

## **POLICY MANUAL DISCLAIMER**

**This policy manual contains guidance for employees of NW BOCES regarding the policies and practices of NW BOCES, but is not intended to contain contractual promises or to constitute a contract of employment between NW BOCES and any of its employees. NW BOCES reserves the right to change or depart from policies stated in this policy manual when it considers this to be in the best interests of NW BOCES, without prior notice to any employee, and no specific provision or specific policy of this policy manual is a promise of employment or benefits upon which any employee can rely upon to their detriment. NW BOCES specifically disclaims that any specific policy contained in the policy manual constitutes a contract of employment with any employee.**

**NW BOCES ALWAYS RESERVES AND RETAINS THE ABSOLUTE RIGHT TO MODIFY THE CONTENTS OF THIS POLICY MANUAL AS IT DEEMS NECESSARY, AND/OR REVOKE THIS POLICY MANUAL IN ITS SOLE DISCRETION, WITHOUT PRIOR NOTICE TO YOU OR ANY EMPLOYEE.**

| <b>Chapter 9- NW BOCES<br/>Health Insurance Portability and Accountability Act<br/>Privacy Rule and the Privacy Act</b> | <b>Section</b> |
|---|----------------|
| <b>Introduction</b>   | 2-7.1          |
| Purpose   | 2-7.1A         |
| Background  | 2-7.1B         |
| Authority   | 2-7.1C         |
| Policy  | 2-7.1D         |
| <b>Responsibilities</b>   | 2-7.2          |
| <b>Definitions</b>  | 2-7.3          |
| Accounting of Disclosures   | 2-7.3A         |
| Designated Record Set   | 2-7.3B         |
| Facility Directory  | 2-7.3C         |
| Health Information  | 2-7.3D         |
| Highly Sensitive Health Information   | 2-7.3E         |
| Individually Identifiable Health Information  | 2-7.3F         |
| Notice of Privacy Practices   | 2-7.3G         |
| Protected Health Information  | 2-7.3H         |
| Psychotherapy Notes   | 2-7.3I         |
| <b>Procedures</b>   | 2-7.4          |
| Designation of Privacy Official and Contact Person  | 2-7.4A         |
| Training  | 2-7.4B         |
| Safeguards  | 2-7.4C         |
| Complaints  | 2-7.4D         |
| Sanctions   | 2-7.4E         |
| Prohibited Sanctions  | 2-7.4F         |
| Mitigation  | 2-7.4G         |
| Refraining from Intimidating or Retaliatory Acts  | 2-7.4H         |
| Waiver of Rights  | 2-7.4I         |

**POLICY AND PROCEDURE FOR CLIENTS' RIGHTS TO ACCESS, INSPECT,  
AND OBTAIN A COPY OF THEIR PROTECTED HEALTH INFORMATION**

1. **PURPOSE.** The purpose of Manual Exhibit 2-7-A is to specify Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedures regarding the rights of clients, under certain circumstances, to access, inspect, and obtain a copy of their Protected Health Information (PHI).
2. **POLICY.** It is NW BOCES policy to provide clients or their personal representatives the maximum rights under these statutes and regulations to access, inspect, and obtain copies of their PHI that is maintained in a PASOR and/or a HIPAA Privacy Rule-designated record set. With respect to access by or on behalf of unemancipated minors, please refer to the Manual Exhibit 2-7-Q, "Policy and Procedure on Protected Health Information of Unemancipated Minors."
3. **PROCEDURES FOR ACCESS WHEN RECORDS ARE SUBJECT TO THE PRIVACY ACT.** In most instances, client medical records will be subject to both the Privacy Act and the HIPAA Privacy Rule. Because the HHS Privacy Act regulations and the HIPAA Privacy Rule have different procedures governing client access to medical records, NW BOCES is required to choose the procedure that provides the client with the greatest access to his or her own PHI. Because the Privacy Act access procedures provide the client with greater access to his or her own PHI than the HIPAA Privacy Rule access procedures do, NW BOCES must follow the Privacy Act access procedures when determining whether to provide a client with access to his or her PHI.

The following procedures shall be used when a client whose records are subject to the Privacy Act makes a request to access, inspect, and/or obtain a copy of their PHI. In all other instances, the service unit shall follow the procedures set forth in Sections 5 and 6 below.

