



**JUSTICE CABINET  
DEPARTMENT OF  
JUVENILE JUSTICE  
POLICY AND PROCEDURES**

**REFERENCES:**

**CHAPTER: Administration**

**AUTHORITY: KRS 15A.065**

**SUBJECT: Privacy of Health Information**

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**APPROVAL: Ronald L. Bishop**

**, COMMISSIONER**

**I. POLICY**

It is the policy of the Department of Juvenile Justice to protect the privacy of individually identifiable health information in compliance with federal and state laws governing the use and disclosure of protected health information (PHI) pursuant to the requirements of the HIPAA privacy rule (45 CFR 164.500 et seq.). Parental access to a minor's PHI shall be in accordance with state law.

**II. APPLICABILITY**

This policy shall apply to all employees of the Department of Juvenile Justice.

**III. DEFINITIONS**

- A. "Individually Identifiable Health Information" means information, including demographic information, that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
1. That identifies the individual; or
  2. With respect to which there is reasonable basis to believe the information can be used to identify the individual.
- B. "Licensed Healthcare Professional" means a medical doctor, a nurse, or a qualified mental health professional.
- C. "Protected Health Information" means individually identifiable health information that is transmitted or maintained in any form or medium.

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D. "Psychotherapy Notes" means notes recorded (in any medium) by a healthcare provider who is a qualified mental health professional documenting or analyzing the contents of conversations during private counseling sessions or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. "Psychotherapy notes" exclude medication prescriptions and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

#### **IV. PROCEDURES**

##### **A. Notice of Privacy Practices**

Beginning on April 14, 2003, a youth (and a youth's parent or guardian if the youth is under 18 years of age) shall be given a copy of the Notice of Privacy Practices as follows:

1. Every youth who is provided physical or mental health services, when provided by a qualified mental health professional, by DJJ personnel in the community at a DJJ office or in a DJJ program, shall be provided a copy of the Notice of Privacy Practices. The Notice shall be provided to the youth at his first appearance for services on or after April 14, 2003. Each youth, and a parent or guardian if appropriate, given the Notice shall be asked to sign an acknowledgment that the Notice has been provided. If the youth refuses to sign the acknowledgement, the employee providing the Notice shall note the refusal on the acknowledgement. The acknowledgement shall be maintained in the youth's file.
2. The Notice of Privacy Practices shall be posted in a prominent location in every DJJ community office.
3. Any youth who requests a copy of the Notice of Privacy Practices shall be given a copy.
4. The Notice shall be posted on DJJ's website.
5. If the Notice of Privacy Practices is changed, the amended Notice shall be provided as required above.

##### **B. Right to Access, Inspect and Copy Protected Health Information**

It is DJJ's policy to honor a youth's right of access to inspect and

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obtain a copy of PHI for as long as the PHI is maintained in compliance with HIPAA and DJJ's retention policy.

1. A youth who has or is receiving services from DJJ, a parent or guardian of a minor, or a personal representative shall make a written request to access to inspect or copy, or to receive copies of, PHI.
2. All requests for access to PHI shall be discussed with the Privacy Officer in the Office of General Counsel.
3. Action shall be taken on the request within 30 days after receipt of the request if the PHI has not been archived and within 60 days if the PHI has been archived. One 30-day extension is permitted if DJJ provides a written statement of the reasons for the delay and the date by which the request will be processed to the individual making the request.
4. The request may be denied without an opportunity for review if the information requested consists of:
  - a. Psychotherapy notes; or
  - b. Information compiled in anticipation of or use in civil, criminal or administrative action or proceeding.
5. The request may also be denied without providing an opportunity for review when:
  - a. The youth making the request is in placement in a treatment facility and the request to obtain PHI would jeopardize the youth, other youths, or the safety of any employee or other person at the facility, or a person responsible for transporting the youth.
  - b. The PHI was obtained from someone other than a healthcare provider under a promise of confidentiality and access would likely reveal the source of the information: or
  - c. Access is otherwise precluded by law.
6. The request may be denied under the following circumstances if the youth is given a right to have the denial reviewed:
  - a. A licensed healthcare professional has determined that the access is likely to endanger the life or physical safety of the youth or another person;
  - b. The PHI makes reference to another person who is not a healthcare provider, and a licensed healthcare professional has determined that the access request is

