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**PROCEDURE – 2503-A**

1. With the exception of treatment and payment information where the identity of the individual is critical, each time PHI is used or disclosed by the NSMHA, the person handling the PHI should consider whether the PHI could reasonably be de-identified and still be used for the purpose of the disclosure or whether or not a limited data set might substitute for the PHI requested.

There are, for example, some QI operations where de-identified or limited data can be as useful as data that are individually identifiable. Additionally, some reports to outside payers or funders could contain de-identified information and comply with our contractual requirements. The process of considering whether or not the information could be reasonably de-identified or could be disclosed in a limited data set is in keeping with our minimum necessary policy and should consider the cost/benefit of the de-identification procedures. Please see the Policy for the “Minimum Necessary” standards.

2. Staff persons disclosing PHI for internal or external purposes should:
  - a. Determine if the PHI should be de-identified or disclosed only as a limited data set prior to its disclosure either internally or externally. *See* above re: “Minimum Necessary.”
  - b. If the PHI is to be de-identified, determine if it can reasonably be de-identified in one of two ways:
    - i. Removal of all identifying elements listed in the policy above.
    - ii. Engagement of a qualified statistician to determine if the PHI alone or in combination with other reasonably available information could be used by the recipient to identify the individual.
  - c. If the PHI will be disclosed only as a limited data set, determine how best to remove the required identifying information listed in the policy above.
  - d. If (b.i) or (c) above is determined to be a reasonable course of action, the staff person should remove the identifying elements or direct that they be removed. The person responsible for the disclosure will be held accountable for the content of the disclosure. Any staff person delegating the task of de-identification or the creation of a limited data set to another staff person should carefully review the results of this work before releasing the information.
  - e. If (b.ii) above is determined to be the only reasonable course of action, the staff person must contact the Privacy Officer/designee, who will be responsible for determining if the qualified statistician should be engaged and for managing the engagement.
  - f. If (c) above is chosen and the information will be released as a limited data set, the staff person responsible for the disclosure must ensure that a “data use agreement” is negotiated and signed before the disclosure is made. The data use agreements must be developed in conjunction with and approved by the Privacy Officer/designee and the organization’s legal counsel. *See* policy above for required elements of a data use agreement.
    - i. If any staff person becomes aware that the recipients of a limited data set are in breach of the agreement, they must notify the Privacy Officer/designee at once.

The Privacy Officer/designee will ensure that immediate steps are taken to cease further disclosures and will report the breach to the Secretary of HHS.

- g. If either (b.i) or (ii) or (c) is chosen, the NSMHA may wish to develop a key that would allow the information to be re-identified. This re-identification code may not be derived from, or related to, information about the individual(s) and may not be otherwise translatable to identify the individual(s). The code will not be disclosed nor the means for re-identification for any purpose.
  - i. The staff person responsible for the disclosure should document the de-identification process and the key for re-identifying the information and keep a copy in the file that contains a copy of the de-identified PHI disclosed. This file must be secured according to NSMHA procedures for securing PHI not held in the designated record set.
  - ii. If an outside statistician is involved in the de-identification, including development or evaluation of the re-identification key, their contract with the NSMHA will specify their obligations with regards to the privacy and security of the PHI they must use to complete their work. The Privacy Officer/designee or a designee will be responsible for monitoring the work of the statistician and for maintaining all documentation including any re-identification keys as described in (g.i) above.