

TITLE 220

PUBLIC HEALTH AND SAFETY

HEALTH SERVICES AUTHORITY PRIVACY CODE OF 2021

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ARTICLE 1. GENERAL PROVISIONS

Section 3-101. Short Title.

This act shall be known and may be cited as the "Choctaw Nation Health Services Authority Privacy Code of 2021."

Section 3-102. Policy and Scope.

A. It is the policy of the Choctaw Nation to protect the health information created by, or maintained by, the Choctaw Nation Health Services Authority facilities and affiliated programs and professionals.

B. This Code establishes standards to protect individuals' medical records and other Tribal Health Information and applies to all Workforce members (employees, volunteers, trainees, students, medical staff, and other persons) working in or for the Health Services Authority facilities, affiliated programs, or professionals.

C. This Code enables the Health Services Authority to make policies and procedures to implement the standards herein.

Section 3-103. Definitions.

As used in this Code, unless the context otherwise requires:

1. "Health Services Authority" means the Choctaw Nation Health Services Authority;
2. "Code" means the Choctaw Nation Health Services Authority Privacy Code of 2021;
3. "Tribal Health Contractor" means:

a. A third-party contractor who, on behalf of the Health Services Authority, creates, receives, maintains, or transmits Tribal Health Information for business purposes. Tribal Health Contractor includes a Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to Tribal Health Information to the Health Services Authority and that requires access on a routine basis to such Tribal Health Information including the following:

(1) A person that offers a personal health record to one or more individuals on behalf of the Health Services Authority; and

(2) A subcontractor that creates, receives, maintains, or transmits Tribal Health Information on behalf of the Tribal Health Contractor.

b. Tribal Health Contractor does not include the following:

(1) A health care provider with respect to disclosures by the Health Services Authority to the health care provider concerning the treatment of the individual, or

(2) Indian Health Services;

4. "Electronic media" means:

a. Electronic storage material on which data is or may be recorded electronically, including, but not limited to devices in computers including hard drives and any removable/transportable digital memory medium, such a magnetic tape or disk, optical disk, or digital memory card;

b. Transmission media used to exchange information already in electronic storage media. Transmission media include, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission;

5. "Health care clearinghouse" means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and value-added networks and switches, that does either of the following functions:

a. Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction;

b. Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity;

6. "Health care provider" means a provider of medical or other health services on behalf of the Health Services Authority;

7. "Tribal Health Information" means any information, including genetic information, whether oral or recorded in any form or medium that:

a. Is created or received by the Health Services Authority; and

b. Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual;

8. "Individually Identifiable Tribal Health Information" is information:

a. That is a subset of Tribal Health Information, including demographic information

collected from an individual, and:

(1) Is created or received by the Health Services Authority,

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and

b. That identifies the individual or for which there is a reasonable basis to believe the information can be used to identify the individual;

9. "Tribal Health Privacy Officer" means the Privacy Officer overseeing Health Services Authority activities and who reports to the Tribal Privacy Officer;

10. "Implementation specification" means specific requirements or instructions for implementing this Code;

11. "Individual" means the person who is the subject of Tribal Health Information;

12. "Tribal Privacy Officer" means the Tribal Privacy Officer overseeing the privacy program of the Choctaw Nation;

13. "Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Health Services Authority or for a Tribal Health Contractor, is under the direct control of the Health Services Authority or Tribal Health Contractor, whether or not paid by the Health Services Authority or a Tribal Health Contractor.

Section 3-104. Responsibilities of the Health Services Authority and Tribal Health Contractors.

A. The Health Services Authority must keep records and submit such compliance reports when requested for review by the Tribal Privacy Officer.

B. The Health Services Authority must cooperate with the Tribal Privacy Officer in investigations or reviews. If any information required of the Health Services Authority or Tribal Health Contractor under this section is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, the Authority or Tribal Health Contractor must so certify and set forth what efforts it has made to obtain the information.

Section 3-105. Administration by the Health Services Authority

A. Personnel Designations

1. The Health Services Authority shall designate a Tribal Health Privacy Officer who is responsible for the implementation of the policies and procedures of the Health Services Authority.

2. The Authority must designate a contact person or office who is responsible for receiving complaints under this section and who is able to provide further information about matters covered by the Notice of Privacy Practices.

B. Training

1. The Health Services Authority must train its workforce on the policies and procedures with respect to Tribal Health Information as necessary and appropriate for the workforce to carry out their functions within the Health Services Authority.

2. The Health Services Authority must provide training as follows:

a. To each new member of the workforce within a reasonable period of time after the person joins the Health Services Authority's workforce; and

b. To the Health Services Authority's workforce whose functions are affected by implementation of this Code or a material change in the policies or procedures of the Health Services Authority within a reasonable period of time after the material change becomes effective.

