



Policy Title: Use of Health Home Consents and the Provision of Access and Sharing of Member's Personal Health Information (PHI)

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Approved By: Miranda Blakeslee

Applicable to: Upon the last revised date, this policy replaces any information provided in prior versions of this policy, Medicaid Updates and guidance webinars posted on the Department of Health's Health Home website related to this subject matter.

Purpose: To establish standards and clear guidance which will inform Health Homes (HH) and Care Management Agencies (CMA) of requirements for the processes identified in this policy. Members and their parent/guardian/legally authorized representative, Managed Care Organization (MCO), healthcare providers, service agencies, and other entities approved by the member are included in the process. Ensuring compliance with all state and federal laws, DOH guidance documents, and HH policy related to consents to prevent unauthorized access and sharing of Protected Health Information (PHI).

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Definitions

Accounting of Disclosures

is a record that lists certain types of disclosures of a patient's protected health information (PHI) that have been made by a healthcare provider or health plan. This is a requirement under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. The accounting typically includes the date of the disclosure, the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure.

Assisted Outpatient Treatment (AOT)

Also known as Kendra's Law in NYS, is a civil court process mandating adults with serious mental illnesses, who have a history of not engaging in treatment resulting in episodes of instability and behavior that is dangerous to themselves or others, to receive assistance needed to effectively participate in out-patient treatment. Through a court order, individuals are referred for Health Home enrollment under Health Home Plus (HH+). Laws and Regulations related to AOT include: [Article 9.60 of the Mental Hygiene Law](#); Title 14 of the New York Codes, Rules, and Regulations. Also see: [Office of Mental Health – Assisted Outpatient Treatment \(AOT\) website](#)

DOH-5055 Health Home Patient Information Sharing Consent

used to enroll/maintain enrollment for HH members who are adult, children/youth 18 years of age or older, or child/youth under age 18 if they are a parent, pregnant, or married and able to self-consent.

When completing the form, page 4 is used to list healthcare providers, family/supports and other entities approved by the member and given full access to PHI (unless otherwise noted) for integration into all aspects of the member's Plan of Care.

Health Home (HH) Member

An individual who has made a voluntary decision to acknowledge and comply with program requirements by signing page one (1) of the **DOH-5055 Health Home Patient Information Sharing Consent**.

Impermissible Disclosure

is an unauthorized or improper use or disclosure of protected health information (PHI) that violates the HIPAA Privacy Rule. It is considered a breach unless the organization can prove that the confidential health data was not compromised.

Patient Rights

Patients have the right to request an accounting of disclosures, and the healthcare provider or health plan must provide it within 60 days, with a possible 30-day extension if necessary.

Protected Health Information (PHI)

Data that relates to the past, present or future health of an individual; the provision of healthcare to an individual; or the payment for the provision of healthcare to an individual. This includes, but is not limited to:

- Name
- Address (all geographic subdivisions smaller than state, including street address, city, county, and zip code)
- All elements (except years) of dates related to an individual (including birthdate, admission date, discharge date, date of death, and exact age if over 89)

- Telephone numbers
- Fax number
- Email address
- Social Security Number
- Medical record number
- Health plan beneficiary number
- Account number
- Certificate or license number
- Vehicle identifiers and serial numbers, including license plate numbers
- Device identifiers and serial numbers
- Web URL
- Internet Protocol (IP) Address
- Finger or voice print
- Photographic image - Photographic images are not limited to images of the face
- Any other characteristic that could uniquely identify the individual.

Policy Statement

The sharing of an enrolled HH member's PHI means a timely and coordinated effort that incorporates the comprehensive assessment, and the subsequent development of a person-centered plan of care and serves to prevent the potential for duplication of services. Care Managers (CM) must assure members are informed about the importance of information sharing, the type and degree of information being shared, and the member's right to limit the sharing of information between entities. In addition, enrolled members must be provided with information on where to file a complaint if a member feels their PHI was used without their permission.

Enrollment in the Health Home Program is voluntary. An individual's decision to/not to enroll is documented through completion of applicable HH consent(s). Consent form(s) document the member's approval for accessing and sharing Protected Health Information (PHI) between specified entities named in the consent (e.g., HH, CMA, Managed Care Organization (MCO), healthcare providers, family and other supports, etc.).

