

2300 CONFIDENTIALITY: PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION.

2301 General Provisions. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Division will safeguard the confidentiality of all personal information, including all health information, photographs and lists of names. These policies assure that:

A. Specific safeguards exist that protect current and stored personal information, including, but not limited to:

1. The provision of secure workstations and data entry areas;
2. The location of printers and FAX machines in secure areas;
3. The positioning of computer screens away from the general public;
4. Assurances of a secure E-mail system, including safeguards that no messages are sent to anyone not authorized to receive the message; and,
5. Training of staff on controls of the use of protected health information.

B. All applicants and eligible individuals and as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

C. All applicants or their representatives are informed about the Division's need to collect personal information and the policies governing its use, including:

1. Identification of the authority under which information is collected;
2. Explanation of the principal purposes for which the Division intends to use or release the information;
3. Explanation of whether providing requested information to the Division is mandatory or voluntary and the effects of not providing requested information;
4. Identification of those situations in which the Division requires or does not require informed written consent of the individual before information may be released; and,
5. Identification of the agencies to which information is routinely released.

a. An explanation of state policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and,

b. These policies and procedures provide no fewer protections for individuals than state laws and regulations.

2302 State Program Use. All personal information in the possession of the Division must be used only for the purposes directly connected with the administration of the rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged.

2303 Release to Applicants and Eligible Individuals. Except as provided below, if requested in writing by an applicant or eligible individual, the Division shall make all requested information in that individual's record of service accessible to and shall release the information to the individual or the individual's representative within 15 working days.

2303.1 Release of Harmful Information. Medical, psychological, or other information that the Division determines may be potentially harmful to the individual may not be released directly to the individual, but must be provided to the individual through either the designated Client Assistance Program representative or the medical or mental health professional from whom the information originated, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

2303.2 Release of Information Obtained from Other Agencies. If personal information has been obtained from another agency or organization, it may not be released. The individual may request the information from the agency or organization from which it was obtained.

2303.3 Requested Amendment to Case Record. An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Division amend the information. If the information is not amended, the request for an amendment must be documented in the case record.

A. A request to amend or correct records shall be in writing, dated and signed by the individual or the individual's representative, and shall:

1. Identify the records which are the subject of the request;
2. Describe the requested change precisely; and,

3. State the reasons for the change.

B. Within 30 working days after receiving a request to amend or correct records, the Rehabilitation Counselor shall:

1. Make or refuse to make the requested change;

2. Give the individual or the individual's representative written notice of the action taken;

3. If the requested change is refused, state the reasons for the refusal. The Rehabilitation Counselor may refuse to amend or correct records because, among other reasons, the records were not created by the Division.

C. If the Rehabilitation Counselor refuses to make the requested change and the individual or the individual's representative disagrees with the action, the Rehabilitation Counselor shall advise the individual or the individual's representative of the appeal process. The Rehabilitation Counselor also shall advise the individual or the individual's representative that s/he may file with the Division a concise statement that, in five pages or less, states the reasons for the requested change in the record of services and for disagreement with the Rehabilitation Counselor's action. The statement of disagreement shall be attached to the disputed record and the Rehabilitation Counselor shall provide a copy of the statement whenever the disputed record is disclosed to another person.

2303.4 Right of the Individual to Inspect Records.

A. When requested by an individual or the individual's representative, the Rehabilitation Counselor shall permit the individual or the individual's representative to inspect any records in the custody of the Division which contain personal information about the individual. Certain restrictions may be found in preceding paragraphs.

B. A request to inspect records shall be in writing, dated and signed by the individual or the individual's representative, and identify the records which are the subject of the request.

C. The Rehabilitation Counselor shall comply with a request to inspect records within a reasonable period, but not to exceed 30 working days after the receipt of the request. A written response from the Rehabilitation Counselor will contain notification of the time and place of the meeting to be held, within the 30 day period, to review the record of service.

D. If the requested records are unavailable or have been destroyed, the Rehabilitation Counselor shall notify the individual or the individual's representative within 10 working days after receipt of the request.

2303.5 Appeal of Denial to Inspect or Amend Records. An individual or the individual's representative may request an appeal hearing if the Rehabilitation Counselor takes any of the following actions with respect to any records in the custody of the Division which contain personal information about the individual:

- A. Denies a request to inspect and obtain copies of the records;
- B. Denies a request to amend or correct records;
- C. Fails to attach a statement of disagreement to the disputed record;
- D. Fails to provide a statement of the disagreement when a disputed record is disclosed to another person.

2304 Release for Audit, Program Evaluation, and Research. With prior approval of the Director or designee, personal information may be released to an organization, agency, or individual engaged in audit, program evaluation, or research only for purposes directly connected with the administration of the rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that:

- A. The information will be used only for the purpose for which it is being provided;
- B. The information will be released only to persons officially connected with the audit, evaluation, or research;
- C. The information will not be released to the involved individual;
- D. The information will be managed in a manner to safeguard confidentiality; and,
- E. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

2305 Release to Other Programs or Authorities.

2305.1 Informed Written Consent. All individually identifiable health information is subject to HIPAA regulations and is to be protected. Protected health information may be disclosed only for treatment purposes, to obtain payment, or to the individual, unless a written authorization for releasing the information is completed. To disclose information to other parties, unless for the purposes of treatment or to obtain payment, the Counselor will obtain the informed written consent of the individual or, if appropriate, the individual's representative, utilizing the WVDRS-84, *Release of Information*. The Division may then release personal and health information to another agency or organization for its program purposes. Cooperative agreements **DO NOT** supersede this policy.

