

West Virginia Executive Branch

Privacy Policy: **Consent**

Issued by: **Sonia Chambers, Chair**
West Virginia Health Care Authority

Policy No: WVEB-P102 Issue Date: 01/30/09 Effective Date: 08/01/09 Rev. Date: Page 1 of 3

1.0 PRIVACY PRINCIPLE SUBJECT TO THIS POLICY

Consent: Each Department shall provide individuals with a reasonable opportunity to object to the collection, use or disclosure of their Personally Identifiable Information (PII). A Department does not collect, use or disclose PII in a manner inconsistent with its notice, unless it has first obtained the individual's additional consent for the use or disclosure or the additional use is required by law.

2.0 POLICY STANDARDS

- 2.1 Each Department shall provide individuals with a reasonable opportunity to object to the collection, use or disclosure of their PII.
- 2.2 Where possible, each Department will seek to make reasonable accommodations when an individual has concerns regarding the processing of his or her PII.
 - 2.2.1 Where state laws require the express or explicit consent of the individuals for the collection, use or disclosure of PII, each Department shall obtain such consent.
 - 2.2.2 Where reasonably possible, individuals must be allowed to revoke their consent after they have provided it. However, under certain circumstances, such as in connection with employment or law enforcement activities, revocation of consent will be limited.
 - 2.2.3 Consent and accommodation are not generally required for the processing of PII where applicable laws impose obligations on the Department to process the PII.
 - 2.2.4 Departments may only conduct consumer marketing activities if it has obtained an appropriate consent from the consumer.
- 2.3. Collection, Use and Disclosure: Departments will establish limits on the collection of PII which shall be obtained by lawful and fair means, and where appropriate or required by law, with the knowledge and permission of the

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individual. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use, where the use or disclosure is not covered in the notice or is allowed by prior consent or authorization or permitted by state or federal law.

2.3.1 Departments may not, as a condition of the supply of a product or service, require an individual to permit the collection, use, or disclosure of information beyond that required to fulfill the Department's lawful purposes and otherwise comply with applicable laws.

2.3.3 Departments will not disclose PII, make available or use for purposes other than those specified in accordance with the Department's notice except with consent or by authority of the law.

2.3.4 Departments will not market products or services to individuals who have objected to receiving those communications; provided, however, that if applicable law requires an individual to opt-in to receive marketing communications, no communications shall be sent unless consent has been received.

2.4 Consent: Consent is written permission contained in a document, which may be contained on a Department's website in an interactive or downloadable form. When required by law, the consent shall be signed giving the Department consent to disclose PII limited to the purposes specified. The signed consent shall be retained for time periods set forth in applicable state or federal law or when no law governs, by policy. A copy of the consent shall be provided to the individual.

2.4.1 Departments will develop consents, as appropriate, which shall be in plain language and contain the following:

- a) Specific information to be disclosed
- b) The name or other specific identification of the person(s) making the request
- c) An expiration date or event that relates to the purpose
- d) A statement of the individual's right to revoke
- e) Statement that the information used or disclosed may be subject to redisclosure; and

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- f) Date and signature by the individual. (If signed by an authorized or personal representative, a description of authority. Documentation of such authority should be obtained.)

3.0 PROCEDURE

- 3.1 Departments shall determine whether existing or whether all new processes require consent, and (if so) what consent is required.

Where consent is not required, Departments shall develop a process for responding to and, if appropriate, accommodating reasonable concerns about the collection, use or disclosure of the PII.

Departments shall review existing consents to assure compliance with applicable laws.

- 3.2 Departments shall create legally compliant consent and authorization forms where needed, which comply with these policies, Department procedures, contracts or grants, and state and federal laws.

4.0 PRIVACY REQUIREMENTS

Federal and State Laws may impose additional requirements upon Executive Branch Departments with respect to the principle of consent. To the extent these laws may apply to a given Executive Branch Department, legal counsel should be consulted to determine what may apply and in what manner. These laws should be reviewed in conjunction with other applicable state and federal laws, rules, these policies, as well as Department-specific business practices, contracts, or grants. Laws may be found in our [Privacy Requirements](#).