Consents provide a method for documenting member choice related to continued enrollment and the member's approval of changes in healthcare providers, non-healthcare services, personal supports and others throughout the member's enrollment in Health Home services.

The CMA is required to utilize New York State Department of Health authorized and numbered consents are used and completed correctly.

Form Number	Form Title	Used For:
DOH-5055	Health Home Patient Information Sharing Consent	• Adults • Children/youth 18 years of age or older, or child/youth under age 18 if they are a parent, pregnant or married and able to self-consent, homeless youth.

The Office for Civil Rights enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which protects the privacy of individually identifiable health information; the HIPAA Security Rule, which sets national standards for the security of electronic protected health information; the HIPAA Breach Notification Rule, which requires covered entities and business associates to provide notification following a breach of unsecured protected health information; and, the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.

The HH, CMA, and Care Manager (CM) must assure that enrolled members are provided with information by their care management service provider on where to file a complaint if they feel their PHI was used without their permission (refer to information contained within Health Home consent form (DOH-5055)).

The HH puts this policy and procedure into place to ensure all relevant statutes are abided by:

1. Federal regulations for Health Information Portability and Accountability Act (HIPAA) 42 CFR 431.302, 42 CFR Part 2
2. Health Information Portability and Accountability Act (HIPAA) 45 CFR Parts 160, 162 and 164
3. Privacy and security of personally identifiable information 45 CFR 155.260
4. New York State Social Services Law Section 369 (4), Section 367b(4)
5. New York Mental Hygiene Law Section 33.13 and 33.16
6. Social Security Act, 42 USC 1396a (a)(7)
7. New York Public Health Law Article 27–F
8. 10 NYCRR Part 300 – Statewide Health Information Network for New York (SHINNY);
9. NY Mental Hygiene Laws 41.05, 41.07 and 41.13

Procedure

Consent guides the process of establishing and maintaining the member's care team and identifies the type of consent each entity may be given to sharing and accessing member's PHI. Upon enrollment to HH it is required that a CMA and CM comply with all state and Federal laws, DOH guidance documents, and this Health Home policy to prevent unauthorized access and sharing of PHI. When a potential member voluntarily agrees to enroll in the HH program they are required to complete a DOH-5055: Health Home Patient Information Sharing Consent.

Prior to signing the **DOH-5055 Health Home Patient Information Sharing Consent** the Member must be provided a clear overview ensuring understanding of the purpose and use of the document, including:

1. Assuring member rights are addressed during the signing of consent.
Individual(s) signing consent (member and/or designee) must fully understand the content and intended use: e.g., voluntary enrollment, the sharing of (PHI) to support the provision of HHCM services; the development of a plan of care and establishment of a care team (multidisciplinary team) approved by the member; ability to update consent information;
2. An outline of the information contained on each page. As one document the DOH-5055 provides four (4) different sections of information.
 - a. Page One (1) provides information regarding the consented access to PHI through consented systems/platforms throughout enrollment in the NYSDOH HH Program.

- b. Page Two (2) acknowledges member's understand of the DOH-5055 and consent to enroll in the Health Home.
 - c. Page Three (3) provides detail about patient information and the consent process, as well as contact information for the HH and Medicaid Helpline.
 - d. Page Four (4) provides consented bidirectional sharing between entities and individuals listed.
3. A Member must confirm their understanding of their choice to enroll and approval to access/share PHI with entities approved by the member.
4. The CM review and provide a copy of the DOH-5055 to the member in the language most suitable for the member's understanding.
 - a. The member must be informed of the importance of including additional providers, services, supports and others to provide a greater level of care and support to the member in meeting their goals.
5. While completing this consent form, a member must be informed of the various means through which his/her health information may be accessed by the HH and assigned CMA/CM. These include:
 - a. Statewide Health Information Network for New York (SHIN-NY),
 - b. The Psychiatric Services and Clinical Enhancement System (PSYCKES);
 - c. TABS/CHOICES (run by the New York State Office for People with Developmental Disabilities OPWDD),
 - d. Single Point of Access under the authority of the Local Government Unit (SPOA/LGU).
 - e. The Uniform Assessment System NY (UASNY)
6. PHI sharing supports provision of services
 - a. Development of a Plan of Care
 - b. Establishment of the member's care team
7. Explanation and understanding of the DOH-5055 must be noted in the members Care Management Record.

