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| Scope of Policy <input checked="" type="checkbox"/> Agency <input type="checkbox"/> IRA <input type="checkbox"/> Day Hab <input type="checkbox"/> Unistel <input type="checkbox"/> Family Support Services <input type="checkbox"/> Transportation | Function: Administrative Policies and Procedures | | | |
| | Subject: Confidentiality | | | |
| | Topic: Privacy of Individual Health Information (HIPAA) | | | |
| Related policies and regulations | Policy and Procedure Department Authority: | | | |
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POLICY:

BACKGROUND

- All programs and services of Continuing Developmental Services, Inc. take all reasonable and appropriate measures to protect the confidentiality of the individuals we support. The agency requires that all of its employees, volunteers, interns, contractors and business associates do the same.
- To protect the confidentiality of individuals’ personal health information, CDS adheres to Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as any subsequent amendments.
- CDS maintains reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of individuals’ health information both paper and electronic, and protect against any reasonably anticipated threats or hazards to the security of the information, unauthorized use or disclosure of the information, and to ensure compliance by officers and employees of CDS. CDS employs mechanisms to control access to personal health information and protect such information from inappropriate disclosure, destruction, modification, or loss.
- CDS also controls access to personal health information per the consumer’s wishes as is reasonable and outlined under the law. Consumer’s limited rights to grant or deny use and disclosure of their personal health information are recognized by CDS.

DESIGNATED RECORD SET

Whenever consumers or others give CDS personal health information about an individual, they create personal health information that is protected under the law. This includes verbal, recorded, paper, or electronic information regarding the medical and/or mental health status of an individual, as well as his/her name, address, birth date, social security number, individualized service plan, photograph, and any other information that can be linked to the person being served. In general, any information that is part of a person’s clinical record is protected under the law.

MINIMUM NECESSARY USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

CDS employees can only disclose individual health information when it is necessary to satisfy a particular purpose (subject to valid authorization) or carry out a function that is allowed by law, and cannot disclose more information than is necessary for the purpose at hand. Employees must exercise reasonable and appropriate care to disclose only the minimum amount of information necessary for their task.



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❖ **Examples of Sharing the Minimum Necessary for the Task**

The following are examples of how staff can protect the privacy of the people we support by sharing only the minimum necessary information:

Example: Staff is picking up a prescription from the pharmacy.

Right: in a low (discreet) voice “I’m here to pick up a prescription for John Smith.”

Wrong: “I’m here to pick up a prescription for John Smith’s amoxicillin.”

Example: Staff accompanies an individual to a clinic.

Right: in a low voice (discreet) voice “John Smith is here for his 2:00 appointment.”

Wrong: “John Smith is here for his physical therapy.”

Sharing the minimum information necessary is one way we can demonstrate confidentiality (HIPAA compliance) as well as respect for the people we support.

NOTICE OF PRIVACY PRACTICES

- CDS provides all consumers or their representatives with a privacy notice that explains the agency’s privacy practices and describes the rights of individuals. This notice identifies the Record Administrator as the Privacy Officer who guides staff in responding to requests for records, and helps them with other information about HIPAA or records access.
- The Notice of Privacy Practices (**attachment A**) states that, in some instances, individuals would have to sign authorizations in order for CDS to release information.
- The Acknowledgement of Receipt of Privacy Practices will be provided with the Notice of Privacy Practices, and must be signed by the consumer or his/her representative.

Any time significant changes are made to the Agencies Notice of Privacy Practices, the notice should be re-distributed and updated Acknowledgement of Receipt of Privacy Practices should be secured.



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SAFEGUARDING AND STORING INDIVIDUAL HEALTH INFORMATION

Confidentiality and privacy cannot be protected by a policy and procedure alone. All employees and affiliates of CDS must continuously protect the privacy of those we support. CDS employees must take all reasonable and appropriate actions to protect the privacy and confidentiality of individual personal health information. Such actions include, but are not limited to, those below.

