
Procedure 2509-A**Staff Access to Protected Health Information (PHI) Using the “Minimum Necessary” Standard**

1. The Privacy Officer, in consultation with the North Sound Mental Health Administration (NSMHA) Leadership Team, will develop the Role-Based Access to PHI Matrix (“Access Matrix”). The Privacy Officer may request that an *ad hoc* committee of employees be appointed to assist in this effort.
 - a. The senior leadership team and the Board of Directors of NSMHA must approve the initial Access Matrix.
 - b. The Access Matrix in effect at any time will be the matrix attached to this policy.
 - c. At least every four years, and more frequently if deemed necessary due to changes either in applicable law or significant changes to job descriptions and areas of responsibilities attributed to various staff members, an *ad hoc* committee facilitated by the Privacy Officer will be constituted to review the current version of the Access Matrix and to suggest modifications to the senior leadership team.
2. All staff members of NSMHA are responsible for reviewing the Access Matrix and for understanding what impacts it has on their role(s) within NSMHA.
 - a. Any employee who believes that any employee or department within NSMHA is not complying with the Access Matrix must report those concerns either to her/his supervisor, directly to the Privacy Officer, or to the Compliance Officer of the organization.
 - b. All employees will be trained on the Access Matrix and all supervisors in NSMHA will be prepared to assist their supervisees in complying with its limitations on access to PHI.
 - i. New employees will have training on the Access Matrix incorporated into their orientation programs;
 - ii. Current employees will receive training in conjunction with NSMHA’s training on the Privacy Regulations that is required under Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH) Act;
 - iii. If and when the Access Matrix is modified, all employees will receive notice of any changes, a description of any operational changes that must be implemented in order to comply with the changes to the Access Matrix, and information on how their day-to-day work will change as a result.
 - iv. The Director of Human Resources will be advised in advance of any changes in order to incorporate them into training curricula.
3. The Access Matrix currently in effect will be attached to this policy and procedure and may have an effective date later than this policy. Staff can make copies of the Access Matrix to assist them in complying with its requirements. All site directors and office managers of both clinical and administrative sites are expected to have a current copy of the Access Matrix available to assist them in their supervisory and oversight activities.
4. The Access Matrix lists the various positions or roles within NSMHA, the types of activities undertaken by each role that uses PHI, and the types of PHI that are needed by staff persons in those roles to fulfill their job requirements.

- a. This list is developed using a standard of only allowing access to the *minimum* amount of PHI that is *necessary* for the use of PHI. In some cases, it may not be reasonable to limit the PHI to the *minimum necessary*. For example, if information that is needed by a staff person is contained in a paper medical record, she or he may need access to the whole record. NSMHA does not expect that the records will be kept in pieces, with staff persons only allowed access to some pieces and not to others. We do expect, however, that staff persons who routinely need information that is located in one section of the record will only go to that section of the record retrieve the information they need, and not seek access to, review, copy, or retrieve information from other parts of the record. The same behaviors should now govern access by staff to PHI or their use of PHI.
- b. If a staff person believes that in a non-routine situation or on a permanent basis she or he needs access to PHI that is not listed for them on the Access Matrix, they should appeal to the Privacy Officer.
 - i. The Privacy Officer can override the Matrix for a single, non-routine situation.
 - ii. The Privacy Officer should document, in writing, the reason for the override, the situations and persons to which it will apply, and the applicable dates.
 - iii. The Privacy Officer cannot make any modifications to the Access Matrix without the approval of senior leadership.
 - iv. If a staff person is not sure if she or he has access to certain PHI, she or he should first consult the appropriate supervisor. If the supervisor is unable to answer the staff person's question, the supervisor should go directly to the Privacy Officer for advice on the matter.
- c. Staff persons who do not comply with the Access Matrix are subject to disciplinary sanctions, up to and including termination.

Disclosures

Disclosures of PHI are categorized by the Privacy Regulations as follows:

1. Disclosures that are not required to meet the minimum necessary requirements
2. Disclosures that are required to meet the minimum necessary requirements, and within this category:
 - a. Routine and Recurring Disclosures
 - b. Non-routine and Non-recurring Disclosures

Disclosures that are *not* required to meet the minimum necessary standard:

1. Disclosures of PHI to the client are not subject to the minimum necessary requirement.
2. Disclosures of PHI to health care providers for treatment purposes are not subject to the minimum necessary requirement. This allows staff to determine quickly and without constraint the information that is necessary for the members to know in order to care for the client. **NB:** Please see Policy No. 2522: "Uses and Disclosures of PHI for Treatment, Payment and Healthcare Operations" for restrictions on disclosures to third-party members of the treatment team.

Please see the Authorizations Policy for additional information on disclosing mental health, substance abuse and HIV/AIDS information to treatment team members.