Changes Consents Listed on Page 4 of the DOH-5055

The DOH-5055 is a living document that may be changed over time to include new healthcare providers, services agencies, family and supports, etc. All changes must be acted on in a timely manner, and assure entities involved in the member's care team are informed.

The DOH-5055 page 4 may be edited to add and/or remove consent per the member's request/approval.

1. Throughout Enrollment, at minimum, the DOH-5055 must include:
 - a. Name of the CMA,
 - b. Member's MCO
 - c. Primary Care provider or healthcare provider from which the member receives most their care.
 - i. Including the healthcare professional treating the chronic conditions identified for enrollment of the member into the HH if such professional is someone other than the primary care provider.
 - d. The member is informed about the importance of including additional providers, services, supports and others to provide a greater level of care and support to the member in meeting his/her goals.

After the initial enrollment, each change to page 4 of the DOH-5055 must be dated and initialed by the member and Care Manager. Evidence of such changes must be documented in the member's consent, minimizing the potential for misuse of PHI.

1. Consents are updated when there is a change in: healthcare provider, family/consenter, significant other(s) or supports; emergency contact; service agency; care management agency; the member's Plan; Behavioral Health Organization (BHO); etc. All other HIPAA compliant forms also on file for the member are to be updated when there is a change in applicable providers.

If a member chooses to give a specific type of consent to a person/entity it must be documented on the DOH-5055 and in the note related to the update.

1. For example, a member indicates they would like their daughter to be an emergency contact, but no other access to information. On page 4 of the DOH-5055 it would state the daughters name, relationship and "(emergency contact only)". With members initials and date of consent.
2. In some situations, if a member would like to grant limited access to/sharing of PHI with certain approved entities the CM must assure these entities are documented on a separate HIPAA compliant consent form in the member's record.
 - a. This alternate form can be created and provided by the CMA or agency requesting the information. The document must clearly reflect the member's choice, define the information to be accessed/shared, identify the purpose, indicate if time limited, etc.
3. The process must include appropriate means of communicating limitations between entities as appropriate to the situation.

Care Managers can use a prefilled DOH-5055 page 4 for consented entities, but the CM and member must review each entity and:

1. Place a check mark next to every entity approved by the member; and
2. Cross out all entities except those who the member has approved; and
3. The member and CM initial and date next to each approved entity and change on the DOH-5055.

Health Homes and Care Management Agencies may not ask or instruct members to approve an entire pre-filled network list in anticipation of an entity possibly becoming a service provider for the member in the future.

1. Consent must clearly identify only those entities approved by the member directly involved in the member's care team/plan of care at the time of the signing and updating consent to align with member choice and protect the member's PHI.
2. Health Homes monitor and assure that proper protocols are being followed to complete Health Home consents and address any issues identified to prevent potential for misuse of member PHI.

The DOH-5055 is to be entered into the Members Care Management Record, as well as any updates that occur throughout the Member's Care episode.

1. It is required that an up-to-date, completed and signed completed DOH-5055 be maintained in the record throughout enrollment.
 - a. Billing for service provision is prohibited without a completed and signed DOH-5055 consent present and viewable in the member's care management record, and
2. CM will review the DOH-5055 and any other HIPAA compliant consents, at minimum:

- a. annually with the member to assure accuracy and up-to-date information regarding the member's selection and address any needed updates, and
 - b. anytime the comprehensive assessment and Plan of Care are being reviewed and updated, and
 - c. when there is a significant life event that requires a change to the member's consent.
- 3. A copy of the DOH-5055 must be offered and provided to the member upon initial completion and each update thereafter for the entirety of the members enrollment.
 - a. All changes to the DOH-5055 must be dated and initialed by the member and the CM.
- 4. If a new DOH-5055 is completed, the DOH-5055 with the most current date supersedes all previously NYS DOH-5055 documents.
 - a. CMs must notify appropriate entities regarding changes made to the consent to maintain continuity of care and assure proper protections for the use of the member's PHI.

Obtaining a New Full DOH-5055 Consent (Page 1-4)

There are situations that warrant the completion of a new consent form(s). CMs must assure that the correct consent form(s) is completed and signed by the member, and that providers and others listed in the consent form are notified accordingly.