2305.2 Release of Information Considered Harmful. Medical or psychological information that the Division determines may be harmful to the individual may be released if the other agency or organization assures the Division that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

2305.3 Release of Information Required by Federal Law. The Division shall release personal information if required by federal law or regulations.

2305.4 Release of Information to the Judicial System. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, and in response to an order issued by a judge, magistrate, or other authorized judicial officer, unless expressly prohibited by federal or state laws or regulations.

2305.5 Release of Information for Protection. The Division may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

2305.6 Explanation of Restrictions to the Individual. If the disclosure of requested records is restricted, such restrictions shall be explained to the individual or the individual's representative. The Rehabilitation Counselor shall:

A. Inform the individual or the individual's representative and document in the case record that specific records contain information which requires professional explanation and interpretation, and review and/or release would not be in the individual's best interests;

B. Inform the individual or the individual's representative that arrangements may be made for the individual to meet the person who prepared the report to discuss the material, provide a summary of the report, and answer any questions concerning its content; and,

C. Advise the individual or the individual's representative of the appeal procedure.

2306 Requesting and Receiving Information. To administer the rehabilitation program and make key decisions in the development of an individual's case, the Rehabilitation Counselor may obtain information about the individual from the individual and other sources outside the Division.

2306.1 Obtaining Information from the Individual. Fundamental to the act of applying for rehabilitation services is the responsibility of the individual to provide such information as the Rehabilitation Counselor reasonably may request for the purposes of determining eligibility and planning and providing rehabilitation services. By signing the *Application for Rehabilitation Services*, the applicant acknowledges his/her understanding that

his/her case information will be held confidential by the Division. Also by signing the application form, the individual authorizes the Division, in effect, to use the information for the stated purposes of determining eligibility and planning and providing rehabilitation services.

2306.2 Obtaining Information from Family Members. When required in the course of serving the individual or in providing services to members of the individual's family, or both, the Rehabilitation Counselor may obtain information from the individual's family members. All information obtained from the individual's family members is subject to the same confidential treatment as is information obtained from the individual or from other sources. Prior to talking with the individual's family members, the Rehabilitation Counselor will explain the reasons fully to the individual and obtain the individual's informed consent in writing on WVDRS-85, *Request for Information*. If the information is obtained from the family member in the presence of the individual it will not be necessary to obtain written informed consent. When speaking with family members, the Rehabilitation Counselor will explain the reasons for requesting the information and advise them that the information will be held confidential.

2306.3 Obtaining Information from Other Sources. When the individual has received services from a physician, other medical provider, educational institution, or other individual, agency, or organization, the Rehabilitation Counselor may need the record or transcript of such services as an aid in determining eligibility or planning and providing services.

A. The Rehabilitation Counselor will inform the individual of the specific information needed from each source and the reason(s) therefore.

B. The Rehabilitation Counselor will prepare WVDRS-85, *Request for Information*. A separate form will be prepared for each source from which information is requested. Entered on the form will be the specific information requested, including specific dates of service when available, date-spans, or certain treatment/procedures that were performed. The Counselor will also provide a description of the purpose for which the information is requested. The individual's informed consent for the source to release the requested information will be shown by the individual's signature. The original will be sent to the source, while a duplicate of the completed form will be attached to the information when received and filed in the case folder. *In every case, the form will be completed specifically for the source and the requested information; the individual will not be asked to sign blank forms. Information received in response to WVDRS-85 will not be released by the Division.*

2307 Fees.

2307.1 Copying Records. The Division may charge a reasonable fee (\$0.25 per page) for copying records if reproduction is made by a photocopying machine within the Division, or the actual cost of reproduction if reproduction is made by a photocopying machine

outside the Division or if the record is not susceptible to photocopying (for example, microfilm, x-rays, etc.). A charge may not be made if the total amount of the fee is \$1 or less.

2307.2 Searching and Preparing Records. The Division may charge a reasonable fee not to exceed \$15 per hour for the time beyond the first two hours expended searching for requested records and preparing the records for inspection and copying. The fee may be prorated for fractions of an hour.

2307.3 Postage. The Division may charge for the cost of postage to mail copies of records.

2307.4 Cost Agreement. Before copying records, the Division shall:

A. Estimate the cost of reproduction, including research, preparation time, and postage, and,

B. Either obtain the agreement of the person requesting copies of the records to pay the cost or demand prepayment of any estimated fee before reproducing the records.

2307.5 Fee Reduction/Waiver. Upon request, the Division may waive or reduce any fee charged pursuant to this section if the Division determines that the waiver or reduction is in the public interest. The Division shall consider, among other relevant factors, the ability of the person requesting the copies of records to pay the fee.

2307.6 Payment Process. If a fee is required, payment will be made to the “West Virginia Division of Rehabilitation Services.”