**A. Making the Initial Request.**

- (1) **Request Must be Made in Writing.** A client must submit a written request to NW BOCES Administrative Director.
- (2) **Confirming Client's Identity.** The identity of the individual requesting access to a client's records shall be determined in accordance with the instructions contained in Manual Exhibit 2-7-R, "Policy and Procedures for Verification of Identity Prior to Disclosure of Protected Health Information."
- (3) **Client Must Designate a Representative.** At the time of the request for PHI, the client must designate, in writing, a representative willing to review the record and inform the client of its contents at the representative's discretion. The representative may be a physician, other health professional, or other responsible

**POLICY AND PROCEDURE FOR MATTERS RELATED TO ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION**

1. **PURPOSE.** The purpose of Manual Exhibit 2-7-B is to specify Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedures for making and accounting of (documenting) disclosures and for receiving and processing requests by clients for an accounting of Protected Health Information (PHI) disclosures.
2. **POLICY.** Unless a client requests an accounting of disclosures for a shorter period of time, a client has the right to request and receive (with certain exceptions) an accounting of disclosures of PHI about the client made by NW BOCES, including disclosures to or by its "business associates," as defined at 45 CFR § 160.103, in the 5 years prior to the date on which the accounting is requested or for the life of the record, whichever is longer.
3. **PROCEDURES.** The following procedures shall be used to make an accounting and to respond to client requests for an accounting of disclosures of PHI.

**A. Disclosures That Do Not Require an Accounting.** The following disclosures do not require an accounting to the client:

- (1) Disclosures to officers and employees of the Department of Health and Human Services (HHS) who have a need to know the information for the performance of their duties, including, but not limited to the performance of treatment, payment, or health care operations that are required in order to investigate or determine compliance with the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule requirements.
- (2) Disclosures to the client.
- (3) Disclosures pursuant to the client's written authorization.

Note: These disclosures are reported as First Party Requests under the Freedom of Information Act (FOIA) reporting requirements.

- (4) Disclosures required under the FOIA.

Note: These disclosures are reported as Third Party Requests under the FOIA reporting requirements.

**B. Disclosures That DO Require an Accounting.** All other areas other than those listed

POLICY AND PROCEDURE FOR THE TRANSMITTAL OF  
CONFIDENTIAL COMMUNICATION BY ALTERNATE MEANS OR TO AN  
ALTERNATE LOCATION

1. PURPOSE. The purpose of this Manual Exhibit is to publish the policy and procedure for allowing clients to request the transmission of protected health information (PHI) by alternate means or to an alternate location.
2. POLICY. An individual has the right to request the transmission of PHI by alternate means or to an alternate location if the individual makes a written request and the request is reasonable.
3. DEFINITIONS.
  - A. Alternate Means. Alternate means are methods of sending confidential communications that are different from the usual methods e.g., registered mail, facsimile, e-mail (if encrypted/secured). etc.
  - B. Alternate Location. Alternate location means an address different from that listed as the mailing address in NW BOCES record. For example, the client can ask NW BOCES to contact him or her at work, instead of at home, or vice versa.
  - C. Confidential Communications. Confidential communications means transmission of a client's PHI from NW BOCES.
4. PROCEDURES. The following procedures will be used when clients request transmission of PHI by alternate means or to an alternate location.
  - A. All requests for confidential communications to be sent by alternate means or to an alternate location shall be in writing and must describe the alternate means or the alternate location.
  - B. The Administrative Director or designee will approve or disapprove all requests. Whenever possible, the decision will be given to the client prior to the client leaving the facility. The Administrative Director or designee will approve the request if it is reasonable.
  - C. A written request must be completed to ensure appropriate documentation.
  - D. Requests will be filed or documented in the medical record after the client has been notified of the decision.

POLICY AND PROCEDURE FOR USE OR DISCLOSURE OF HEALTH INFORMATION  
PURSUANT TO AUTHORIZATION OR VALID WRITTEN REQUEST

1. **PURPOSE.** The purpose of Manual Exhibit 2-7-D is to publish the policy and procedure for disclosing protected health information (PHI) pursuant to the client's authorization or a valid written request in accordance with the Privacy Act of 1974, as amended, *5 United States Code* (U.S.C.) 552a; the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, *45 Code of Federal Regulations* (CFR) Parts 160 and 164; Confidentiality of Alcohol and Drug Abuse Client Records, 42 CFR Part 2; Confidentiality of Mental Health Records, 42 CFR Part 51; and the Freedom of Information Act, 5 U.S.C. 552.
  
2. **POLICY** It is Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy that a client must complete and sign a written request for authorization for use or disclosure of health information prior to disclosing health information for any purpose.
  - A. A valid written request from the client may also be honored.
  