Reasons for obtaining new consent include, but are not limited to when the following occurs:

- 1. If the member re-enrolls in the Health Home program following disenrollment.
- 2. If a member changes Health Homes.
 - a. See BCHN003: Health Home Member Transfer Policy, for timeframe requirements for obtaining a new consent.
 - i. Within the first fifty-six (56) days of the transfer from another health home whether maintaining current CMA or not a member's chart will update in alignment with the enrollment policy.
 - ii. The DOH-5055 consent from the transferring HH will be uploaded to the attachments in the Care Management Record and used until the new consent is completed.
- 3. If a Health Home has changes in its structure and/or network.

Obtaining a New DOH-5055 Consent Page 4 Only

There are situations that warrant the completion of only page 4 of the DOH-5055. CMs must assure that the correct consent form(s) is completed and signed by the member, and that providers and others listed in the consent form are notified accordingly.

Reasons for obtaining new consent include, but are not limited to when the following occurs:

- 1. If a consent form has several cross-outs, updates, unreadable, etc.
- 2. If transferring to a new CMA in the same HH
 - a. For timeframes associated with this reason see BCHN003: Health Home Member Transfer Policy.

Steps required to accurately complete a new DOH-5055 Page 4 Only:

1. At the top of the currently approved Page 4, CM will write “ARCHIVE” in large letters.
2. CM will complete the new DOH-5055 page 4 with the member once;
 - a. Each line completed with an entity/individual on the new page 4 is considered a change to the DOH-5055 and must be dated and initialed by the member and the Care Manager.
3. CM will upload the DOH-5055's to the Care Management Record.
 - a. The “ARCHIVED” DOH-5055 page 4 will be uploaded to the attachments section of the Care Management Record titled “ARCHIVED DOH5055 Page 4 – Date of Archive”
 - b. The updated DOH-5055 page 4 will be uploaded to the attachments section. It will be accompanied by the original or most recent DOH-5055 page one and two. The DOH-5055 will be a full document page one through four and will be titled as “UPDATED DOH5055 – Date of Consent”
 - i. Page two (2) will have a date different than that of Page four (4). The Date on page 2 will always represent the date the member enrolled in the program with Bassett as their lead health home. This date will not change, unless the member disenrolls from the lead health home.

Acceptable Practices for Obtaining Signatures

1. Signing consents via wet-signature (ink-paper);
2. Consent forms may be provided to and received back from members, completed and signed either in person, via regular mail, email/scan or fax, or through other secured electronic means.
3. When appropriate, ask the member if they have any supporting documentation that directs signing of consent to be done by someone other than the member, for instance if the member is unable to sign for themselves due to a physical limitation.
 - a. identify if the member has a Legal Guardian to sign on behalf of the member;
4. HHs must be sure that individuals understand that without a signed consent, enrollment cannot occur or continue.
 - a. If during the enrollment process or anytime during enrollment, the individual refuses to sign consent, the HHCM must discuss the purpose of consent for enrollment/continued enrollment and the individual's reason/s for refusal.
 - b. If the individual continues to refuse to sign, enrollment/continued enrollment cannot occur.
 - i. If an individual on Assisted Outpatient Treatment (AOT) refuses to sign the Health Home consent form, the AOT court order acts as the official authorization for enrollment. The care manager should document the refusal and note "AOT order" on the signature line to enable care management and billing.
 - ii. The HHCM must continue to work on obtaining the member's signature. While the member's signature is not required for enrollment under an AOT order, attempts must continue to be made at minimum every six (6) months.

Request for Information

Record Release Request

Members have the right to request their records at any time. It is the responsibility of the Health Home to ensure members requests are received and reported appropriately. When a request is made for records outside of, the following must be completed:

1. A member must complete a Health Home Care Authorization for Record Release.
2. Send completed form to the Bassett Health Home.
3. The Health Home will gather the requested information and return, per the requested method, to the member in 10 days.
4. The Health Home will upload the request to the members Netsmart record and Bassett EPIC record for tracking.

Accounting of Disclosures

The Health Home and its Care Management Agency (CMA) partners are required who disclose a BHN patient's PHI are responsible for documenting those disclosures in an Accounting of Disclosures.

The following disclosures of a patient's PHI do not need to be documented when made:

1. Prior to April 14, 2003.
2. To carry out treatment, payment, or healthcare operations.
3. To the patient.
4. Pursuant to a valid and effective authorization (one that complies with the requirements of state law as well as with the HIPAA Privacy Regulations) signed by the patient.
5. To persons involved in the patient's care or other notification and location purposes.
6. To federal officials for national security or intelligence purposes.
7. To a correctional institution or law enforcement official that has custody of a patient.
8. To a health oversight or law enforcement official or agency provided the official or agency notifies BHN in writing that providing an Accounting of Disclosures to a specific patient would be reasonably likely to impede the official's or agency's activities.