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reasonably likely to cause substantial harm to such other person; or

- a. The request is made by the youth's parent, guardian, or other personal representative and a licensed healthcare professional has determined that access is reasonably likely to cause substantial harm to the youth or another person.
2. If the request is granted, the individual and DJJ shall arrange a mutually convenient time for the individual to inspect and copy the information. If the individual agrees, a copy of the information may simply be provided.
  3. If the request is denied, a written denial shall be provided to the individual. The denial shall be in plain language and contain the basis for the denial, a statement, if applicable, of review rights, and a description of how the individual may complain to DJJ or to the Secretary of Health and Human Services.
  4. If access is denied because DJJ does not maintain the PHI that is the subject of the request, and DJJ knows where the PHI is maintained, DJJ shall inform the individual where to direct the request for access.
  5. DJJ shall, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI denied.
  6. If the reason for denial is one that gives the individual right of review, the denial shall be reviewed by a licensed healthcare professional designated by DJJ and who did not participate in the original decision to deny if the individual who made the original request submits a written request for review. The reviewing professional shall make a decision within 30 days of receipt of the review request. Written notice of the reviewing professional's decision shall be provided to the individual.

**C. Amendment of Protected Health Information**

A youth, or the parent or guardian of a minor or other personal representative (if appropriate), who believes information in his health records is incorrect may request an amendment or correction of the information.

1. The request for amendment shall be in writing and clearly identify the information to be amended as well as the reasons for the amendment.

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2. The request may be denied if the material requested to be amended:
  - a. Was not created by DJJ;
  - b. Is not part of the juvenile's health record;
  - c. Is not part of the information that the youth would be permitted to inspect or copy; or
  - d. Is accurate and complete.
3. The request shall be forwarded to the Privacy Officer, in the Office of General Counsel, immediately. The request shall be acted on no later than 60 days after receipt of the request. DJJ may have a one-time extension of 30 days to process the request if the individual making the request is given a written statement of the reasons for the delay and the date by which the request will be processed.
4. If the request is granted, after review and approval by the individual responsible for the entry, DJJ shall:
  - a. Insert the amendment or provide a link to the amendment at the site of the information that is the subject of the request;
  - b. Inform the individual that the amendment is accepted;
  - c. Obtain the individual's identification of and agreement to have DJJ notify the relevant persons with whom the amendment needs to be shared; and
  - d. Within a reasonable time, make reasonable efforts to provide the amendment to persons identified by the individual, and persons that DJJ knows have the PHI that is the subject of the amendment and that they may have relied on or could foreseeably rely on to the detriment of the individual.
5. If the request is denied, DJJ shall provide a written denial, in plain language, that contains:
  - a. The basis for the denial;
  - b. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such an amendment;
  - c. A statement that if the individual does not submit a written statement of disagreement, the individual may request that DJJ provide the individual's request for amendment and the denial with any future disclosures of the PHI that was the subject of the request; and

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d. A description of how the individual may complain to DJJ or the Secretary of Health and Human Services.

6. A written statement of disagreement with a denial shall be limited to one page in length. DJJ may prepare a written rebuttal to the statement. If a rebuttal is prepared, a copy shall be provided to the individual who made the request. If a statement of disagreement is submitted by the individual, DJJ shall identify the record of PHI that is the subject of the disputed amendment and append or otherwise link the individual's request for amendment, the denial, statement of disagreement, and the rebuttal, if any. If a written statement of disagreement was not submitted, the request for amendment and its denial, or a summary of such information, shall be included with subsequent disclosures of PHI only if the individual has requested such action.
7. If DJJ is informed by another entity of an amendment to an individual's PHI, DJJ shall amend the appropriate record accordingly, in written or electronic form.

