



VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: VNS Health Health Plans Use and Disclosure of Member Information

APPLIES TO: VNS Health Health Plans

OWNER: Corporate Compliance Department

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PURPOSE

This policy and procedure establishes the general rules which VNS Health Health Plans will follow when using and disclosing the health information of its members. All Plan personnel are expected to maintain the confidentiality and privacy of member information in accordance with the Federal Health Insurance Portability and Accountability Act of 1996 and its related regulations ("HIPAA").

POLICY

I. Protected Health Information. HIPAA requires VNS Health Health Plans to adhere to certain rules when using and disclosing the "protected health information" (PHI) of its members. PHI is defined by HIPAA as information, in any form or medium (including oral, written and electronic communications), that:

- A. is created by a Plan, health care provider, or a health care clearinghouse;
 - B. relates to an individual's physical or mental health, the provision of health care to an individual, or the payment for the provision of health care to an individual; and
 - C. identifies, or could be reasonably expected to be used to identify, an individual.
- PHI includes everything from a member's name, address, and telephone number to the member's clinical and billing records.

Note: The HIPAA Privacy Rule protects the individually identifiable health information about a decedent for 50 years following the date of death of the individual.

II. Use and Disclosure for Treatment, Payment and Health Care Operations. Consistent with the terms of the Joint Notice of Privacy Practices of the VNS Health Organized Health Care Arrangement (OHCA), VNS Health may use and disclose the PHI of its members for VNS Health's treatment, payment and health care operations purposes, and may share information amongst the entities participating in the VNS Health OCHA to manage joint operational activities. The entities include VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, Medical Care at Home, P.C., and VNS Health Health Plans.

III. VNS Health Health Plans' Privacy Notice. VNS Health Health Plans provides its members with a copy of the Joint Notice of Privacy Practice which describes VNS Health Health Plans' uses and disclosures of member information, the member's privacy rights, and the procedure for making complaints.

IV. Member Restrictions. The member has the right to request restrictions on how VNS Health Health Plans uses or discloses PHI to carry out treatment, payment and health care operations, but VNS Health Health Plans does not have to agree to such restrictions. When a request for a restriction is made by a member, VNS Health Health Plans informs the member of VNS Health Health Plans' decision regarding a request for a restriction and documents that the request was made as well as the decision made by VNS Health Health Plans. The decision shall be documented in the member record and logged by the Chief Compliance and Privacy Officer.

VNS Health Health Plans staff may not agree to any restrictions on VNS Health Health Plans' uses or disclosures of a member's PHI without the prior approval of the Chief Compliance and Privacy Officer. If VNS Health Health Plans does agree to a restriction requested by a member, VNS Health Health Plans honors the restriction, unless the member subsequently agrees to terminate the restriction¹ and except when otherwise required to provide emergency treatment to the member.

V. Confidential Communications/Alternative Communications. The member has the right to request that VNS Health Health Plans provide them with communications of their PHI by alternative means or at alternative locations. However, VNS Health Health Plans is only required to permit and accommodate such requests if the member clearly states that the disclosure of all or part of the information, absent the accommodation, could endanger the member and such request is put in writing. For all other requests for alternative communications, VNS Health Health Plans is not required to agree to any accommodation, but if it does, then it is bound by such agreed-upon accommodations. When a request for alternative communications is made by a member², VNS Health Health Plans informs the member of VNS Health Health Plans' decision regarding the request for alternative communications and documents that the request was made as well as the decision made by VNS Health Health Plans. The decision will be documented in the member record.

Plan staff may not agree to any other alternative communication requests without the prior approval of the Chief Compliance and Privacy Officer. If VNS Health Health Plans does agree to a request for alternative communications, VNS Health Health Plans honors the request, unless the member subsequently terminates the request for alternative communications³ and except when otherwise required to provide emergency treatment to the member.

¹ Either in writing or orally. Oral agreements to terminate a restriction are documented by VNS Health Health Plans.

² If the member clearly states that the disclosure of all or part of the information, absent the accommodation, could endanger the member, VNS Health Health Plans will require the member to put the statement in writing and will comply with the requested accommodation.

VI. Uses and Disclosures for Underwriting and Related Purposes. If VNS Health Health Plans receives PHI for the purposes of underwriting, premium rating or other activities relating to the creation, renewal or replacement of a health insurance or health benefits contract, and the health insurance or benefits are not placed with VNS Health Health Plans, VNS Health Health Plans does not use or disclose the PHI for any other purposes, except as required by law.