  - B. Authorization for use and disclosure of PHI is not required to be completed for disclosures for which authorization is not required.
  
3. **PROCEDURE.** The following procedures will be used when clients authorize disclosures of PHI and will govern how disclosure of PHI will be accomplished for valid authorizations or written requests received by NW BOCES. Adherence to the Following procedures is required.
  - A. Only authorizations with valid signatures will be processed by NW BOCES.
  
  - B. An individual may authorize a release of PHI by completing and signing the authorization.
  
  - C. Blanket authorization (no specified individual or organization or for a time period which exceeds one year) or duplicated authorizations will not be honored.
  
  - D. The authorization will terminate one year from the date of signature unless the client specifies a different expiration date or expiration event.
  
  - E. A written request must identify the individual and description of the information desired, such as date of visit or diagnosis/condition. The request must contain the name and address of the requester, date of birth, signature for comparison purposes, and date.
  
  - F. If the authorization or written request does not contain sufficient information that



POLICY AND PROCEDURE FOR REQUESTS FOR CORRECTION/AMENDMENT OF  
PROTECTED HEALTH INFORMATION

1. **PURPOSE.** To establish the policy and procedures for receiving and processing requests for correction/amendment of protected health information (PHI).
  
2. **POLICY.** Pursuant to the requirements set forth in the Privacy Act as amended, 5 U.S.C. 552a and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR Parts 160 and 164, every client receiving healthcare services at an Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) facility has the right to request corrections or amendments to his or her PHI contained in NW BOCES Privacy Act System of Records (NW BOCES Medical, Health, and Billing Records System Number 09-17-0001) that was created or received by NW BOCES.
  
3. **REQUEST FOR CORRECTION/AMENDMENT OF PHI.** A client who believes that his or her health information is inaccurate or incomplete may submit a request to NW BOCES Administrative Director or his or her designee for correction/amendment of the record in question.
  - A. The client must complete a written request for Correction/Amendment of Protected Health Information.
  - B. The Administrative Director or designee receiving the written request will date the form.
  - C. The client must receive a date stamped copy of the completed form as an acknowledgment of the receipt of the request within 10 working days.
  - D. If a decision on the request for correction/amendment can be made within 10 working days of NW BOCES' receipt of the request, then NW BOCES will simultaneously notify the client of the receipt of the client's correction/amendment request and of its decision within that 10-day period.
  - E. The Administrative Director or designee in consultation with the appropriate staff member will review the request for correction/amendment and will inform the client in writing within 60 days after receipt of the request, of approval or denial of the request for correction/amendment. NW BOCES may extend the time frame one time only for no more than 30 days if it informs the client in writing prior to the expiration of the initial 60 day time frame of the reasons for the delay and the date by which NW BOCES will act on the request. Approvals shall be processed in accordance with the procedures set forth in Section 5 below. Denials shall be processed in accordance with the procedures set forth in Sections 6 and 7 below.

POLICY AND PROCEDURE FOR DE-IDENTIFICATION OF  
PROTECTED HEALTH INFORMATION AND SUBSEQUENT RE-IDENTIFICATION

1. PURPOSE. To publish the Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedures for determining when health information is not individually identifiable or for the de-identification of protected health information (PHI), and for any subsequent re-identification.
2. POLICY. NW BOCES may determine when health information is not individually identifiable or when to de-identify PHI for disclosures other than healthcare purposes in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR Parts 160 and 164. NW BOCES may also determine when it is necessary to re-identify previously de-identified PHI and must comply with the terms of this policy to adequately de-identify PHI and to ensure proper re-identification of PHI.
3. DEFINITIONS.
  - A De-identification. De-identification is the process by which PHI is rendered individually unidentifiable through the removal of such identifiers described in the "Procedures" section of this policy or through a determination based upon statistical and scientific methods.
  - B Re-identification. Re-identification is the process of assigning a code or other means of record identification in order to allow de-identified PHI to be retrieved/identified by NW BOCES but still maintaining the anonymity of the client(s) described in the "Procedures" section below.
4. PROCEDURES.
  - A De-identification. The following procedures shall be used to de-identify PHI or to determine when health information is not individually identifiable.
    - (1)The determination of whether health information is individually identifiable or whether PHI may be de-identified will occur when there is no "need to know"; the identity of the client. This determination will be made on a case-by-case basis depending on the nature of the request. Examples may be situations related to research or a cancer registry where there is no "need to know" the identity of the client.
    - (2)NW BOCES may determine that health information is not individually identifiable in the following two ways:
      - a.If a health care professional de-identifies client records (including electronic records) containing PHI by removing the following identifiers of



POLICY AND PROCEDURE FOR USE AND DISCLOSURE FOR DIRECTORY PURPOSES

1. **PURPOSE.** To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure for using and disclosing protected health information (PHI) for directory purposes.
2. **POLICY.** An NW BOCES facility may maintain a directory of inpatients and disclose limited PHI from that directory without the individual or guardian's written authorization, provided the individual or guardian was informed of the intended use or disclosure in advance and had the opportunity to agree to or prohibit or restrict the use or disclosure.