1. Transport of Individual Health Information

- CDS employees should never remove original individual health information from a CDS site except as warranted by agency policy and or another purpose protected under the law.
- In cases where transport of individual health information is necessary only the minimum necessary should be shared.
- When possible a copy of the documentation should be used in lieu of the original.
- If it becomes necessary to remove original documentation the following steps should be taken:
- Approval from Program Manager must be obtained.
- The documentation should be signed out of the home site. Sign out information should include Consumer name, date of removal, name and contact information of employee removing documentation.
- A copy of each page of the documentation to be removed must be left at the site to facilitate ongoing care and business operations. Extraordinary care must be taken to secure the copy until the original is returned. *Best practice recommendation would be to lock copies in Managers' office and track access.*
- Care must be taken to protect the original/copied documentation while off site. *Best practice recommendations include:*
- *use of a portable lock box that cannot be locked in the trunk of the vehicle.*
- *Documentation should not be left in a vehicle overnight.*
- *Documentation should be returned to the home site before the end of the day,*



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Documents and Paperwork

CDS Employees must take all reasonable and appropriate actions to ensure personal health information is not accessible to unauthorized persons, such as other consumers or non-employees. Paperwork must not be left where it can be found and/or read by anyone who has no right to see it. Documents containing personal health information must be put away when not in use whenever possible. If necessary to prevent unauthorized disclosures, documents will be kept in locked areas or cabinets. Binder covers, postings, and other things which may be generally visible should not have personal health information on them. Documents and anything containing documents with personal health information must be stored out of view.

When sending facsimiles, employees must ensure they have the correct fax number and that someone is on the other end to receive the document before faxing individual health information. The fax should include a message that the recipient should treat the information as confidential, and destroy it and notify the sender in the event the information is received in error.

Computers

Employees must be aware of the location and positioning of computer screens, and take reasonable and appropriate precautions to ensure they are not visible to unauthorized persons. When leaving a computer that may be visible to others who are unauthorized to see the information, even momentarily, employees must log off or lock the computer. Staff are not to share their computer passwords with anyone. Employees are to utilize good judgment and available security mechanisms in order to secure protected health information transferred via email. Before emailing, an employee should verify that he or she has the correct email address for the recipient, and include in the message that the recipient should treat the information as confidential, and delete it and notify the sender in the event the information is received in error.

Oral Communication

Employees are not to discuss a consumer in front of other people unnecessarily. For example, staff cannot discuss one individual's health information in front of another consumer, or another consumer's family. When speaking about a consumer, CDS employees must talk no more loudly than is necessary. In public, employees are not to refer to a consumer by first and last name unless this is necessary. Whenever possible, employees should reference the individual by his/her first name or first name and last initial. A CDS employee is not to discuss a consumer with the employee's family, friends, or others who do not have a need for, or right to, the individual's information.



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Disclosures to Fellow CDS Employees

While quality treatment and care at CDS cannot be compromised for the purposes of privacy or confidentiality, employees are expected to limit their communication of individual health information to only those other CDS employees who require it for purposes allowed by law. Employees are expected to demonstrate professionalism, respect, and compassion in their decisions regarding communication of **all** information regarding consumers. Therefore, employees are prohibited from disclosing information regarding consumers for the purpose of violating their rights under HIPAA or under the Residents Rights put forth in New York State regulations. Equally, employees are expected to disclose information to coworkers as necessary to facilitate and/or provide quality care and treatment to consumers and/or to enable themselves or others to adequately carry out the functions of the organization under the law.

USES AND DISCLOSURES

Uses and Disclosures of Protected Health Information

As outlined in the CDS Notice of Privacy Practices, designated CDS employees may use and disclose individual health information for the purposes of **treatment** without having a person sign an authorization to disclose that information. There is no restriction under the law regarding how much of such information is disclosed for the purpose of treatment.

Staff of CDS may also disclose information for billing and **payment** purposes and for **healthcare operations**, which are day to day business functions of the agency. Although a signed authorization is not required to use or disclose information for payment or healthcare operations, the law does limit what information is released, per a standard known as the minimum necessary standard. This states that only the minimum amount of protected health information can be disclosed that is absolutely required to accomplish the purpose of the disclosure.

There are other uses and disclosures that CDS may make without the consumer's authorization and which are not for the purpose of treatment, payment or healthcare operations. They are outlined in the agency's notice of privacy practices. Included are appointment reminders (care should be taken to ensure reminders contain limited information and are addressed/delivered to the intended recipient) disclosures to parents or guardians, public health reasons, worker's compensation, organ and tissue donation, identification of a body or cause of death, for funeral directors to carry out their duties, lawsuits and disputes, relaying of information in order to maintain agency operations, and when required to do so by federal or state law. **For any other purposes**, an employee must seek the permission of a person, their legal guardian, or their personal representative before disclosing protected health information (PHI).



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Incidental Uses and Disclosures

The nature of customary health care practices and communications, and the various environments in which individuals receive health care or other services, create a potential for the incidental disclosure of protected individual health information. The law does not require the elimination of such disclosures; rather it permits certain incidental disclosures when the agency has reasonable safeguards in place, and follows the minimum necessary standard, to protect an individual’s privacy.