VII. Other Uses and Disclosures of PHI. VNS Health Health Plans does not use or disclose PHI for purposes other than treatment, payment and health care operations, with the following exceptions:

A. VNS Health Health Plans may disclose PHI to the member.

B. VNS Health Health Plans may disclose PHI to entities within the VNS Health OHCA in accordance with the terms of the Joint Notice of Privacy Practices and CCD.15 VNS Health Organized Health Care Arrangement Policy.

C. VNS Health Health Plans may disclose PHI for treatment activities of a health care provider (e.g., VNS Health Health Plans can provide PHI to a physician in order to assist the physician in treating a member).

D. VNS Health Health Plans may disclose PHI to another Covered Entity or health care provider for its payment activities (e.g., disclosing eligibility information to an ambulance company so that the ambulance company can submit an insurance claim for services it provided).

E. VNS Health Health Plans may disclose PHI to another Covered Entity or health care provider for certain of its health care operations⁴, provided VNS Health Health Plans and the Covered Entity each has or had a relationship with the member and the PHI pertains to that relationship.

F. VNS Health Health Plans may use and disclose PHI pursuant to a valid HIPAA authorization.

G. VNS Health Health Plans may disclose PHI to a business associate, subject to the terms of the applicable business associate agreement.

H. VNS Health Health Plans must disclose PHI to the Department of Health and Human Services in connection with compliance reviews and investigations, subject to the requirements of applicable law.

I. VNS Health Health Plans may disclose PHI to a member's family, friends and personal representatives as described in VNS Health Health Plans policy regarding such disclosures.

³ Either in writing or orally. Oral agreements to terminate a restriction are documented by VNS Health Health Plans.

⁴ The purpose of such disclosure must be for quality assurance activities, process improvement, case management, population-based activities relating to improving health or reducing health care costs, protocol development, contacts with health care providers and members about treatment alternatives and related activities, training programs, accreditation, licensure, credentialing or fraud and abuse compliance.

J. VNS Health Health Plans may disclose PHI to a person subject to the jurisdiction of the FDA for purposes related to a product approved by the FDA (e.g., incident reporting, tracking of products, product recalls or post-marketing surveillance).

K. VNS Health Health Plans may use or disclose PHI for various legal, regulatory and employment purposes pursuant to VNS Health Health Plans's policy regarding such disclosure.

L. VNS Health Health Plans may disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, subject to the requirements of HIPAA and applicable law.

M. VNS Health Health Plans may use or disclose a limited data set that meets the requirement of HIPAA's privacy regulations, if VNS Health Health Plans enters into a data use agreement with the limited data set recipient.

N. VNS Health Health Plans may use or disclose PHI as otherwise specifically permitted or required by federal regulations.

Note: HIV-related information, genetic information, alcohol and/or substance abuse records and mental health records enjoy additional confidentiality protections of state and federal law that must be followed. Questions concerning the disclosure of these types of information should be raised with the Privacy Officer.

VIII. Incidental Disclosures. Incidental uses or disclosures of PHI which occur as a by-product of an otherwise permitted or required use or disclosure are not considered to be a violation of HIPAA, provided adequate safeguards have been put into place and minimum necessary policies have been implemented.

IX. Remuneration for PHI.

A. Except as listed below, if VNS Health Health Plans receives remuneration for PHI, VNS Health Health Plans may not disclose PHI for any purpose unless it has obtained the member's authorization. VNS Health Health Plans may disclose PHI for the following purposes even if it is receiving direct or indirect remuneration in exchange for disclosing PHI:

1. Public health activities;
2. Research purposes if the remuneration received is reasonable cost-based fee to cover the cost to prepare and transmit the information for research purposes;
3. Treatment and payment purposes;
4. Sale, transfer, merger, or consolidation of all or any part of VNS Health Health Plans and for related due diligence;

5. Services rendered by a business associate at the specific request of
6. To a patient or their personal representative when requested; or
7. Otherwise required by law permitted under the privacy regulations.

MEMBER AUTHORIZATIONS

I. Authorization Required. If VNS Health Health Plans intends to use or disclose PHI, VNS Health Health Plans first obtains a valid written and signed authorization from the member or their personal representative. When VNS Health Health Plans receives a valid authorization, all uses and disclosures pursuant to the authorization must be consistent with its terms. A valid authorization should be written in plain language and specifically include:

- A. the information to be used or disclosed;
- B. the person or entity who will be using or disclosing the information;
- C. the person or entity who will be receiving the information;
- D. each purpose of the requested uses or disclosures;
- E. an expiration date or event which relates to the individual or the purpose of the use or disclosure⁵;
- F. the signature of the individual (or personal representative) and the date; and
- G. various required statements and information specified by the privacy regulations.