The PHI that may be disclosed from a directory is limited to the individual's name, the individual's location in the facility, and the individual's condition (e.g., stable), described in general terms that do not communicate specific information. An individual's religious affiliation may be disclosed only to clergy, if the client has not objected to such disclosure.

3. **PROCEDURES.** The following procedures shall be used for using and disclosing information for directory purposes:
  - A. Any restriction(s) on the use or disclosure of an individual's PHI will be noted and such information will not be disclosed from the facility's directory of clients.
  - B. If there are no stated restrictions to the release of an individual's PHI, the facility may disclose the individual's name, location within the facility, and condition in general terms upon request, by name of individual. Religious affiliation may also be disclosed to clergy who request such information, but clergy need not ask by client's name.
  - C. If the individual is incapacitated or in emergency treatment and does not have the opportunity to restrict or prohibit some or all of the uses or disclosures, the facility may disclose some or all of the directory information if such disclosure is consistent with any previously stated preferences. Any disclosure of directory information about an individual who has not had an opportunity to agree or object to the use or disclosure must be in the individual's best interest. NW BOCES facility must provide the individual with an opportunity to agree or object to any releases of his or her directory information as soon as the individual resumes making his or her health care decisions.

POLICY AND PROCEDURE FOR THE USE AND DISCLOSURE OF  
PROTECTED HEALTH INFORMATION DURING A DISASTER  
AND FOR DISASTER RELIEF PURPOSES

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure on the use and disclosure of protected health information (PHI) during a disaster and for disaster relief purposes.
2. POLICY. NW BOCES may use or disclose PHI during a disaster and disaster relief to government agencies (Federal, State, or local) engaged in disaster relief activities, as well as to private disaster relief or disaster assistance organizations (e.g., Red Cross and Salvation Army) authorized by law or by its charter to assist in disaster relief efforts, for the purposes of coordinating such efforts to allow them to carry out their responsibilities.
- 3or. DISASTER. For the purpose of this policy, a disaster is any event that overwhelms normal medical capability of the local facility and that triggers mass casualty medical readiness of the facility. A disaster may be declared by the facility leadership or by the Federal, State, or local government.
5. PROCEDURES. The following procedures shall be used when using and disclosing PHI during a disaster and for disaster relief purposes.

A. Notification. NW BOCES may use and disclose PHI for the purpose of notification (or assisting in the notification, identification, or location) of a family member, personal representative of the client, or another person responsible for the care of the client, of the client's location, general condition, or death.

B. Uses and Disclosures when Client is Present. If the client is present and/or available and can make health care decisions, NW BOCES will release the information if NW BOCES:

- (1) obtains the client's agreement;
- (2) provides the client the opportunity to object to the disclosure, and the client does not express an objection; or
- (3) reasonably infers from the circumstances, based upon the exercise of professional judgment that the client does not object to the disclosure.

## POLICY AND PROCEDURE FOR SENDING AND RECEIVING

### PROTECTED HEALTH INFORMATION BY FACSIMILE

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedures for transmitting client medical and/or protected health information (PHI) by facsimile (FAX) which will best safeguard the confidentiality of such records. Due to the complex and distinct issues related to computer-based electronic transmission of PHI and/or client medical information this manual exhibit is not intended to address the safeguards necessary to ensure the confidentiality of that particular form of client health information or client medical information transmission.
2. POLICY. It is policy of NW BOCES to ensure that client PHI sent or received by NW BOCES facilities are handled in a manner that protects against unauthorized disclosure of such PHI to third parties.
3. RESPONSIBILITIES. It shall be the responsibility of all NW BOCES staff to ensure compliance with the policy and procedures published in this manual exhibit.
4. BACKGROUND. The fax machine is a widely used means to instantly send and receive written documentation. Understandably, fax machines are now used regularly to transmit PHI, as they are important tools used both to assist in the provision of client care and to facilitate the medical billing process. While no common methods of transmission of client PHI are infallible with respect to security, the transmission of client PHI via fax machines raises legitimate concerns regarding the confidentiality of PHI. Without proper safeguards to ensure that PHI is faxed in accordance with strict protocols, there is significant risk that the confidentiality of those records will be compromised. In accordance with the express requirements set forth in the Privacy Act, it is incumbent upon NW BOCES to “establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated embarrassment, inconvenience, or unfairness to any individual on whom information is obtained.” (5 U.S.C. §552a(e)(10)) This policy is intended to establish such appropriate administrative, technical, and physical safeguards for the faxing of client PHI.
5. DEFINITIONS.
  - A. Medical Records. Covers the same categories of records as those identified as being