3. Disclosures of PHI that are being made in response to an authorization (including a client-initiated authorization) are, in most cases, not subject to the minimum necessary requirements. The exceptions to this are:
 - a. Authorizations that we are requesting. We are required to apply the minimum necessary standards to our requests for disclosures to us by third parties. By signing the authorization, the client consents to our determination of the minimum necessary.
 - b. Authorizations sent by third parties to us where we believe the authorization is excessive or are not warranted. For example, a client requests the disclosure of her or his psychotherapy notes to their employer. In those cases, the staff person who receives the authorization should consult with their supervisor or the Privacy Officer to determine if the client should be contacted and wishes to submit a modified authorization.

Please see the Authorizations Policy for instructions on the requirements for a valid authorization.

4. Disclosures of PHI to the Secretary of Health and Human Services for compliance purposes and disclosures that we are required to make in order to comply with the HIPAA regulations on standard transactions are not subject to the minimum necessary requirements.
 - a. Many of these disclosures will be made routinely, e.g., PHI contained in a bill for services, and is covered by billing and other policy and procedure in NSMHA.
 - b. If a staff person, however, gets any request for PHI from a person(s) purporting to be a representative of DHHS or any of its sub-agencies, she or he should contact the senior staff person on site at the time and the Privacy Officer about the request before disclosing any information.
 - i. If the Privacy Officer is not available legal counsel should be contacted.
 - ii. If the person ostensibly representing Department of Health and Human Services (DHHS) presents in person at a site and states that she or he is involved in an investigation, audit or any other type of fact-finding mission, staff should confirm the credentials, but should not interfere with the investigation or audit process.
5. Disclosures that NSMHA is required to make by law. In this case, we are only permitted to release the information that is relevant to the requirements of the law.

Please see the Authorizations policy for additional information on disclosures required by law.

Routine and Recurring Disclosures

1. The Privacy Officer may request that an *ad hoc* committee of employees be appointed to assist in this effort.

- a. The senior leadership team and the Board of Directors of NSMHA must approve the initial Disclosures Matrix.
 - b. The Disclosures Matrix in effect at any time will be the matrix attached to this policy.
 - c. On **at least** an annual basis, an *ad hoc* committee facilitated by the Privacy Officer will be constituted to review the current version of the Disclosures Matrix and to suggest modifications to the senior leadership team.
2. All staff members of NSMHA are responsible for reviewing the Disclosures Matrix and for understanding how it affects disclosures of PHI they may be asked to make.
- a. Any employee who believes that an employee or department within NSMHA is not complying with the Disclosures Matrix must report those concerns either to their supervisor, directly to the Privacy Officer, or to the Compliance Officer of the organization.
 - b. All employees will be trained on the Disclosures Matrix and all supervisors in NSMHA will be prepared to assist their supervisees in complying with its requirements.
 - i. New employees will have training on the Disclosures Matrix incorporated into their orientation programs;
 - ii. Current employees will receive training in conjunction with NSMHA's training on the Privacy Regulations that is required under HIPAA;
 - iii. On at least an annual basis, if and when the Disclosures Matrix is modified, all employees will receive notice of any changes, a description of any operational changes that must be implemented in order to comply with the changes to the Disclosures Matrix, and information on how their day-to-day work will change as a result, if at all.
 - iv. The Director of Human Resources will be advised in advance of any changes in order to incorporate them into training curricula.
3. The Disclosures Matrix currently in effect will be attached to this policy and procedure. Staff can make copies of the Disclosures Matrix to assist them in complying with its requirements. All site directors and office managers of both clinical and administrative sites are expected to have a current copy of the Disclosures Matrix available to assist them in their supervisory and oversight activities.
4. The Disclosures Matrix lists routine disclosures by type, e.g., "Disclosures for eligibility determinations for Social Security benefits," the roles or positions of the persons to whom the PHI should be disclosed, and the types of PHI that can be disclosed.
- a. This list is developed using a standard of only allowing access to the **minimum** amount of PHI that is **necessary** for the use or disclosure of PHI. In some cases, it may not be reasonable to limit the PHI to the minimum necessary. For example, in some cases, especially with paper records, it may not be possible to separate information out or may not be reasonable to redact every piece of information that is not needed for the purpose of the disclosure. Any staff person who believes that compliance with the Disclosures Matrix in a particular case violates the minimum necessary standard, should appeal to their supervisor. The supervisor may then appeal to the Privacy Officer for assistance.