**D. Access to PHI by DJJ Employees**

It is DJJ's policy to protect the privacy of individually identifiable health information in compliance with state and federal law and to limit access to such information to employees who have a need for such information to perform their jobs.

1. DJJ employees shall be granted access to PHI in accordance with state and federal law and relevant DJJ Policies and Procedures.
2. DJJ employees shall access PHI relating to an individual only when such access is necessary to perform a function of their job.
3. Communications between employees which involve PHI shall be considered confidential and shall not take place in public areas, unless it is absolutely necessary. If discussion must be held in a public area, reasonable steps shall be taken to assure confidentiality of PHI.
4. Records shall be maintained in accordance with appropriate policies and procedures set forth in the Department's Policies and Procedures Manual.
5. If PHI in any form is lost or stolen, the Privacy Officer, in the Office of General Counsel, shall be notified as soon as

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possible, but no later than two business days after the loss is discovered, in order for the Privacy Officer to initiate mitigation.

**B. Authorization for the Disclosure of PHI**

Unless one of the limited exceptions apply, DJJ shall not use or disclose PHI unless an authorization is obtained from the individual who is the subject of the PHI.

1. Any disclosures that occur shall be limited to the minimum amount of information necessary to meet the purpose of the use or disclosure, unless:
  - a. The disclosure is authorized by the individual;
  - b. The disclosure is required by law; or
  - c. The disclosure is to another healthcare provider and is for treatment, payment or healthcare operation purposes.
2. DJJ shall obtain an authorization for any use or disclosure of psychotherapy notes except:
  - a. To carry out treatment, payment or healthcare operations; or
  - b. For DJJ to use in defending itself in litigation or other proceedings brought by the individual.
3. PHI may be disclosed without authorization:
  - a. To a public health authority;
  - b. To report child abuse or neglect or other situations involving abuse, neglect or domestic violence;
  - c. To the Food and Drug Administration;
  - d. To a health oversight agency;
  - e. To judicial or administrative proceedings;
  - f. To law enforcement (but only in certain circumstances);
  - g. To avert a serious threat to health or safety;
  - h. For governmental functions (such as national security, veterans information);
  - i. To other agencies administering public benefits;
  - j. To medical examiners and coroners;
  - k. To funeral directors;
    - l. For organ donation purposes;
  - m. For some research purposes; or
  - n. As required or permitted by law.
4. Any questions as to whether use or disclosure is permitted shall be directed to the Privacy Officer, in the Office of General Counsel.

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C. Accounting of Disclosures

An individual has the right to receive a written accounting of disclosures of PHI made by DJJ.

1. All disclosures of PHI shall be accounted for upon the request of the individual. "Disclosure" includes any form of communication that discloses PHI, including verbal.
2. The following list of exceptions do not require tracking or need to be accounted for:
  - a. Disclosures made for treatment, payment, and healthcare operations;
  - b. Disclosures made to the individual;
  - c. Disclosures made for national security or intelligence purposes;
  - d. Disclosures made to correctional institutions or law enforcement officials;
  - e. Disclosures made prior to April 14, 2003; and
  - f. Disclosures to health oversight agencies (contact the Privacy Officer if this situation arises).
3. A request for an accounting of disclosures shall be made in writing. The request may be for a period of up to six years prior to the date the accounting is requested. No accounting shall include disclosures made prior to April 14, 2003.
4. An accounting of disclosures shall include the following information:
  - a. Date of disclosure;
  - b. Name of person who received the PHI, and address, if known;
  - c. Brief description of PHI disclosed; and
  - d. Brief statement of the purpose of the disclosure or a copy of the individual's written authorization or a copy of the individual's written request for disclosure.
5. The accounting of disclosures shall be completed within 60 days of receipt of the request. If the PHI has been disclosed to a business associate, then a request shall be made by DJJ to the business associate to provide an accounting of disclosures of the individual's PHI. The business associate shall provide the accounting within 20 days of the request. DJJ is allowed one 30-day extension to complete the accounting, but the individual making the request shall be informed in writing of the delay, the reason for the delay, and the date the accounting will be



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provided. Notification of the extension shall be made to the individual within the original 60-day timeframe.

