

West Virginia Executive Branch

Privacy Policy: Notice

Issued By: Sonia Chambers

West Virginia Health Care Authority

Policy No: WWEB-P105 Issue Date: 01/30/09 Effective Date: 08/01/09 Rev.Date:

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1.0 PRIVACY PRINCIPLE SUBJECT TO THIS POLICY

Notice – Departments shall be open regarding the authority for collecting personally identifiable information (PII); the purpose of the collection; the location of the entity maintaining the PII; with whom the PII may be shared and why; rights an individual has in PII; and the Department's policies, procedures, standards, and practices with regard to PII.

2.0 POLICY STANDARDS

- 2.1 Departments that collect personally identifiable information (PII) directly from an individual shall have a privacy notice. This privacy notice shall contain (at minimum): a description of the information collected by the Department, the source(s) of that information if not from the individuals themselves, a statement regarding the purposes for the PII collection, how the PII will be used, types of entities to whom the PII may be disclosed, the individual's rights and choices (if any), where the information is maintained. The notice will also provide a statement that the PII will be appropriately secured.

Departments should use reasonable efforts to draft notices using simple language. Other efforts, such as use of color and layout, should be made to ensure that the notices are understandable and accessible to the intended readers. If desired, Departments may use layered or highlights notice templates to improve readability and better communicate the notice contents.

- 2.2 Delivering Notice: Notice shall always be provided to an individual upon request. Additionally, each Department shall deliver notices to individuals as required by applicable laws, and in the appropriate accessible format. Where a Department collects PII from an individual, it shall place its privacy notice on its website, if it has one.
- 2.3 Specific Notice Requirements: There are additional notice requirements required by law based on certain circumstances. Departments must ensure that their notices meet these requirements as well, if applicable.

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- 2.3.1 Social Security Numbers: If a Department seeks an individual's social security number (SSN) to provide benefits and services, the Department provides a privacy notice which will: disclose the federal or state legal authority under which it is collecting the individual's SSN, explain the uses that will be made of the individual's SSN and inform the individual whether the disclosure is voluntary or mandatory, by what statutory or other authority such number is solicited and what uses will be made of it.
- a) If a Department ties the individual's disclosure of his or her SSN, for use on a third party's form, to a right, benefit or privilege, and the disclosure is mandated by federal law or the disclosure is to any federal, state or local agency maintaining a system of records in existence and operating before January 1, 1975, when such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual; then the Department must ensure that the individual is provided with a Privacy Act notice indicating that the disclosure is mandatory and that failure to provide the SSN may result in the denial of an application, benefit, or service.
 - b) If a Department provides an individual with a third party's form where the disclosure of the SSN is voluntary, the Department must ensure that the individual has notice that the disclosure is voluntary.
- 2.3.2 HIPAA Covered Entities: If a Department is a covered entity not otherwise exempt from application of the HIPAA Privacy Rule, the Department shall provide notice in plain language, at least once every three years. The notice shall include an effective date and must be promptly revised and re-distributed if there is a material change to any of its privacy practices. The notice describes how the Department may use and disclose PHI; the individual's rights with respect to the PHI and how the individual may exercise these rights, including how to make a complaint to the covered entity; and whom individuals contact for further information about the covered entity's privacy policies. See HIPAA Notice
- 2.3.3 Financial Institutions and Receipt of Information from Financial Institutions: If a Department qualifies as a financial institution because it is significantly

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engaged in financial activity, it must protect non-public personal information (NPPI). The Department must provide annual notice in writing of its privacy practices to its customers with whom it has on-going relationships, and notice to its customers when the Department shares the customer's NPPI with unaffiliated entities. Notice may be provided electronically if the customer agrees. The privacy notice must be a clear, conspicuous, and accurate statement of the privacy practices. It should include what information is collected about its customers, with whom it shares the information, and how it protects or safeguards the information. It must also provide an opt-out provision to prevent sharing of NPPI with unaffiliated third-parties except as may otherwise be permitted by law.

- a) The Department's delivery of the notice must meet the standard of reasonable expectation that the notice will be received.
 - b) **Note:** If a Department receives NPPI from an outside financial institution, the ability to reuse and re-disclose the NPPI is limited by the requirements of the outside financial institution, regardless of whether the Department is a financial institution or not.
- 2.3.4 Children: Each Department that provides online services directed to children under thirteen (13) years of age and collects information from children shall post a privacy notice on the homepage of the website and a link to the privacy policy on every page where PII may be collected. The notice must:
- a) Be directed to parents and state the site's information collection practices.
 - b) Advise that the Department or operator must obtain verifiable parental consent before collecting PII from children.
 - c) Inform parents of their choice as to whether their child's PII will be disclosed to third parties; and

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- d) Advise parents of their right to access their child's PII with the opportunity to delete the child's PII and to opt-out of future collection or use of the information.
- 2.3.5 Electronic transactions: Electronic transactions directly with individuals require clear and conspicuous notice to the individual. The notice includes the right of an individual to give or refuse to conduct a transaction electronically; how the individual gives consent, and an explanation of whether the consent applies (i) only to a particular transaction; or (ii) to a group of transactions during the course of the relationship. If the consent is intended to cover multiple transactions, then the individual must be informed that consent to one transaction does not result in the individual's giving up the right to refuse to consent to conduct subsequent transactions electronically.
- a) If a law, regulation, rule or case law requires that information related to a transaction be "in writing," a transaction may nevertheless still be conducted electronically as long as the individual gives consent following receipt of clear and conspicuous notice of the following:
 - i) Right or option to have the record provided or made available in non-electronic form.
 - ii) Right or option to withdraw the consent for the electronic transaction, how that can be done, and any conditions or consequences, which may include termination of the parties' relationship, or fees in the event of such withdrawal.
 - iii) Information as to whether the consent applies only to a particular transaction or to categories of records that may be provided or made available.
 - iv) Information as to how, after consent, the individual may, upon request, (i) obtain a paper copy of an electronic record; and (ii) whether any fee will be charged for such copy.
 - v) Information as to the hardware and software requirements for access to and retention of the electronic records; and

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- vi) Reasonable demonstration that the individual can access information in the electronic form that will be used to provide the information that is the subject of the consent.
- vii) After consent has been obtained, if there are material changes in the Department's hardware and software, such that there is a material risk that the individual will not be able to access or retain a subsequent electronic record that was the subject of the consent, then the individual must be provided notice of the revised hardware and software, and of the right to withdraw consent.

3.0 PROCEDURE

- 3.1 Departments shall review existing notices (in any format) and shall create new notices, as needed, to assure compliance with this Policy.
- 3.2 Departments shall create a website notice of privacy practices where needed, which notice shall comply with these policies, as well as Department-specific business practices, laws, contracts, or grants.

4.0 PRIVACY REQUIREMENTS AND REFERENCES

The following laws may impose additional requirements upon Executive Branch Departments with respect to the principle of notice. 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](#).