Authorization for Release of Protected Health Information

- CDS is required to obtain written, signed authorization prior to disclosing certain PHI. The agency has developed a form called a Disclosure of Private Health Information for this purpose.
- A signed authorization to disclose information is required for any purpose other than those noted as not requiring an authorization in the Notice of Privacy Practices.
- A signed authorization is always required for the use or disclosure of psychotherapy notes, as well as for uses and disclosures for marketing purposes.
- In the event of an emergency, CDS may release information in the best interest of the consumer, and inform the consumer or his/her representative by written notice as soon thereafter as possible.
- The signer of an authorization to disclose information can submit written request to rescind the authorization at any time, and CDS will no longer disclose information for the purposes stated in the authorization. CDS cannot take back disclosures already made under the authorization prior to its revocation.

Research

CDS will not disclose any individual health information for the purpose or research without the signed consent of a consumer or his/her representative.

RIGHTS OF CONSUMERS

The law affords consumers a number of privacy rights that are outlined in the notice of privacy practices. These rights include:

Former Consumers’ Access to Protected Health Information

A former consumer’s rights regarding protected health information are the same as those of a current consumer.



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Current Consumers’ Access to Protected Health Information

Consumers and representatives have a right to request the opportunity to inspect and copy protected health information pertaining to the consumer. Requests for access to this information must be submitted to the director of the department where the information is kept using the Request for Consumer Access to Health Information form. CDS may deny requests for access to individual health information, and in such cases will provide the person making the request with a written explanation of the reasons for the decision. The person may request CDS’ reconsideration of the decision by a health care professional who did not participate in the original decision. In the event that the second request is denied, the individual or representative may request reconsideration of the decision by a medical record access review committee. Requests for access to information and disposition of request(s) will be tracked. CDS may verify the identity of the person requesting the information to ensure private information is not disclosed to an unauthorized person.

Personal Representatives:

When a person has a personal representative, he/she has similar rights to access and control health information as the consumer. Depending on the individual’s circumstances, the personal representative may be his/her guardian, healthcare proxy, involved parent, spouse, adult child, or any person authorized under the law to act on his/her behalf regarding health care decisions. In the event that the consumer is deceased, the law recognizes the personal representative as the person with legal authority to act on behalf of the decedent or the estate, such as the executor or next of kin. If CDS believes that an individual has been, or may be, subjected to abuse or neglect by the personal representative, or that treating a person as an individual’s personal representative could endanger the individual, the agency may choose not to treat that person as the individual’s personal representative if, in professional judgment, CDS believes doing so would not be in the best interest of the individual.

Accounting Of Disclosures of Protected Health Information

CDS will account for all disclosures of personal health information made without the person’s authorization for purposes that are not treatment, payment, or healthcare operations (**Attachment B**). This accounting will be maintained in the individual’s record. The consumer or representative has a right to ask CDS to provide him/her with an accounting of these disclosures.

Consumer/Representative Restrictions of Use and Disclosure

Consumers or their representatives can request a restriction on the use and disclosure of the individual’s health information. These requests must be made in writing to the director of the program involved. The request must include the specific information involved, whether use or disclosure, or both, are to be restricted, and to whom the



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limitations apply. The agency Request for Special Privacy Protections form is to be used for such requests. CDS is not required to agree to requested restrictions. The person making the request will be notified of its outcome via the agency Response to Request for Special Privacy Protection form. In the event that the special privacy protection is terminated by CDS or the consumer/representative, the privacy officer will notify the consumer/representative via a Termination of Special Privacy Protection notice.

Amendment of Protected Health Information

Consumers and representatives may request changes to be made to personal health information. CDS can deny such requests if, for example, the agency believes the record is accurate and complete.

Complaints

Individuals or representatives who believe their privacy rights have been violated may file a complaint directly with CDS through the director of quality assurance. Any CDS employee who receives a complaint regarding an alleged allegation of privacy rights must direct the complainant to the director of quality assurance. As a representative of CDS, the employee must him/herself immediately contact the director of quality assurance to ensure he/she has been informed of the complaint. CDS has developed a Complaint Form for a consumer or his/her representative to use in presenting a complaint. The complaint will be answered via a Response to Complaint letter. Complaints will be tracked on a consumer bases via a Complaint Tracking Information form. CDS will not engage in any discriminatory or other retaliatory behavior, including in response to a privacy complaint.