Section 3-106. Refraining from intimidation or retaliation.

Neither the Health Services Authority nor a Tribal Health Contractor may threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual for:

1. Filing of a complaint with the Tribal Health Privacy Officer or Tribal Privacy Officer; or

2. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing pursuant to applicable law.

ARTICLE 2. HEALTH SERVICES AUTHORITY HEALTH INFORMATION PRIVACY AND SECURITY

Section 3-201. General Provisions.

The Code provides the Health Services Authority the authority to make and maintain policies and procedures related to securing Tribal Health Information.

Security Standards for the Protection of Tribal Health Information

Section 3-202. Applicability.

The Health Services Authority must comply with the applicable standards, implementation specifications, and requirements of this Code with respect to electronic Tribal Health Information.

Section 3-203. Definitions.

As used in this article:

1. "Access" means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource;
2. "Administrative safeguards" are administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic Tribal Health Information and to manage the conduct of the Health Services Authority's or Tribal Health Contractor's workforce in relation to the protection of that information;
3. "Authentication" means the corroboration that a person attempting to access Tribal Health Information is the one claimed;
4. "Availability" means the property that data or information is accessible and useable upon demand by an authorized person;
5. "Confidentiality" means the property that data or information is not made available or disclosed to unauthorized persons or processes;
6. "Encryption" means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key;
7. "Information system" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people;
8. "Integrity" means the property that data or information have not been altered or destroyed in an unauthorized manner;
9. "Physical safeguards" are physical measures, policies, and procedures to protect Health Services Authority or Tribal Health Contractor electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
10. "Security or Security measures" include all administrative, physical, and technical safeguards in an information system;
11. "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system;
12. "Technical safeguards" means the technology and the policy and procedures

for its use that protect electronic Tribal Health Information and control access to it; and

13. "User" means a person or entity with authorized access.

Section 3-204. Tribal Health Security standards.

A. The Health Services Authority and Tribal Health Contractors shall:

1. Ensure the confidentiality, integrity, and availability of all electronic Tribal Health Information that the Health Services Authority or Tribal Health Contractor creates, receives, maintains, or transmits;

2. Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;

3. Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required; and

4. Ensure compliance with this Article by its Workforce.

B. Implementation Specification. The Health Services Authority and Tribal Health Contractors may use any security measures that allow the Health Services Authority or Tribal Health Contractor to reasonably and appropriately implement the standards of this Code.

Section 3-205. Administrative safeguards.

A. The Health Services Authority shall implement a security management process, policies and procedures to prevent, detect, contain, and correct security violations.

B. Implementation Specification. These policies and procedures must include:

1. Risk Analysis: Conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic Tribal Health Information held by the Health Services Authority or Tribal Health Contractor;

2. Risk Management Plan: This Plan must include the implementation of security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level;

3. Sanctions Policy: Apply appropriate sanctions against Workforce Members who fail to comply with the security policies and procedures of the Health Services Authority.

Section 3-206. Physical safeguards.

The Health Services Authority must implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed.

Section 3-207. Technical safeguards.

The Health Services Authority must implement policies and procedures addressing technical safeguards, including:

1. Access Control. Implement technical policies and procedures for electronic information systems that maintain electronic Tribal Health Information to allow access only to those persons or software programs that have been granted access rights;
2. Audit Control. Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic Tribal Health Information;
3. Integrity. Implement policies and procedures to protect electronic Tribal Health Information from improper alteration or destruction;
4. Person or entity authentication. Implement procedures to verify that a person or entity seeking access to electronic Tribal Health Information is the one claimed; and
5. Transmission security. Implement technical security measures to guard against unauthorized access to electronic Tribal Health Information that is being transmitted over an electronic communications network.

Section 3-208. Tribal Health Contractors

A. "Tribal Health Contractor" means a person or organization that performs a function or activity involving the Use or Disclosure of Tribal Health Information on behalf of the Choctaw Nation. A person or organization who only assists in the performance of the function or activity is also a Tribal Health Contractor. This includes a person or organization that receives Tribal Health Information from the Choctaw Nation, and one who obtains Tribal Health Information for the Choctaw Nation. This also includes a subcontractor that creates, receives, maintains, or transmits Tribal Health Information on behalf of a Tribal Health Contractor.

B. No person or entity may be deemed a Tribal Health Contractor, as defined herein, unless duly vetted and approved as such by the Health Services Authority pursuant to the Health Agreements Policy and the Health Services Authority THA Decision Tree and Deviation Process.

