

Topic: Uses and disclosures of PHI – Special Circumstances	Department: Entire Agency
Original effective date: 1/26/21	Last revision date: 11/15/24
Owner: VP for Quality and Compliance	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): 164.510; 164.512	
Related documents/Links:	

Policy: It is the policy of The Arc of Monroe (“The Arc”) to ensure that people have opportunities for privacy and that business, administrative and support functions promote personal and organizational outcomes.

Additional Information: For the purposes of this procedure, “staff” includes employees, contractors, consultants, interns, students and volunteers.

“Protected health information or PHI” is defined as information about people we support that relates to their past, present or future mental or physical health and also identifies them in some way. In addition to more obvious things such as treatment plans, service documentation, clinical assessment, etc., the following are also considered PHI:

- Initials of someone we support. If you share initials, you are sharing PHI. Reducing a name to initials does not protect it under HIPAA law.
- Pictures of someone we support. This includes any photograph that will identify the person in some way. This may be the case even if their face isn’t visible, but something distinctive about them is. It could also apply to pictures of the back of their head, side shots, other parts of their bodies that are distinctive, etc.
- Anything that describes someone in a way that makes it clear who you are talking about (such as a full physical description; or a combination of characteristics that are so unique as to effectively name the person). EXAMPLE: A short middle-aged woman with blazing red hair and right-side hemiparesis who goes to Henrietta Day Services.

This definition applies whether the information is written, spoken, signed, or in an electronic format – regardless of the language (e.g., English or any other language). You should presume that any information about people we support that you work with in your job is PHI and should be treated as such.

Please note:

- The Arc does not use facility directories as described in 164.510. This is because the law states that such directories may only be used if they describe the person’s general condition and “not communicate any specific medical information about the individual.” Since participation in any of our I/DD services requires an I/DD diagnosis, the use of such a directory would by default disclose specific medical information about people we support (namely, their I/DD).
- The Arc does not engage in research with or involving the people we support (164.512(i)).
- None of the situations listed in section 164.512(k) (“Uses and disclosures for specialized government functions”) currently apply The Arc.

Procedure	
Task:	Responsible party:
Uses and disclosures of PHI requiring an opportunity for the person to agree or object: Involvement in the person’s care and notification purposes	
<p>1. The Arc may share with the following parties PHI that is directly relevant to their involvement with the person’s health care or any payments related to the person’s care:</p> <ul style="list-style-type: none"> *Family member *Other relative *Close personal friend *Any other person identified by the person <p>We may also use or disclose PHI to find any of the above parties in order to notify them of the person’s location, general condition or death.</p> <p>Note: per 14 NYCRR 633.11, the following can be considered surrogates/legal representatives (in the order listed):</p> <ul style="list-style-type: none"> *A guardian lawfully empowered (as in through a court proceeding) *An actively involved spouse *A parent *An actively involved adult sibling *An actively involved adult family member <p>“Actively involved” is defined as significant and ongoing involvement in the person’s life so as to have sufficient knowledge of the person’s needs.</p> <p>As such, these parties can receive information about the person and/or make determinations in regards to the disclosure of PHI on behalf of the person.</p>	<p>Staff, Managers</p>
<p>2. The following conditions must be met for us to share PHI as indicated in step 1 of this section:</p> <p><u>If the person is present and has capacity to give consent, we need to do the following before we use or disclose the PHI:</u></p> <ul style="list-style-type: none"> *We have to obtain the person’s agreement; *We have to give the person an opportunity to object to the disclosure AND they don’t object; OR *We have to reasonably infer from the circumstances, based on professional judgment, that the person does not object to the disclosure <p><u>If the person is not present or does not have capacity to give consent:</u></p> <ul style="list-style-type: none"> *If the person is not present or they cannot agree or object because of their level of capacity, The Arc may, based on professional judgment, determine whether the disclosure is in the best interest of the person and if so, disclose only the PHI that is directly relevant to the person’s involvement in their care. <p><u>If the person supported is deceased:</u></p> <ul style="list-style-type: none"> *PHI may be shared consistent with step 1 of this section unless doing so 	<p>Staff, Managers</p>