BUSINESS ASSOCIATES

CDS may disclose protected health information to business associates on a minimum-necessary basis for the purposes of treatment, billing, agency operations and any other legal purpose outlined in the notice of privacy practices without the written authorization of the consumer or their representative. Written authorization will be obtained for all other purposes of disclosure. CDS will obtain satisfactory assurances as required by law, via a contract, that any business associate will use the information only for the purpose intended by CDS, will safeguard the information from misuse, and will assist CDS in complying with its duties under the law. CDS will not disclose individual health information to a business associate for the associate’s independent purposes, except as needed for the proper management and administration of the business associate.

Examples of business associates include, but are not limited to, attorneys, accountants, and consultants.



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Contracts with business associates regarding disclosure and use of healthcare information must describe the permitted and required uses of protected health information by the business associate, provide that the associate will not use or further disclose the information other than is permitted or required by the contract or as required by law, and require the associate to use appropriate safeguards to prevent uses or disclosures not included in the contract. Should CDS become aware of a material breach or violation of a contract or agreement by a business associate, CDS would take all reasonable steps to cure the breach or end the violation. In the event this is unsuccessful, CDS will terminate the agreement, if feasible. If termination of the agreement is infeasible, CDS will notify the Department of Health and Human Services Office for Civil Rights of the situation. CDS is not required to enter into a contract regarding use and disclosure of individual health information when the disclosure is to a health care provider for the purpose of medical treatment or payment, to certain health plan sponsors, to a public benefits program such as Medicare, to entities whose functions would not involve more than incidental disclosure of protected health information, to conduits of information such as the postal service, couriers, and their electronic equivalents, to a financial institution processing consumer transactions, to an organized health care arrangement (OHCA), or to other entities allowed by law.

DE-IDENTIFICATION OF PROTECTED HEALTH INFORMATION

Health information that has been de-identified is not protected health information. De-identification is the removal of information that would render people unable to identify the individual, such as name, address, social security number, date of birth, etc. An example of this would be blacking out such information with a marker or changing the information to fiction.

VIOLATIONS AND SANCTIONS

CDS considers violations of the security, privacy and confidentiality of personal health information to be a serious matter. Therefore, all such violations are to be immediately reported to the privacy officer, who will track the violations and ensure appropriate follow-up occurs.

Employees found to have compromised the security, privacy or confidentiality of personal health information are subject to the agency’s policy regarding progressive discipline. The agency will take whatever actions it deems appropriate in regard to affiliated non-employees found to have committed such violations.



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RETENTION OF PROTECTED HEALTH INFORMATION

CDS will maintain protected health information according to the rules and regulations of the New York State Office of Mental Retardation and Developmental Disabilities, the Social Security Administration and other pertinent entities. CDS will ensure that protected health information is electronically and physical safeguarded against unauthorized disclosure through applicable information technology and document storage policies and procedures.

DESTRUCTION OF PROTECTED HEALTH INFORMATION

Protected health information safeguarded by CDS will be destroyed according to a policy and procedure regarding document destruction and deletion. Protected health information must be destroyed in a manner that safeguards against improper disclosure of such information.

PROCEDURE:

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| Responsibility: Executive Team | Procedure: <ol style="list-style-type: none"> 1. Ensures all employees, volunteers, interns, contractors, and business associates take all reasonable and appropriate measures to protect the confidentiality of the personal health information of consumers both paper and electronic. 2. Formulates and utilizes mechanisms to control access to personal health information, and protect it from inappropriate disclosure, destruction, modification, or loss. Both paper and electronic. 3. Oversees security management and risk management for the agency in regard to personal health information 4. Oversees the response to, reporting of, and sanctions regarding security incidents 5. Follows the policy for written contracts in regard to personal health information |
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| Training Manager | 1. Works to ensure all employees receive proper training regarding privacy of individual health information |
| Site Manager | <ol style="list-style-type: none"> 1. Demonstrates due diligence to protect, and ensure others protect, individuals' health information 2. Ensures site employees receive proper training regarding protection of individual health information 3. Reports known or potential privacy violations as per policy 4. Follow policy regarding use and disclosure of personal health information |
| All CDS Employees | <ol style="list-style-type: none"> 1. Exercise reasonable and appropriate care to disclose the minimum personal health information necessary for the purpose at hand 2. Follow policy regarding the transport of personal health information 3. Follow policy regarding documents and paperwork 4. Follow CDS computer policies 5. Follow policy regarding the destruction of personal health information 6. Follow policy regarding oral communication of personal health information 7. Follow policy regarding disclosure of consumer personal health information to fellow CDS employees 8. Ensure documents are retained in accordance with OMRDD, SSA, and other pertinent entities' requirements 9. Ensure all personal health information is destroyed according to CDS policy 10. Report violations of this policy to the privacy officer immediately |