ARTICLE 3. NOTIFICATION IN THE CASE OF BREACH OF UNSECURED TRIBAL HEALTH INFORMATION

Section 3-301. Definitions.

As used in this Article:

1.. “Breach” means the acquisition, access, use, or disclosure of Tribal Health Information in a manner which compromises the security or privacy of the Tribal Health Information.

a. Breach does not include:

(1) Any unintentional acquisition, access, or use of Tribal Health Information by the Health Services Authority workforce or a person acting under the authority of the Health Services Authority or a Tribal Health Contractor if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted;

(2) Any inadvertent disclosure by a person who is authorized to access Tribal Health Information to another person authorized to access Tribal Health Information and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted; or

(3) A disclosure of Tribal Health Information where the Health Services Authority or a Tribal Health Contractor has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in subparagraph a of paragraph 1 of this Section, an acquisition, access, use, or disclosure of Tribal Health Information in a manner not permitted is presumed to be a breach unless the Health Services Authority or Tribal Health Contractor, as applicable, demonstrates that there is a low probability that the Tribal Health Information has been compromised based on a risk assessment of at least the following factors:

a. The nature and extent of the Tribal Health Information involved, including the types of identifiers and the likelihood of re- identification;

b. The unauthorized person who used the Tribal Health Information or to whom the disclosure was made;

c. Whether the Tribal Health Information was actually acquired or viewed; and

d. The extent to which the risk to the Tribal Health Information has been mitigated.

B. “Unsecured Tribal Health Information” means Tribal Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons.

Section 3-302. Notification to individuals.

A. The Health Services Authority shall, following the discovery of a breach of Tribal Health Information, notify each individual whose unsecured Tribal Health Information has been, or

is reasonably believed by the Health Services Authority to have been accessed, acquired, used, or disclosed as a result of such breach. A breach shall be treated as discovered by the Health Services Authority as the first day on which such breach is known, or by exercising reasonable diligence, would have been known, to any Workforce member, other than the person committing the breach.

B. Timing of Notice:

1. Upon identification of a Breach that requires notification, the Health Services Authority shall provide the required notification as described herein. Such notification shall be made to the appropriate individual(s) in the required manner without unreasonable delay but in no case longer than sixty (60) days.
2. If Tribal Law Enforcement informs the Health Services Authority that notification otherwise required by this Code would impede a criminal investigation or cause damage to Choctaw Nation security, the Health Services Authority may delay notification in accordance with Tribal law and policy.

D. Content of the Individual Notice: The notice must include each of these elements:

1. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
2. A description of the types of unprotected Tribal Health Information involved in the Breach;
3. Any steps the Individual should take to protect himself/herself from potential harm resulting from the Breach;
4. A brief description of what the Health Services Authority is doing to investigate the Breach, to mitigate harm, and to protect against future Breaches; and
5. Contact procedures for the Individual to ask questions or learn additional information, which shall include a telephone number or email address. This is addressed in the Breach Notification Procedures Policy.

E. Manner of Notice. Written notification to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail. If the individual is deceased or has a designated Personal Representative, notice shall be given to either the Estate, if known, or designated Personal Representative, if known.

F. Confidential Communication. If an Individual has requested confidential communications, the notice shall be provided consistent with Health Service Authority policy and procedure.

G. Substitute Notice. In any case in which there is insufficient contact information that

precludes written notification to the individual, a substitute form of notice reasonably calculated to reach the individual shall be provided. In the case in which there is insufficient contact information for ten (10) or more individuals, the substitute notice shall be in the form of a conspicuous posting for a period of ninety (90) days on the Health Services Authority website.

H. In the event of a single Breach involving more than five hundred (500) Patients, the Health Services Authority shall issue a press release to the primary Choctaw Nation publication.

Section 3-303. Notification by a Tribal Health Contractor.

A Tribal Health Contractor shall, following the discovery of a breach of unsecured Tribal Health Information, notify the Health Services Authority of such breach in accordance with the Tribal Health Contractor Agreement.

Section 3-304. Uses and disclosures of THI: General rules.

A. The Health Services Authority may not use or disclose Tribal Health Information, except as permitted by this Code.

B. The Health Services Authority is permitted to use or disclose Tribal Health Information to the individual who is the subject of the Tribal Health Information as follows:

1. For treatment, payment, or health care operations;
2. Incident to a use or disclosure otherwise permitted; or
3. Other uses and disclosures may be provided with a valid authorization as provided in Article 4 of this Code.

C. The Health Services Authority is required to disclose Tribal Health Information to the patient or representative or the patient as defined by Choctaw law, when requested.

