

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER
POLICY AND PROCEDURE MANUAL

Date of Issue: 4/1/03
Date Revised:

Section Number 539

Policy 539 – Administrative Safeguards – Data and Entity Authentication

I. PURPOSE

Southern Highlands Community Mental Health Center, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI by assuring that PHI is going to, or coming from, the appropriate person or entity and that the data being processed or transmitted has not been modified intentionally or inadvertently.

II. POLICY

Southern Highlands Community Mental Health Center will establish and maintain procedures for assuring that recipients of PHI via electronic or other means are the intended recipients.

We will also establish and maintain procedures for data authentication. These procedures will assure that PHI contained in messages or files has not been altered or modified.

Other policies and procedures to review that are related to this policy:

Administrative Requirements – Training
Administrative Requirements – Documentation

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER

FOR EXTERNAL USE ONLY

DATA USE AGREEMENT

This Data Use Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 20____, by and between Southern Highlands Community Mental Health Center (“SHCMHC”), a behavioral health corporation, and _____ (“Data Recipient”).

WITNESSETH:

WHEREAS, SHCMHC and Data Recipient are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder; and

WHEREAS, the purpose of this Agreement is to satisfy the obligations of SHCMHC under HIPAA and to ensure the integrity and confidentiality of certain information disclosed or made available to Data Recipient and certain information that Data Recipient uses, discloses, receives, transmits, maintains or creates from SHCMHC.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule.

1. Individual shall have the same meaning as the term “individual” in 45 CFR Section 164.501 of the Privacy Rule and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g) of the Privacy Rule.

2. Limited Data Set shall have the same meaning as the term “limited data set” in 45 CFR 164.514 (e) of the Privacy Rule.

3. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Information as in 45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time.

4. Protected Health Information or PHI shall have the same meaning as the term “protected health information” in 45 CFR Section 164.501 of the Privacy Rule, to the extent such information is created or received by Data Recipient from SHCMHC.

5. Required by Law shall have the same meaning as the term “required by law” in 45 CFR Section 164.501 of the Privacy Rule.

B. SCOPE AND PURPOSE

1. This Agreement sets forth the terms and conditions pursuant to which SHCMHC will disclose certain PHI to the Data Recipient.

C. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT

1. Data Recipient agrees to use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement.
2. Data Recipient agrees to report to SHCMHC any use or disclosure of the Limited Data Set not provided for by this Agreement of which it becomes aware, including without limitation, any disclosure of PHI to an unauthorized subcontractor, within ten (10) days of its discovery.
3. Data Recipient agrees to ensure that any agent, including a subcontractor, to whom it provides the Limited Data Set agrees to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to such information.
4. Data Recipient agrees not to identify the information contained in the Limited Data Set or contact the individual.
5. Data recipient will indemnify, defend and hold harmless SHCMHC and any of SHCMHC's affiliates, and their respective trustees, officers, directors, employees and agents ("Indemnities") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure of the Limited Data Set or any other breach of this Agreement by Data Recipient or any subcontractor, agent or person under Data Recipient's control.

D. TERM AND TERMINATION

The provisions of this Agreement shall be effective as of the earlier of Effective Date or April 14, 2003, and shall terminate when all of the Limited Data Set provided by SHCMHC to Data Recipient is destroyed or returned to SHCMHC, or, if it is infeasible to return or destroy the Limited Data Set, protections are extended to such information, in accordance with the termination provisions in this Section.

E. MISCELLANEOUS

1. A reference in this Agreement to a section in the Privacy Rule means the section as amended or as renumbered.
2. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for SHCMHC to comply with the requirements of the Privacy Rule and HIPAA.
3. The respective rights and obligations of Data Recipient under Section C of this Agreement shall survive termination of this Agreement.
4. Any ambiguity in this Agreement shall be resolved to permit SHCMHC to comply with the Privacy Rule.
5. There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individual whose PHI is used or disclosed pursuant to this Agreement.

6. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

7. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.

8. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this Agreement shall govern. Without limiting the foregoing, no provision of any other agreement or understanding between the parties limiting the liability of Data Recipient to SHCMHC shall apply to the breach of any covenant in this Agreement by Data Recipient.

9. This Agreement shall be construed in accordance with and governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above.

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER

Executive Director: _____
Signature Date

DATA RECIPIENT

CEO: _____
Signature Date