POLICY AND PROCEDURE FOR CREATING A LIMITED DATA SET

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure for creating a limited data set for the use or disclosure of protected health information (PHI) only for the purposes of research, public health, or health care operations.
2. POLICY. For purposes of research, public health, or health care operations, NW BOCES may disclose information that is not fully de-identified if it creates a limited data set that complies with the terms of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR 164.514(e). Any use or disclosure by NW BOCES must be made pursuant to a data use agreement with the recipient of the limited data set. All use or disclosures must be made in accordance with the Manual Exhibit No. 2-7-K, "Policy and Procedure for Limiting the Use or Disclosure of PHI to the Minimum Necessary."
3. DEFINITIONS.

A Health Care Operations. Health care operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

- (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and clients with information about treatment alternatives; and related functions that do not include treatment;
- (2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
- (3) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;



POLICY AND PROCEDURE FOR LIMITING THE USE OR DISCLOSURE OF AND  
REQUESTS FOR PROTECTED HEALTH INFORMATION  
TO THE MINIMUM NECESSARY

1. PURPOSE. To publish the Northwest Wyoming BOCES (NW BOCES) policy and procedures for limiting protected health information (PHI) to the minimum necessary:
  - A. The use or disclosure of PHI; and
  - B. All PHI requested by NW BOCES from other health care providers and health plans.
2. POLICY. The medical record shall be maintained confidentially and shall not be disclosed except as provided by the Privacy Act of 1974 as amended, 5 United States Code (U.S.C.) 552a; the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164); the Freedom of Information Act as amended (5 U.S.C. 552); and other relevant Federal laws and guidance.
3. RESPONSIBILITIES.
  - A. NW BOCES Administrative Director. The Administrative Director or his or her designee shall identify, in writing, individual staff or classes of staff who have a need to know for access to PHI in order to perform their official duties.

The Administrative Director or designee shall identify, in writing, the category or categories of PHI for each staff person or class of staff who have a need to know for access, and any conditions appropriate for such access.
  - B. Designated NW BOCES Staff Person. The responsible NW BOCES staff person, as designated by the Administrative Director shall monitor compliance with the “minimum necessary” requirements.
5. PROCEDURES. NW BOCES must make reasonable efforts to limit the use or disclosure of PHI to the minimum necessary in order to accomplish the intended purpose of the use, disclosure, or request.
  - A. Minimum Necessary Requirement. The “minimum necessary” requirement does not apply to:
    - (1) disclosures to or requests by a healthcare provider for treatment purposes;
    - (2) disclosures to the client;
    - (3) uses or disclosures made pursuant to a valid authorization signed by the client or personal representative, so long as the use or disclosure is consistent with the authorization;



POLICY AND PROCEDURE FOR PROVIDING NORTHWEST WYOMING BOARD OF  
COOPERATIVE EDUCATIONAL SERVICES NOTICE OF PRIVACY PRACTICES

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure for providing the "Notice of Privacy Practices," (Notice) to all clients.
2. AUTHORITY. 45 Code of Federal Regulations (CFR) 164.520
3. POLICY. It is NW BOCES policy to provide adequate notice of its uses and disclosures of protected health information (PHI) and of the individual's rights and NW BOCES' legal duties with respect to PHI to its beneficiaries.
4. PROCEDURES.
  - A. Display. NW BOCES shall prominently and clearly display NW BOCES "Notice," (see Appendix 1) in every service unit and treatment facility and on NW BOCES Web site at <http://www.nwboces.com>. In addition, NW BOCES may prominently display NW BOCES Notice in other public places within its facilities.
  - B. Request. Any individual, whether or not a client, has the right to request and receive a copy of NW BOCES Notice at any time.
  - C. Initial Visit. After December, 2010, all clients, including both new and established clients, shall be provided a copy of the Notice at their first visit to a NW BOCES facility:
    - (1)The Client Registration Office or other appropriate department will provide a copy of the current Notice to the client.
    - (2)A staff member will briefly summarize the purpose of the Notice, in a statement such as the following: "The purpose of the Notice is to inform you of the uses and disclosures which NW BOCES may make of your protected health information, and it tells you of your rights and NW BOCES' legal duties with respect to such information."
    - (3)The client does not have to read the Notice, instead an alternate means may be used to communicate the content, e.g., a video shown in the waiting room or a staff member or accompanying family member may read the Notice to the client.