Disclosures that must be documented included disclosures:

1. to a Business Associate (BA) of BHN – unless the disclosure to the BA is made for purposes of the BA providing treatment, payment, or healthcare operations activities on behalf of BHN;
2. Required by law, including mandatory reporting to local, state, and federal agencies and authorities;
3. For purposes of public health activities:
 - a. Victims of abuse, neglect, or domestic violence.
 - b. Health oversight activities.
 - c. Judicial and administrative proceedings.

- d. Law enforcement purposes pursuant to process and for identification and location purposes.
- e. To coroners, medical examiners, and funeral directors.
- f. Cadaveric organ, eye, or tissue donation purposes.
- g. Research purposes.
- h. To avert a serious threat to health or safety.
- i. Specialized government functions including military and veterans' activities, national security and intelligence activities, protective services for the public officials, correctional institutions and other law enforcement custodial situations.
- j. Workers' compensation.

The information that must be documented for each disclosure is:

1. The date of the disclosure.
2. The name of the entity or person who received the PHI and the address and contact information.
3. A brief description of the PHI disclosed.
4. A brief statement of the purpose of the disclosure that reasonably informs the patient of the basis of the disclosure.

Documentation should be maintained so it can be retrieved quickly upon a request from the Privacy Officer who is responsible for providing the Accounting of Disclosures to the patient. Contact HIM for instructions on Quick Disclosure in Epic

Questions about what types of disclosures must be documented should be directed to the employee's supervisor, or Health Home.

Disenrollment from the Health Home Program and PHI Sharing

Whether disenrollment is due to Member-Driven or Administrative reasons a CM will take all steps necessary to end coordination and PHI sharing on the members behalf. See BCHN004: Health Home Disenrollment Policy for proper procedure in notifying and disenrolling members.

Training

Health Homes must assure that policies and procedures related to training for staff on the subject of PHI and Consent include, but are not limited to the following:

1. familiarity with the various laws and requirements for adults and children associated with consent;
2. the use, purpose, and completion of Health Home consents for adults;
3. protection of PHI, and agency specific and DOH required reporting protocols for HHs and CMAs;
4. how to engage members regarding the various consents and obtaining the appropriate signatures, and provider information for the CM to assist the member with quality care management to in meeting the member's health and wellness needs.
5. Managing member refusals to sign consent forms.

Quality Monitoring

The HH must provide oversight and monitoring activities to ensure that consents are obtained in accordance with the requirements and timelines outlined in policy. Quality monitoring activities must include, but are not limited to:

1. enrollments that did not occur due to refusal by individuals to sign consent;
2. proper management of member enrollment under AOT order if member refuses to sign consent;
3. individuals that chose to opt out of HH program enrollment;
4. members were enrolled in the presence of a correctly completed and signed consent form(s);
5. updates to consent were made correctly and timely upon changes in providers, services, and others approved by the member and/or Parent, Guardian/Legally Authorized Representative, etc.;
6. proper notification to member's care team to cease sharing of information upon the member's disenrollment, as appropriate;
7. timely notification to Health Home at member disenrollment for distribution of Notice of Determinations;
8. identification of violations in management of PHI, immediate actions taken to report a violation of PHI as per state and federal laws and HH policy, actions taken to correct the violation and prevent reoccurrence.
9. meet required timelines for ensuring consents were signed for Health Home structure/network changes;
10. meet required timelines if a member/s changes Health Homes, Care Management Agency, or both.

Supporting Policies and Resources

Additional information about Health Home Consents and PHI and other information referenced in this policy can be accessed on the DOH Health Home website via the following links:

- DOH-5055 Health Home Patient Information Sharing Consent
- BCHN004: Health Home Member Disenrollment Policy
- BCHN003: Health Home Member Transfer Policy
- Health Home Care Authorization for Record Release
- [Health Home Plus Program Guidance for High-Need Individuals with Serious Mental Illness](#),
- BCHN010 Health Home Notification of Change and Fair Hearing Policy - Notification of Change Form and Instructions