D. Tribal Health Contractors. A Tribal Health Contractor may use or disclose Tribal Health Information only as permitted or required by its Tribal Health Contractor Agreement or to the Health Services Authority, the individual, or the individual's designee, as necessary to satisfy the Health Services Authority's obligations under this Code.

E. Minimum Necessary. When using, disclosing, or requesting Tribal Health Information, the Health Services Authority must make reasonable efforts to limit Tribal Health Information to the minimum amount of Tribal Health Information necessary to accomplish the intended purpose of the use, disclosure, or request. This requirement does not apply to:

1. Disclosures to or requests by a health care provider for treatment;
2. Uses or disclosures made pursuant to an authorization; or
3. Uses or disclosures that are required by Tribal law.

F. The Health Services Authority must treat a personal representative as the individual so long as that person has legal standing to serve as a personal representative under Tribal law. The Health Services Authority may elect not to treat a person as the personal representative of an individual if:

1. The Health Services Authority has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

2. Treating such person as the personal representative could endanger the individual; and

3. The Health Services Authority, in the exercise of professional judgment and pursuant to policy and procedure, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

ARTICLE 4. AUTHORIZATION, NOTICE, AND ACCOUNTING FOR USES AND DISCLOSURES

Section 3-401. Uses and disclosures for which an authorization is required.

A. Except as otherwise permitted or required, the Health Services Authority may not use or disclose Tribal Health Information without an authorization and the disclosure must be consistent with the authorization.

B. The Health Services Authority shall maintain and implement a policy and procedure regarding what constitutes a valid authorization, the revocation of such authorization, and the scope of an authorization.

C. Psychotherapy notes. The Health Services Authority must obtain a patient's authorization for any use or disclosure of psychotherapy notes, except for:

1. Use by the originator of the psychotherapy notes for treatment;

2. Use or disclosure by the Health Services Authority 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; or

3. Use or disclosure by the Health Services Authority to defend itself in a legal action or other proceeding brought by the individual.

D. The Health Services Authority must obtain an authorization for any use or disclosure of Tribal Health Information for marketing, except if the communication is in the form of:

1. A face-to-face communication made by the Health Services Authority to an individual; or

2. A promotional gift of nominal value provided by the Health Services Authority.

E. If the marketing involves financial remuneration to the Health Services Authority from a third party, the authorization must state that such remuneration is involved.

Section 3-402. Uses and Disclosures Not Requiring an Authorization.

A. The Health Services Authority shall maintain and implement policies and procedures that outline permissible authorizations that are consistent with:

1. This Code;
2. Choctaw Law; and
3. The Choctaw Nation's position as a sovereign nation.

B. The Health Services Authority must make any use and disclosure in accordance with the minimum necessary standard. It may not use or disclose an entire medical record, except when justifiable.

Section 3-403. Notice of privacy practices for Tribal Health Information.

An individual has a right to adequate notice of the uses and disclosures of Tribal Health Information that may be made by the Health Services Authority, and of the individual's rights and the Choctaw Nation's duty with respect to Tribal Health Information. This is addressed in Notice of Privacy Practices Procedures Policy.

Section 3-404. Access of individuals to Tribal Health Information.

A. Right of access. Except as otherwise provided, an individual has a right of access to inspect and obtain a copy of the Tribal Health Information about the individual in a designated record set, for as long as the Tribal Health Information is maintained in the designated record set, except for:

1. Psychotherapy notes; or
2. Information compiled in reasonable anticipation of, or for use in a proceeding involving Tribal Law Enforcement; or
3. As otherwise listed within the Health Services Authority Right to Access Tribal Health Information policy.

B. Implementation Specification: The Health Services Authority shall maintain a policy and procedure regarding an individual's right to access, form of access requested, and the time and

cost to provide records.

Section 3-405. Amendment of Tribal Health Information.

A. Individuals have the right to have the Health Services Authority amend Tribal Health Information in a designated record set. The Health Services Authority may deny an individual's request for amendment if the Tribal Health Information was not created by the Health Services Authority or is otherwise accurate and complete.

B. The Health Services Authority shall maintain a policy and procedure regarding record amendments. This is addressed in the Amendment of Tribal Health Information Policy.

Section 3-406. Accounting for Disclosures:

A. Individuals have the right to request an Accounting for Disclosures of their Tribal Health Information over the previous six (6) years, except for:

1. disclosures to carry out treatment, payment or healthcare operations;
2. incidental disclosures otherwise permitted or required;
3. disclosures made pursuant to a valid authorization; or
4. disclosures which are otherwise listed within Health Services Authority Accounting of Disclosures of Tribal Health Information Policy.

B. The Health Services Authority shall maintain a policy and procedure for requests for an accounting of disclosures.