

TITLE: SUPER PROTECTED AND OTHER UNAUTHORIZED DATA POLICY	
STATUS: FINAL	EFFECTIVE DATE: 11/04/2024
VERSION: 8	PAGE: 1 OF 4

PURPOSE

This policy describes how ClinicalConnect HIE (CCHIE) and its Participants will comply with Federal and State Laws that govern Super Protected Data and other highly sensitive health information. This policy also provides the conditions in which CCHIE will permit disclosure of certain types of highly sensitive health information.

OVERVIEW

Due to Federal and State Laws, CCHIE and its Participants must take precautions regarding the exchange and disclosure of highly sensitive health information. Therefore, Participants will not be permitted to disclose certain data types to CCHIE or through any of its services except in specific circumstances addressed within this policy.

SCOPE

This policy applies to CCHIE and its Participants.

DEFINITIONS

“Confidential HIV-Related Information” shall have the same meaning as set forth in Pennsylvania’s Confidentiality of HIV-Related Information Act (1990 Act 148). This includes test results (whether positive or not) and other information which may or does indicate that an individual has HIV or an HIV-related illness such as AIDS. This also includes all information that could reasonably identify an individual or the individual’s contact(s) as having any of these conditions.

“Licensed Provider” is an organization or individual that is licensed to provide Mental Health and/or Drug and Alcohol treatment related services. An individual or facility that is generally licensed to practice medicine would not be considered a Licensed Provider for the purposes of this policy.

“Participant” is an organization that has signed a Data Exchange Agreement with CCHIE.

“Protected Health Information” or “PHI” shall have the same meaning as set forth in the Health Insurance Portability and Accountability Act (HIPAA).

“Psychotherapy Notes” shall have the same meaning as set forth in the Health Insurance Portability and Accountability Act (HIPAA).

“Self-Pay Data” is an added protection from the American Recovery & Reinvestment Act (ARRA) which permits patients to restrict disclosures of PHI to a health plan under certain conditions. This protection was mandated under 42 USC 17935 of the Health Information Technology for Economic and Clinical Health (HITECH) Act and now implemented under 45 CFR 164.522(a)(1)(vi) of the HIPAA Privacy Rule through Omnibus HIPAA Rulemaking. For this right to be exercised, all the following conditions must apply:

1. Patient explicitly requests to restrict disclosure of PHI to a health plan (for purposes of payment or healthcare operations) and follows the Participant’s documented procedure for such requests;
2. PHI pertains solely to a health care item or service in which either the patient or someone on behalf of the patient (other than the health plan) paid out-of-pocket in full; and
3. Disclosure is not otherwise required by law.

“Substance Use Disorder (SUD) Counseling Notes” shall have the same meaning as set forth in 42 CFR Part 2.

“Super Protected Data” for purposes of this policy means Confidential HIV-Related Information, Self-Pay Data, and health information from Licensed Providers.

POLICY

- A. Participants shall adhere to Federal and State Laws when exchanging or otherwise disclosing protected health information (PHI) through CCHIE including obtaining all necessary authorizations required under Federal and State Law prior to the release of PHI.
- B. Participants shall ensure that the following are not disclosed to or through any CCHIE Service:
 - Super Protected Data;
 - Psychotherapy Notes;
 - SUD Counseling Notes; and
 - All other data in which disclosure is either prohibited by Federal or State Law or in which it is infeasible for either the Participant or CCHIE to meet Federal and

State Law requirements pertaining to such disclosure as well as re-disclosure of the data.

- C. Participants may disclose data related to mental health and drug and alcohol treatment from Licensed Providers provided that Participants are responsible for adhering to all Federal and State Law requirements pertaining to such disclosures (e.g. HIPAA, 42 CFR Part 2, etc.) and ensuring that the remaining data types set forth in section B are not sent to CCHIE.
- D. Consistent with a Patient's right to opt-out, CCHIE will not attempt to limit or restrict types of information that can be accessed or disclosed through CCHIE by a Participant. Participants who have the technical capability to do so may allow patients to request that sensitive PHI be withheld from CCHIE. With the exception of Psychotherapy Notes and SUD Counseling Notes, Participants without this capability shall inform patients that the Participant cannot selectively withhold PHI from being sent to CCHIE and provide patients with the opportunity to opt-out of CCHIE.
- E. CCHIE is not responsible for searching for Super Protected Data or any highly sensitive health information about a patient that may be sent to CCHIE. If CCHIE does discover that it has received such data, CCHIE will attempt to notify the Participant of the incident, and the Participant will need to follow its "In Error" procedure(s) pursuant to CCHIE's In Error Policy. CCHIE shall provide recommendations for the Participant as needed.
- F. If either Psychotherapy Notes or SUD Counseling Notes are mistakenly sent to CCHIE, the Participant shall coordinate with CCHIE to remove these as quickly as possible.
- H. CCHIE cannot be responsible for preventing Super Protected Data, Psychotherapy Notes, SUD Counseling Notes, or any other highly sensitive data from being sent to CCHIE and through any of its services.

RELATED POLICIES AND PROCEDURES

- Permitted Data Use Policy
- In Error Policy

Revision History

DATE	AUTHOR	COMMENTS
8/27/2015	Jones	Creation of the policy
4/1/2017	Dukes	Reviewed Policy – No Changes
7/15/2019	Dukes	Addressed "Self-Pay Data" and other unauthorized disclosures
7/17/2019	Mosesso	Approved Revisions

10/27/2020	Dukes	Changed “Self-Pay Data” to “Out-of-Pocket, Paid-in-Full Data” and revised wording to facilitate other CCHIE services
1/8/2021	Dukes	Applied Compliance Manager edits
1/6/2023	Dukes	Reviewed policy – applied minor format updates
10/29/2024	Dukes	Drafted changes to facilitate revisions to HIPAA, 42 CFR Part 2, Pennsylvania use and disclosure laws regarding mental health and drug and alcohol information, etc.
11/04/2024	Dukes	All revisions have been approved
1/7/2026	Dukes	Reviewed – applied minor format updates