

Privacy Laws and the Role as a Member of the State Board of BHDS

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule is a federal regulation that became effective in April 2003. The purpose of HIPAA is to prevent inappropriate use and disclosure of individuals' health information and to require organizations which use health information to protect that information and the systems which store, transmit, and process it.

In addition to federal law and regulations, the Code of Virginia also addresses health privacy laws. The HIPAA Privacy Rule must be read and understood **in conjunction with Virginia law**.

The Department has a Privacy Policy Departmental Instruction (DI) that combines state and federal law and regulations together so as to advise staff in day-to-day operations. The Virginia Human Rights Regulations also include privacy protections for individual health information. The Office of the Attorney General provides advice to DBHDS staff on implementation issues.

Board members do not need to know all the intricacies of privacy law, but only the general rule contained in Virginia Code 32.1-127.1:03(A)(3), which is that **any protected health information that a board member obtains in the performance of his duties as a board member should generally not be re-disclosed absent authorization**. (The Board itself is not a covered entity under the HIPAA Privacy Rule, nor is it a "health care entity" as defined by 32.1-127.1:03.)

In summary, as a board member, you may encounter Protected Health Information (PHI = any health information that links an identifiable person with his or her health condition) through a call from an individual or family member of an individual receiving services, a report from the Office of Human Rights or other staff office at DBHDS, or through a news story. Just remember that Protected Health Information (PHI) can not be shared unless either:

- The individual has authorized the disclosure of the information; or
- It is required by law.

Consult with the agency's privacy officer for guidance/clarification on specific HIPAA-related issues. When in doubt – ASK!

How Do Individuals Know What Their Privacy Rights Are?

The DBHDS **Notice of Privacy Practices** must be given to each individual upon admission into our system. It is posted on our website, and tells them how:

- PHI may be used or disclosed by the care provider
- To access their personal medical records
- To request to correct their records if they appear incorrect
- To request alternative communications of their medical information that are more confidential
- To request restrictions on release of personal health information
- To request an accounting of certain disclosures of personal health information
- To object to certain disclosures of personal health information

Pertinent Privacy Laws

- **Virginia Statutes**

- Patient Health Records Privacy Act (§ 32.1-127.1:03)
- Authority to consent to medical treatment of certain minors (§ 54.1-2969)
- Parental Access statute (§ 20-124.6)
- Freedom of Information Act (§ 2.2-3705.5)
- Exchange between CSBs and state facilities (§ 37.2-839)
- Inpatient Treatment of Minors Act (§ 16.1-338)

- **Virginia Regulations**

- Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-115)
“Human Rights Regulations”

- **Federal Laws**

- Federal Substance Abuse Confidentiality Regulations (42 C.F.R. Part 2)
- The HIPAA Privacy Rule (45 C.F.R. Parts 160 and 164)

- **Preemption:**

A HIPAA standard that is contrary to state law, preempts state law
UNLESS

State law is more stringent

- provides greater protection to the individual
- provides the individual with greater access