- b. The Privacy Rule exempts from the minimum necessary standard all required elements of the HIPAA electronic transactions; the optional elements of these transactions must, however, be considered in developing the Disclosures Matrix.
- c. Any type of disclosure not listed as a routine disclosure on the Disclosure Matrix is considered a non-routine disclosure, and staff must follow the procedures listed below under non-routine disclosures.
- d. All disclosures of the entire medical record to a third party for payment or for operations pursuant to Policy No. 2522: “Uses and Disclosures of PHI from Individuals for Treatment, Payment or Healthcare Operations” are considered non-routine disclosures. *See, also, below, “Disclosure of the Entire Medical Record.”*
- e. The Privacy Officer cannot make any modifications to the Access Matrix without the approval of senior leadership.
- f. If a staff person is not sure if a particular disclosure meets the definition of a routine disclosure, she or he should first consult their supervisor. If the supervisor is unable to make the determination, they should go directly to the Privacy Officer for advice on the matter.
- g. Staff persons who do not comply with the Disclosures Matrix are subject to disciplinary sanctions, up to and including termination.

Non-Routine and Non-Recurring Disclosures

1. Non-routine and non-recurring disclosures are any disclosures that are subject to the minimum necessary standard and are not listed on the Disclosures Matrix as a routine and recurring disclosure. Please see above under “Disclosures that are not required to meet the minimum necessary standard” and “Routine Disclosures.”

NSMHA will designate the Privacy Officer to be an expert resource for NSMHA staff on non-routine disclosures.

2. All staff persons requesting a review of non-routine disclosures should have the following information available for the reviewer:
 - a. The authorization or request if in writing.
 - b. The staff person’s assessment of the PHI that should be disclosed and why.
 - c. Any back-up documentation, for example, the medical record, which can assist the reviewer in making the determination.
3. The Privacy Officer and all NSMHA staff may no longer rely on representations made by requestors outside of NSMHA that the PHI being requested is the minimum necessary. Instead, per the HITECH Act, NSMHA must make its own determination of “minimum necessary,” rather than, as in the past (pursuant to HIPAA), relying on the representations of the requestors, including Business Associates (who must also follow the “minimum necessary” standard).
 - a. If a staff person, for any reason, believes that the requestor’s representation regarding the minimum necessary PHI that is needed and has listed on the request, staff members should make sure the Disclosure Expert is advised of their opinion so this information is included in the deliberation.

- b. The decision by the Privacy Officer should be documented on the document requesting the PHI or linked or attached to the document. The decision should be signed and dated.

Disclosing the Entire Medical Record

Each time a disclosure of PHI is made that includes the entire medical record, the decision to disclose the entire record must be documented on the “Accounting for Disclosures” form, including the reasons why, and placed in the administrative section of the medical record attached to the written request (if one is available). A copy of the documentation should be sent to the Privacy Officer.

If a written request is not available, the documentation should include the requestor’s name, position, whether the requestor is a part of NSMHA workforce or an outside company, the stated reason for the request, the date, and the signature and name of the person making the disclosure.

Role-Based Access Matrix

Role	Type of Access	Format	Type of Information
Executive Director Member Grievance Comm.	Create, Use, View, Disclose, Transport	Paper, Electronic	All
Deputy Director Member Grievance Comm.	Create, Use, View, Disclose, Transport	Paper, Electronic	All
Contracts Manager/ Legislative Liaison	Create, Use, View, Disclose, Transport	Paper, Electronic	All
Tribal Liaison	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Insurance, Financial, Codified, Clinical
Quality Specialist Coordinator	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Insurance, Financial, Codified, Clinical
Quality Specialist	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Insurance, Financial, Codified, Clinical
Privacy Officer	Create, Edit, Use, Disclose, View, Transport, Destroy	Paper, Electronic	All
IS/IT Administrator	Create, Edit, Use, View, Disclose, Transport, Destroy	Paper, Electronic	Demographic, Insurance, Financial, Codified,
Fiscal Officer	Create, Edit, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Insurance, Financial, Codified
Accounting Specialist	Create, Edit, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Insurance, Financial, Codified
Administrative Assistant	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Codified, Clinical Complete Legal Record
Executive Assistant	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Codified, Clinical, Complete Legal Record
Administrative Assistant Coordinator	Create, Use, View, Disclose, Transport	Paper, Electronic	Demographic, Codified, Clinical, Complete Legal Record
Administrative Assistant/Receptionist	Create, Use, View, Transport	Paper, Electronic	Demographic, Codified, Clinical, Complete Legal Record

Type of Access:

Create:	Primary source documentation
Edit:	Changing incorrect data (According to policy)
Use:	Read and view the information to make decisions pertinent to position
Disclose:	Conveyance of the information to persons or entities outside NSMHA
View:	Employee may view certain information but is expected not to make decisions based on what she or he knows
Transport:	Moving information from one place to the other (should not view)
Destroy:	Final legal disposition of NSMHA's business records

What information:

Demographic:	Information to identify a person (name, address, race, marital status, religion)
Insurance:	Information used to identify payers and insured
Financial:	Payment rates, account balances, payer analysis, etc.
Codified:	Clinical information that is in (alpha) numeric format (e.g., ICD-9CM, CPT, Rev. Codes)
Clinical:	Information that describes a patient's health status
Complete legal record:	That set of printed information maintained as the legal record
All:	All of the above