II. Who Can Execute an Authorization. The following individuals are authorized to sign an authorization for a member:

- A. The member, provided that their competent and at least 18 years old;
- B. A personal representative with the legal authority to make medical decisions for an incapacitated member, such as a court appointed guardian authorized to make medical decisions, health care agent, parent, or other person acting *in loco parentis* that has the legal authority to make medical decisions on behalf of a minor subject to VNS Health Health Plans's policy and procedure regarding personal representatives.
- C. An executor or administrator of a deceased member's estate.

⁵ Under certain circumstances, research authorizations do not need to include an expiration date and, instead, "end of the research" or "none" can be documented on the form.

III. Defective Authorizations. VNS Health Health Plans does not accept an authorization if the authorization's expiration date has passed or the expiration event is known by VNS Health Health Plans to have occurred. VNS Health Health Plans also rejects any authorization that has not been filled out completely or contains material information that VNS Health Health Plans knows is false. An authorization is invalid if VNS Health Health Plans knows it is revoked or incorrectly created as a compound authorization (as discussed below).

IV. Compound and Conditional Authorizations.

A. Compound Authorizations. Generally, an authorization for the use or disclosure of PHI should not be combined with any other document. Any type of authorization may, however, be combined with any other type of authorization, except when the authorization conditions the provision of treatment, payment, enrollment in a Plan, or eligibility for benefits on the member's providing one of the authorizations to be combined.

1. Psychotherapy notes. An authorization for a use or disclosure of psychotherapy notes will only be combined with another psychotherapy note authorization.

2. Research. An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of PHI for such research or a consent to participate in such research. For additional information regarding the use of research authorizations refer to VNS Health Health Plans' HIPAA Research Policy.

B. Prohibition on Conditioning of Authorizations. Except as indicated in this Section, VNS Health Health Plans does not condition a member's treatment, payment, enrollment in VNS Health Health Plans, or eligibility for benefits on the member's providing an authorization.

1. VNS Health Health Plans may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on the member's provision of an authorization for the disclosure of the PHI to such third party.

2. VNS Health Health Plans may condition enrollment in VNS Health Health Plans or eligibility for benefits on the provision by the individual of an authorization requested by VNS Health Health Plans prior to an individual's enrollment in VNS Health Health Plans, if: (i) the authorization sought is for VNS Health Health Plans' eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and (ii) the authorization is not for a use or disclosure of psychotherapy notes.

V. Revocations. An individual can revoke their authorization, in writing, at any time, unless VNS Health Health Plans has relied upon the authorization.

VI. Specific Authorizations.

A. Authorizations for Psychotherapy Notes. See Appendix A. Please consult with the Chief Compliance and Privacy Officer, or designed, if you believe the record contains psychotherapy notes.

1. Authorizations for Marketing. Generally, VNS Health Health Plans does not use or disclose member information for marketing purposes unless it obtains an authorization. There are, however, several exceptions to the authorization requirement for marketing. For questions regarding marketing authorizations, refer to VNS Health Health Plans' Marketing Policy and Center for Medicare and Medicaid Services Marketing Guidelines.

REFERENCE: 45 CFR §§160.103, 164.508, 164.510, 164.512 & 164.522(a);
https://www.health.ny.gov/health_care/medicaid/redesign/docs/mltc_policy_13-24.pdf

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Appendix A

Psychotherapy Notes

Generally, VNS Health Health Plans obtains an authorization prior to using or disclosing a member's psychotherapy notes. Psychotherapy notes are recorded by a mental health professional, document or analyze the contents of conversations during an individual or group counseling session and are separated from the rest of the member's medical record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis and progress to date.

An authorization is not required; however, when the psychotherapy notes are used or disclosed for the following purposes:

1. Use by the originator of the psychotherapy notes for treatment;
2. Use or disclosure by VNS Health Health Plans for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling;
3. Use and disclosure by VNS Health Health Plans to defend itself in a legal action or other proceeding brought by the member;
4. Disclosures to the Secretary of Health and Human Services to investigate VNS Health Health Plans' compliance with the law;
5. Uses and disclosures required the law, if the use or disclosure complies with and is limited to the relevant requirements of such law;
6. Disclosures to a health oversight agency in connection with the oversight of the originator of the psychotherapy notes;
7. Disclosures to coroners or medical examiners for the purpose of identifying a deceased person, determining the cause of death or other duties as authorized by law; or

Consistent with applicable law and standards of ethical conduct, uses and disclosures which are based on a good faith belief of VNS Health Health Plans that such uses or disclosures are necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and such uses or disclosures are to a person or persons who may reasonably be able to prevent or lessen the threat.