POLICY AND PROCEDURE FOR USE AND DISCLOSURE OF  
PROTECTED HEALTH INFORMATION FOR INVOLVEMENT IN THE CLIENT'S CARE  
AND FOR NOTIFICATION PURPOSES

1. PURPOSE. To publish the Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure on the uses and disclosures of protected health information (PHI) for involvement in the client's care and for notification purposes.
2. POLICY. NW BOCES may use or disclose to family members, relatives or close personal friend or any other person identified by the client, PHI directly relevant to that person's involvement in the client's health care or payment.
3. PROCEDURES.
  - A. Notification. NW BOCES may use or disclose PHI to notify or assist in the notification of (including identifying or locating) a family member, personal representative, or another person responsible for the care of the client, of the client's location, general condition, or death.
  - B. Uses or Disclosures When the Client is Present. If the client is present and/or available and can make health care decisions, NW BOCES may release the information if it:
    - (1) obtains the client's agreement;
    - (2) provides the client the opportunity to object to the disclosure, and the client does not express an objection; or
    - (3) reasonably infers from the circumstances, based upon the exercise of professional judgment that the client does not object to the disclosure.
  - C. Limited Uses or Disclosures When the Client Is Not Present. When the client is not present or when opportunity to agree or object is not possible or practicable due to the client's incapacity or emergency condition, the following procedures shall be used:
    - (1) A NW BOCES provider, using his or her professional judgment, may determine that the use or disclosure is in the best interests of the client, and only use or disclose PHI that is directly relevant to the person's (family member, friend, spouse, personal representative, etc.) involvement.

POLICY AND PROCEDURE FOR MAINTENANCE, USE AND DISCLOSURE  
OF PSYCHOTHERAPY NOTES

1. **PURPOSE.** To publish the Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure on the maintenance, use, and disclosure of psychotherapy notes.
2. **POLICY.** All psychotherapy notes recorded on any medium (i.e., paper, electronic), by a mental health professional, such as, a psychologist or psychiatrist must be kept by the author and filed separately from the rest of the client's medical record to maintain a higher standard of protection.
3. **DEFINITION.** Psychotherapy notes means process notes (not progress notes) recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session for his or her use only, and are separated from the rest of the client's medical record.
4. **PROCEDURES.** Psychotherapy notes may be used or disclosed following the procedures below:

**A. Disclosure Authorization.** When disclosing psychotherapy notes to the client or to another individual, written authorization for use and disclosure of health information must be dated, signed by the client or legal guardian (if the client is a minor or incompetent), or the client's personal representative, and request for psychotherapy notes must be checked. The authorization should not be used in conjunction with other disclosures or uses.

**B. Authorization Not Required.** An authorization is not needed to use or disclose psychotherapy notes for:

(1) Providing treatment, payment, or health care operations:

- a. use or disclosure by the originator of the notes for treatment;
- b. use or disclosure for mental health training programs under supervision within NW BOCES facility; or
- c. use or disclosure by NW BOCES in a legal action or other proceedings brought by the client, in consultation with the Office of General Counsel;

POLICY AND PROCEDURE FOR USE AND DISCLOSURE OF  
PROTECTED HEALTH INFORMATION FOR RESEARCH PURPOSES

1. PURPOSE. To publish the Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedures on how NW BOCES may use or disclose protected health information (PHI) for research purposes without authorization by a client.
2. POLICY. It is the policy of NW BOCES to use or disclose PHI for research purposes in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Privacy Act. For research purposes and educational materials, follow the Department of Health and Human Services, National Institute of Health research guidelines.
3. PROCEDURES. The following procedures will be used for the use or disclosure of PHI for research purposes.

A. Institutional Review Board. Upon receipt of the Institutional Review Board (IRB) Approval of Waiver of Authorization, NW BOCES will use or disclose PHI for research when its IRB has approved, in whole or in part, a waiver of the client's authorization for its use or disclosure.

B. Documentation of Waiver Approval. Documentation of IRB approval of waiver must include the following:

(1) Identification. A statement identifying the IRB and the PHI for which the use or disclosure has been determined to be necessary by the IRB.