<p>goes against any prior expressed preference of the person that is known to The Arc. In other words: if the person told us before they died that they didn't want their sister to know anything about their healthcare, we would have to honor that wish too after the person died.</p>	
<p>3. The Arc may use or disclose PHI to outside parties to assist in disaster relief efforts as long as: *We have obtained the person's agreement; *We gave the person an opportunity to object to the disclosure AND they did not object; OR *We can reasonably infer from the circumstances, based on professional judgment, that the person does not object to the disclosure</p> <p>We also have to make sure that if we do this, that we will not interfere with the emergency responders' work.</p>	Staff, Managers
<p>Uses and disclosures for which an authorization or opportunity to agree or object is not required</p>	
<p>Uses and disclosures required by law:</p>	
<p>1. The Arc may use or disclose PHI to the extent that we are required to by law.</p>	Staff, Managers
<p>Uses and disclosures for public health activities:</p>	
<p>1. The Arc may use or disclose PHI for public health activities. These include: *To prevent or control disease, injury or disability *To report child abuse or neglect *To the Food and Drug Administration (FDA) related to the safety and effectiveness of an FDA-regulated product or activity *To someone who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition</p> <p>NOTE: for confidential HIV-related information, this is pre-empted by NYS law. Please cross reference the policy, "Privacy of Confidential HIV Information."</p>	Staff, Managers
<p>Disclosures about victims of abuse, neglect or domestic violence:</p>	
<p>1. The Arc is able to share PHI with appropriate legal or government authorities if we believe that someone we support is being abused, neglected or is subject to domestic violence. Please cross reference the incident reporting policies, procedures and regulations. NYS laws and regulations pre-empt HIPAA, as they grant more protections to the person.</p>	Staff, Managers
<p>Uses and disclosures for health oversight activities:</p>	
<p>1. The Arc is required to disclose PHI to health oversight agencies, such as the NYS Department of Health (DOH), NYS Office of the Medicaid Inspector General (OMIG), or the Office for People with Developmental Disabilities (OPWDD) for the purposes of audits, investigations, inspections, disciplinary actions, or legal proceedings.</p>	Staff, Managers

Uses and disclosures for judicial and administrative proceedings:	
1. The Arc may disclose PHI for any judicial or administrative hearing if we are required to by court order or mandate.	Staff, Managers
Uses and disclosures for law enforcement purposes:	
1. The Arc may disclose PHI to law enforcement personnel if required to by law.	Staff, Managers
2. The Arc may also disclose PHI in response to a law enforcement officer's request in order to identify or locate a suspect, fugitive, material witness, or missing person. In this instance, only the following information may be shared: *Name and address *Date and place of birth *Social security number *ABO blood type and rh factor *Type of injury (if any) *Date and time of treatment (if any) *Date and time of death (if applicable); and *A description of distinguishing characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars and tattoos.	Staff, Managers
3. The Arc may disclose PHI if requested by a law enforcement official if it's believed that someone we support is or is suspected to be a victim of a crime. We can only do this if: *The person agrees; OR *If we cannot get the person's agreement because they do not have the capacity to give it; AND *Waiting to obtain consent would negatively affect their investigation; AND *Sharing the information is in the best interest of the person, based on our professional judgment.	Staff, Managers
4. The Arc can share PHI about someone who died to law enforcement personnel if we believe that the persons' death occurred as part of a crime.	Staff, Managers
5. The Arc can share PHI to law enforcement personnel if that information could be considered evidence of a crime committed on Arc property.	Staff, Managers
Uses and disclosures about decedents:	
1. The Arc can share PHI to a coroner or medical examiner in order for them to: *Identify the deceased *Determine a cause of death; OR *Perform other duties as authorized by law.	Staff, Managers
2. The Arc can share PHI with funeral directors in order for them to carry out their duties with respect to the deceased.	Staff, Managers
Uses and disclosures for cadaveric organ, eye or tissue donation purposes:	
1. The Arc may disclose PHI to organ procurement organizations or other entities involved in the procurement, banking or transplantation of	Staff, Managers

cadaveric organs, eyes, or tissue for the purpose of facilitating donation and transplantation.	
Uses and disclosures to avert a serious threat to health or safety:	
1. The Arc may use or disclose PHI, including to law enforcement personnel, if it believes that doing so is necessary to avert or lessen a serious and imminent threat to the health or safety of a person or the public.	Staff, Managers
Disclosures for workers' compensation:	
1. The Arc may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illness without regard to fault.	Staff, Managers
Manager responsibilities:	
1. Managers are responsible for acting as role models for other staff in regards to keeping PHI as secure as possible, consistent with the HIPAA privacy law.	Managers
2. Managers should have a basic understanding of what PHI can and cannot be shared under the special circumstances listed above, or know whom they can ask for support.	Managers
VP for Quality and Compliance:	
1. Acts as the agency's Privacy Officer	VP for Quality and Compliance
2. Responsible for administering the agency's HIPAA privacy policies and procedures	VP for Quality and Compliance
3. Acts as a resource for staff in regards to proper implementation of the HIPAA privacy rule	VP for Quality and Compliance

Document revision record:

Revision Date	Release Date	Reason for change	Approver
12/20/23	12/20/23	Added reference to 14 NYCRR 633.11; spelled out acronyms; cross-referenced policy on confidential HIV information; added reference to regulations (in addition to policies and procedures)	ICC
11/15/24	11/15/24	Corrected typo	ICC