# Procedural Standard 16-2

 **August 5, 2019**

TO: DES Staff

FR: Frank Joyce RN, Senior Director, Disability Evaluation Services (DES)

BY: Sherry Campanelli, Program Compliance Manager, DES

**RE: Request for Access to Personal Health Care Information (PHI): DES Authorization to Release Information**

**Background:** Except for psychotherapy notes and information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding, the HIPAA Privacy Rule (Privacy Rule) requires covered entities *and their business associates* to provide individuals access to their protected health information (PHI) that is kept in a “designated record set”. A designated record set is a group of records maintained for a covered entity that contains medical records, billing records, and enrollment, payment, claims adjudication, and case management record systems and other records used to make decisions about the individual. With limited exceptions, the Privacy Rule provides individuals with a legal, enforceable right to see and receive copies of their medical and other health records, upon request of the information. This right includes allowing the individual to instruct a covered entity or their business associate to send the individual’s records to another person or entity.

 At the same time, 42 CFR Part 2 restricts disclosure of information relating to treatment for substance use disorders without a client’s written authorization.

Disability Evaluation Services (DES) is a business associate of state Medicaid agencies and other state agency customers. In the DES environment, an individual’s case file may include medical records, billing records, claims adjudication records, and any records that are used, in whole or in part, to make decisions about an individual. All of these records are subject to an individual’s requests for access.

DES routinely receives a high volume of calls and written requests for access (copies of medical records, consultative examinations (CE), entire case files) from individuals, their authorized representatives, parents of child applicants, attorneys, as well as agencies including the Disability Determination Services in the Massachusetts Rehabilitation Commission, Executive Office of Health and Human Services and others.

**Policy:** DES’ policy is to provide individuals the right to inspect and obtain a copy of their PHI that is contained within the designated record set, unless there is an exception under the law. Absent an exception, access will be permitted in accordance with this Policy. This procedural standard establishes the DES policy that, when a HIPAA Authorization is required for release of records, individuals and/or their representatives must use the standard Disability Evaluation Services (DES) “Authorization to Release Information” form (attached) to request access to the records. DES has adopted this internal policy of only recognizing its own release form in order to ensure the information is released using a standard form that is compliant with the law and to provide efficient and cost effective services.

If DES receives a request for access that does not include a completed DES Authorization to Release Information form, it will be returned to the requestor instructing him or her to complete the form in order to access the records. .

Only the following exceptions to the requirement to request access with the DES Authorization to Release Information form are permitted:

* Social Security Administration form SSA-827 received from the Disability Determination Services (DDS) of the Massachusetts Rehabilitation Commission or any other state’s official DDS agency.
* Release of information pursuant to a court order
* Release of information requested by DES’s covered entity

All other inquiries about access will receive instructions to complete the DES Authorization to Release Information and return it to DES for processing.[[1]](#footnote-1) Complaints or inquiries about this requirement may be referred to the Program Manager responsible for Licensed Health Care Professional (LHCP) and Authorization to Release Protected Health Information reviews. If necessary, the Program Manager or the LCHP may contact the Office of Management (OOM) for advice.

DES responds to requests for access in accordance with the timeliness requirements of 45 CFR 164.524.

**Summary:** In order to fully comply with HIPAA Privacy Rule requirements that individuals have access to their own information and to protect against unauthorized disclosures of PHI, DES institutes the use of a standard Disability Evaluation Services (DES) Authorization to Release Information form and requires its use as a means of requesting PHI from DES files.

1. Instructions regarding the actual internal processing of requests for access, communications with requesting individuals or entities, and review of records by a Licensed Health Care professional prior to release are contained in other internal documents. [↑](#footnote-ref-1)