a client or who is assisting in an individual's care before disclosing individually identifying health information. The client must identify anyone whom the client has authorized to receive the client's IIHI.

### **Incidental to an Otherwise Permitted Use and Disclosure**

Certain incidental uses and disclosures are permitted if they occur as a by-product of another permissible or required use or disclosure. Such use and disclosures must be considered secondary in nature that cannot reasonably be prevented, are limited in nature, and occurs as a result of another use or disclosure that is permitted by the HIPAA Privacy Rule.

- Incidental use and disclosure is permitted only if the underlying use and disclosure does not violate the HIPAA Privacy Rule.
- Reasonable safeguards, as defined in the "DPH Privacy Policy, Safeguards", must be in place to limit the instances of incidental use and disclosure.
- DPH covered components are not required to provide an accounting of incidental disclosures.

Another incidental type of disclosure that is permitted involves visitors who are viewing the Division's business processes that contain IIHI. Whenever DPH covered component allows another entity to inspect its business processes that contain IIHI, the covered component is incidentally disclosing individually identifying health information without authorization and without statutory authority. Since such access to individually identifying health information is secondary to the purpose for which the visiting entity is inspecting the business process and since disclosure of such individually identifying health information cannot reasonably be prevented and is limited in nature, the covered component shall demonstrate a good faith effort to keep individually identifying health

information secure by informing visitors of confidential requirements and by requiring each visitor to sign a DHHS [Pledge of Confidentiality](#) form. DPH covered components must ensure that no IIHI leaves Division premises in any documents or data.

### **Limited Data Set (Research, Public Health or Health Care Operations)**

A subset of paper or electronic records containing IIHI that excludes those elements that could identify a client may be disclosed to a recipient who has entered into a data use agreement with the Division or with a specific DPH program. Use or disclosure of a limited data set may only be used for the purposes of:

- Research
- Public health
- Health care operations.

A limited data set requires that all direct identifiers be removed not only for the client, but also the client's relatives, employers, or household members of the client. (See the DPH Privacy Policy, [De-Identification of Health Information and Limited Data Sets](#) for a list of required identifying data elements and the requirements for creating a limited data set and a data use agreement.)

Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of IIHI.

De-identified information that has been re-identified shall be disclosed only as permitted in DHHS and DPH privacy policies.

DPH covered components may create a limited data set or may allow their business associate to create a limited data set; however, the component's business associate(s) may not disclose information in a limited data set without Division approval.

### **Other State and Federal Laws**

The Division all workgroups with DPH are required to evaluate state and other federal laws that apply to their programs to determine whether there is a requirement conflict between specific laws and to determine which state or federal law is the more stringent, thereby taking precedence for requirements. Division procedures must reflect implementation requirements of the state and federal laws with which the Division and DPH programs must comply. The DPH HIPAA Office and the Office of Legal and Regulatory Affairs can provide guidance and facilitate the interaction between HIPAA and other state and federal requirements.

## News Media

The Division must develop procedures for responding to requests for disclosure of IHI to the news media. The DHHS Public Affairs Office is generally responsible for responding to the news media for agencies within the Department; therefore, Division procedures must ensure staff is knowledgeable about actions to be taken in responding to inquiries from the news media. Division management coordinates media relations with the DHHS Public Affairs Office. Division staff is prohibited from responding to media requests without management approval. (See DHHS Communications Policy *DHHS Media Training Manual* for the Department's requirements when responding to the media.)

### For relevant documents:

[DHHS Pledge of Confidentiality Form – DHHS 1050](#)

[DPH Permission to Tape Record/Photograph](#)

These documents can be accessed on the DPH HIPAA website at <http://www.schs.state.nc.us/hipaa/>.

**References:** DHHS Directive III-11; 45CFR 164.502, 164.504, 164.506, 164.508, 164.510, 164.512, 164.514; Family Education Rights and Privacy Act (FERPA), APSM 45-3; NC General Statutes 7B-301, 8-53, 50B, 90-21.20, 122C, 122C-53(b), 130A Articles 1 – 18; 131E, 131E-214 10 NCAC, Chapters 39-50.

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at <mailto:HIPAA.DPH@ncmail.net>.