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To: Developmental Disabilities Waiver Providers Agencies

From: Selina Leyba, Developmental Disabilities Supports Division, Community Programs Bureau Chief *SL*

Subject: Communication of Protected Health Information (PHI)

The purpose of this memo is to clarify the required communication process for Protected Health Information (PHI) between participants, guardians, advocates, Case Managers and all Developmental Disabilities Waiver service providers.

All individuals involved in the Developmental Disabilities (DD) Waiver are responsible for safeguarding participant information and ensuring it is shared appropriately, when necessary. It's the law!

Protected Health Information and Secure Communication

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that protects the privacy and security of Protected Health Information (PHI) and governs how health information may be used, accessed, and shared among individuals, providers, and organizations involved in delivering developmental disability services. PHI includes individually identifiable health information, such as medical information, diagnoses, treatment information, health and safety information, and other participant-specific information protected by applicable privacy requirements.

Therap Secure Communication (SCOMM) is the DDSD provided and required method for electronically transmitting participant-specific PHI between individuals and entities involved in the delivery, coordination, oversight, or administration of DD Waiver services.

Therap access is not limited to DDSD staff, Case Managers, or provider agencies. DD Waiver participants, guardians, providers, advocates, and other individuals involved in a participant's services and supports may have a Therap account when appropriate access is established.

Participants, guardians, providers, and other individuals who need Therap access should notify their case manager. The case manager will then contact the DDSD DD Waiver Program Manager, Steven Fernandez, to request an account and obtain the necessary access and permissions. Once an account is established, SCOMM may be used to

securely communicate participant-specific information with other authorized Therap users who are involved in the participant's services and supports.

Unallowable Communication Methods

Participant-specific PHI must not be transmitted through text messages or other unsecured electronic messaging applications or services.

DDSD recognizes that participants, Guardians, advocates, staff, and others may send unsolicited text messages to case managers or service providers. If a text message contains PHI, the recipient must not continue the exchange of PHI through text messaging.

Required Actions When PHI Is Received by Text or Other Unsecure Sources

If participant-specific PHI is received by text message or any other unsecured way participants, guardians, advocates, and any other provider or vendor should immediately:

- Follow your agency's HIPAA policies
- Do not respond or forward the message with PHI or continue the exchange through text messaging.
- Delete the PHI-containing the message from personal and unsecured devices or platforms
- Notify the sender that PHI cannot be transmitted through text messaging.
- Direct the sender to an approved secure communication method, such as Therap SCOMM.

Developmental Disabilities Waiver Service Standards Requirements:

- **Chapter 6.2: IDT Membership and Meeting Participation**
 - All confidential protected health information (HIPAA-sensitive PHI) must be sent through Secure Communication (SCOMM) in THERAP by provider agencies required to maintain Scomm accounts.
- **Chapter 20.1: HIPAA and HITECH** Medical records and individually identifiable health information are collectively defined as "Protected Health Information" (PHI).
 - HIPAA compliance extends to electronic and virtual platforms. All Guardians and individuals must have Scomm included in their assigned privileges if they have a user account
 - All parties must be following the Developmental Disabilities Waiver (DD Waiver) Service Standards regarding communication as it relates to client specific Protected Health Information (PHI).
 - PHI must not be sent through "Text" or any other electronic messaging services other than THERAP by use of Secure Communication (SCOMM).

- **Chapter 20.5.1:** The SCOMM is a Health Insurance Portability and Accountability Act (HIPAA) compliant module used to facilitate the exchange of information similar to electronic mail.
 - The use of SCOMM to communicate with Interdisciplinary Teams (IDT's), DDSD, Division of Health Improvement (DHI) to share PHI is mandatory.

Violations of HIPAA

All providers contracted with DDSD are required to comply with HIPAA and all applicable laws and requirements related to the protection of Protected Health Information (PHI). Providers may be subject to contract management activities, up to and including corrective action or other contractual remedies, if they or anyone acting on behalf of their organization is found to have violated these requirements. Please ensure that all employees, contractors, and subcontractors understand their responsibility to protect the privacy and confidentiality of the individuals they serve, are appropriately trained on HIPAA and PHI requirements, and are aware of the potential consequences of unauthorized access, use, or disclosure of health information.

For any questions related to this change, please contact Steven Fernandez via email at Steven.Fernandez@hca.nm.gov or via phone at 505-584-1687.