6. A copy of the accounting that is provided shall be maintained in the individual's record.
7. The accounting of disclosures shall be provided at no charge for a request made once during any twelve-month period. A reasonable fee shall be charged for any additional requests made during a twelve-month period provided that the individual is informed of the fee in advance and given an opportunity to withdraw or modify the request.

**D. Verification of Identity of Requestor**

Prior to disclosing PHI to third parties, the employee providing the information shall verify the identity of the requestor and the authority of the requestor to request the information.

1. PHI may be released to a third party only if an authorization has been signed by the individual who is the subject of the PHI, unless the situation is one of the exceptions set forth earlier in this policy or the HIPAA privacy rule.
2. The identity and authority of the party requesting the information shall be verified prior to the information being provided.
3. Any request that requires an authorization shall be discussed with the Privacy Officer prior to disclosure of the information.

**E. Complaint Process**

DJJ shall provide a process for an individual to file a complaint if the individual feels that his privacy rights have been violated.

1. DJJ strongly encourages that individuals and employees discuss and attempt to resolve issues in the most direct and informal manner at the local level.
2. If the complaint cannot be resolved informally, an individual may call, write or present in person the alleged privacy violation or complaint to the Juvenile Services Regional Manager or the Regional Facilities Administrator, depending on from where the complaint arises.
3. The complaint shall be summarized on the Complaint Report Form. The complaint must include the date on which the act being complained of occurred, a description of the PHI affected and how it was affected, the name of anyone who

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may have been improperly provided with the PHI, and the date the complaint is being made.

1. The Complaint shall be investigated and a written response provided to the individual who filed the complaint within 30 days from the date the complaint was filed. The Complaint shall be forwarded to the Privacy Officer and the investigation and the response shall be discussed with the Privacy Officer prior to completion.
2. A copy of the complaint and the response shall be filed with the Privacy Officer. If a violation was found to have occurred, the Privacy Officer shall, after discussion with appropriate management personnel, take any corrective action necessary, including disciplinary action against employees.
3. The Privacy Officer shall retain a record of the complaint for a minimum of six years.
4. There shall be no retaliation against any individual for filing a complaint.

**C. Judicial and Administrative Proceedings**

Except for information that is provided as statutorily required in the every day course of treatment, prior to providing PHI pursuant to any court order, subpoena, or other court or administrative proceeding document, the employee requested to provide the information shall discuss the situation with the Privacy Officer.

**D. Psychotherapy Notes**

Even though an individual has a right to access most health information, the individual does not have a right to access psychotherapy notes. Therefore, DJJ is not required to fulfill an individual's request for access to psychotherapy notes. An individual shall be informed of this limitation on access if the request will not be fulfilled.

In most circumstances, an individual's psychotherapy notes may not be used or disclosed without the individual's written authorization. An authorization is not required for the following uses or disclosures of psychotherapy notes:

1. To carry out the following treatment, payment or healthcare operations:
  - a. Use by the originator of the notes for treatment;
  - b. Use by DJJ for its own training programs in which students, trainees, or practitioners in mental health learn under

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supervision to practice or improve their skills in group, joint, family or individual counseling; or  
c. To defend itself in a legal action or other proceeding brought by the individual.

2. To respond to the federal Department of Health and Human Services to determine compliance with HIPAA privacy rules;
3. To comply with the law;
4. To assist in oversight of the originator of the notes;
5. To help coroners/medical examiners in the examination of deceased persons; or
6. To address serious public health or safety concerns.

**E. Training**

All DJJ employees who have access to PHI shall receive training related to this policy and HIPAA privacy rules. Acknowledgment of such training shall be received from each employee who receives the training.

**F. Privacy Officer**

The Assistant General Counsel in the Office of General Counsel has been designated as DJJ's Privacy Officer. Any questions related to this policy or HIPAA privacy rules may be directed to the Privacy Officer.

**V. MONITORING MECHANISM**

The Privacy Officer and Quality Assurance shall monitor compliance with this policy.