(2) Date of Action. Date on which the alteration or waiver of authorization was approved.

(3) Waiver Criteria. The IRB must include a statement that has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

a. Use or disclosure of PHI involves no more than minimal risk to the privacy of individuals based on, at least, the presence of the following elements:

(i) An adequate plan to protect the identifiers from improper use and disclosure, including reasonable administrative, technical and physical safeguards against unauthorized use and disclosure.

(ii) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or

**POLICY AND PROCEDURE FOR REQUEST FOR RESTRICTION(S) ON THE USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

1. **PURPOSE.** To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure on the rights of clients to request restriction(s) of the use or disclosure of their protected health information (PHI).
  
2. **POLICY.** Under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, clients have the right to request restrictions on the use or disclosure of their PHI to carry out treatment, payment and health care operations, in client directory, and disclosures to relatives, family members, personal representatives, close friends, health care givers, and any other person involved in the client's care or payment who is identified by the client.  
NW BOCES is not required to agree to the request. However, a client still may object to the disclosure of information for the in client directory and to relatives, friends, and others involved in client care under 45 CFR 164.510(b) (See Manual Exhibit 2-7-M, "Policy and Procedures for Uses and Disclosures of Protected Health Information for Involvement in the Client's Care and for Notification Purposes."
  
3. **PROCEDURES.** The following procedures will govern how restrictions will be requested and processed.
  - A. The request for restriction must be in writing. The client is not required to provide a reason for the request.
  
  - B. NW BOCES Administrative Director or his or her designee, in consultation with an appropriate official, must review the request, before the client is notified of the decision, except for acceptance of the request to omit PHI from directories. NW BOCES is not required to agree to the requested restriction. Before agreeing to the restriction, NW BOCES must attempt to contact the Office of General Counsel.
  
  - C. If NW BOCES agrees to a restriction, PHI may not be used or disclosed by NW BOCES or its Contractor(s) (Business Associate(s)) in violation of such restriction, except if the restricted PHI is needed by NW BOCES or another health care provider to provide emergency treatment of the client.
  
  - D. If NW BOCES agrees to a restriction the restriction will be processed accordingly and subsequently filed in the medical record.
  
  - E. If NW BOCES disagrees (or denies) to a restriction, the restriction will be processed accordingly and subsequently filed in the medical record.



POLICY AND PROCEDURE FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION OF UN-EMANCIPATED MINORS

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure for disclosing and providing access to protected health information (PHI) of un-emancipated minors.
2. POLICY. The NW BOCES Administrative Director or designee shall be responsible for determining whether or not to release the PHI of an un-emancipated minor to the minor or to the minor's parent or legal guardian. In all cases, whether a client is a minor and whether a minor is emancipated shall be determined by applicable law. If it unclear which applies, consult the Office of General Counsel (OGC).
3. PROCEDURES. The following procedures will govern how health information of un-emancipated minors will be disclosed:

A. Requests By Un-emancipated Minors.

- (1) A minor who requests access to his or her health information shall, at the time of the request, designate a personal representative in writing (e.g., physician or other health representative or responsible person), who would be willing to review the record and inform the minor of its contents.
- (2) Upon receipt of request and designation of a personal representative, the NW BOCES Administrative Director will review the request to determine whether direct access to his or her health information if it is determined that direct access is not likely to have an adverse effect on the minor.
- (3) If the NW BOCES Administrative Director believes he or she is not qualified to determine, or has determined, that access by the minor is likely to have an adverse effect on the minor, the record will be sent to the designated personal representative. The minor will be informed in writing that the record has been sent. The minor will be allowed access to his or her record consistent with a determination by the Administrative Director of the manner of disclosure, if any, that would limit any likely adverse effect on the minor.

B. Requests by a Parent, Legal Guardian or Individual Acting in Loco Parentis.

- (1) At the time of request, the parent, legal guardian, or individual acting in loco parentis, shall designate in writing a health professional (other than a family member) to whom any records will be sent.

POLICY AND PROCEDURE FOR VERIFICATION OF IDENTITY PRIOR TO  
DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services (NW BOCES) policy and procedure for verifying the identity or authority of any person requesting protected health information (PHI) prior to the disclosure of such PHI.
  
2. POLICY. NW BOCES will verify the identity of any person requesting PHI and the authority of any such person to have access to the requested PHI, if the identity or such authority is not known to NW BOCES.
  - A. Client. A client may request that PHI pertaining to him or her be released to themselves or others they specify.
  - B. Guardians. Guardians may request the release of PHI on behalf of the client.
  - C. Representatives. Representatives of hospitals, clinics, and health centers may request the release of PHI.
  - D. Law Enforcement Officials. Law enforcement officials and other individuals may request PHI of a client.
  
4. PROCEDURES. The following procedures shall be used to verify the identity of any person, entity, or organization requesting PHI.
  - A. Request Made in Person by the Client. If the identity of the client requesting PHI is personally known to the responsible NW BOCES staff member, the client's representation regarding their identity will be sufficient verification if it is reasonable under the circumstances. Otherwise, the client's identity shall be verified through the following methods:
    - (1) Provide one piece of tangible identification (preferably picture (I.D.), such as,

POLICY AND PROCEDURE FOR THE USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR EMANCIPATED MINORS AND ADULTS WITH PERSONAL REPRESENTATIVES OR LEGAL GUARDIANS

1. PURPOSE. To publish Northwest Wyoming Board of Cooperative Educational Services(NW BOCES) policy and procedure for the use and disclosure of protected health information (PHI) of emancipated minors and adults with personal representatives, including legal guardians, pursuant to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160 and 164; the Privacy Act of 1974 as amended, 5 United States Code (U.S.C.) §552a; the Health and Human Services (HHS) Privacy Regulations, 45 CFR Part 5b; and the Confidentiality of Alcohol and Drug Abuse Client Records, 42 CFR Part 2.

NOTE: This policy does not govern the procedures to follow in cases involving requests for access to the PHI of an unemancipated minor by the parent, personal representative or legal guardian of such unemancipated minor. In those instances, follow the procedures set forth in Manual Exhibit 2-7-Q, "Policy and Procedure for Protected Health Information of Unemancipated Minors."

2. POLICY. Except as expressly provided in this policy, NW BOCES shall treat a personal representative of an emancipated minor or adult the same as the emancipated minor or adult for the purposes of the use and disclosure of PHI as it relates to such personal representation.

(5 U.S.C. § 552a (h); 45 CFR §§5b.10; and 45 CFR § 164.502(g) (1), (2), (5))

3. DEFINITION.

A. Personal Representative. Any person who, under applicable law, has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care. A personal representative may include, but is not necessarily limited to, the legal guardian of any such individual who has been declared incompetent due to physical or mental incapacity by a court of competent jurisdiction. (5 U.S.C. 552a (h); and (45 CFR § 164.502(g)(2))

4. PROCEDURES. The following procedures shall be used when determining whether to disclose PHI to a personal representative of an emancipated minor or adult:

A. Confirming the Status of the Personal Representative. Before disclosure of the PHI of an adult or emancipated minor may be made to any individual claiming to have

POLICY AND PROCEDURE FOR THE DISCLOSURE OF PROTECTED HEALTH INFORMATION TO LAW ENFORCEMENT OFFICIALS

1. PURPOSE. To publish Northwest Wyoming BOCES (NW BOCES) policy and procedure on the disclosure of protected health information (PHI) to law enforcement agencies. This policy is not applicable to disclosures governed by the Federal Confidentiality of Alcohol and Drug Abuse Client Records regulations, 42 Code of Federal Regulations (CFR) Part 2.
2. POLICY. It is NW BOCES policy to disclose PHI to law enforcement agencies in accordance with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule; and the Privacy Act of 1974 as amended. NW BOCES may disclose PHI to law enforcement agencies under certain conditions and certain situations as outlined below.
3. PROCEDURES.

A. Law Enforcement Requests. NW BOCES will from time to time receive requests from Federal or State law enforcement officials to release PHI that is in the possession of NW BOCES to such law enforcement officials. These may arise in a number of circumstances, including but not limited to: child abuse and neglect; domestic violence; sexual assault; and criminal vehicular assault. The Privacy Act of 1974, as amended, 5 U.S.C. § 552a (b)(7); the HHS Privacy Act regulations, 45 CFR § 5b.9(b)(7); and the HIPAA Privacy Rule, 45 CFR § 164.512(f)(1), generally authorize the release of PHI to law enforcement officials if the activity is required or authorized by law and if the law enforcement request meets the following basic criteria:

- (1)The request is in writing;
- (2)the request identifies the specific nature of the law enforcement activity (for example: investigation of sexual assault, child abuse, etc.);
- (3)the facility is able to determine that the information sought is relevant and material to the particular law enforcement inquiry;
- (4)de-identified information could not be used;
- (5)the request is specific and limited in scope to the extent possible; and