CHAPTER 9

THE MINIMUM NECESSARY RULE

I. THE MINIMUM NECESSARY RULE

The Minimum Necessary Rule requires that DMH, its offices, facilities, programs and Workforce Members, when using, disclosing, or requesting Protected Health Information (PHI), must make reasonable efforts to limit PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request. This Minimum Necessary Rule applies to all uses and disclosures of PHI that do not meet one of the six exceptions listed below. The Minimum Necessary Rule applies to exchanges of PHI between DMH Workforce Members and to such exchanges with Business Associates and with other third parties.

The five exceptions to the Minimum Necessary Rule are the following:

1. **Disclosures made pursuant to an authorization**. The applicable authorization must meet the requirements set forth in Chapter 8, Authorization for Use and Disclosure of Protected Health Information. Additionally, the disclosure must be consistent with any limitations imposed by the individual or PR in the authorization.

2. **Disclosures to the individual who is the subject of the information.** This exception applies to disclosures to individual and/or PR, if applicable, who is the subject of the information. The right of an individual, and/or his/her PR, to access the individual's PHI is discussed in Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH.

3. **Disclosures that are required by law.** This exception applies only to the extent that the information is required to be disclosed. (See Chapter 6, Uses and Disclosures of Protected Health Information.)

4. **Uses or disclosures required for compliance with HIPAA standardized transactions.** This applies to certain billing transactions. The exception applies only to the data elements that are required for HIPAA standardized transactions. It does not apply to optional or discretionary data elements in HIPAA standardized transactions.

5. Disclosures made to the U.S. Department of Health and Human Services in a HIPAA investigation. The U.S. Department of Health and Human Services is authorized to conduct compliance reviews to determine if DMH and other Covered Entities are complying with HIPAA. The Department of Health and Human Services also has authority to investigate complaints made by individuals who may believe that DMH or another Covered Entity is not complying with HIPAA.

II. SPECFIC REQUIREMENTS

A. Workforce Access to PHI

DMH is responsible for identifying those individuals or groups of individuals that need access to PHI to carry out their duties. For each person or group that is identified, DMH must make a reasonable effort to limit access to the specific category or categories of PHI needed for each person or group to perform his/her or its duties**.** DMH shall document its Workforce Member access to PHI in accordance with Section III.A., below.

B. Routine Disclosures and Requests

For each type of disclosure or request for PHI that a DMH Workforce Member makes on a routine and recurring basis, DMH will develop procedures that are designed to limit the amount of PHI that is disclosed or requested to that which is reasonably necessary to achieve the purpose of the disclosure or request. Requests for this purpose only refer to requests for PHI made of other Covered Entities. The procedures shall be documented in accordance with Section III.B., below.

C. Non-Routine Disclosures and Requests

DMH must develop criteria designed to limit the amount of PHI that a Workforce Member discloses or requests on a non-routine basis to that which is reasonably necessary to accomplish the purpose for which the disclosure is being sought. All non-routine disclosures and requests for PHI shall be reviewed on an individual basis in accordance with the procedures set forth in Section III.C., below. Requests for this purpose only refer to requests made of other Covered Entities.

D. Entire Medical Record

The entire medical record of an individual shall not be used, disclosed or requested, unless the entire medical record is the amount of PHI that is reasonably necessary to accomplish the specific purpose that prompted the

request for the medical record.

III. DMH PROCEDURES FOR ENSURING THAT THE MINIMUM AMOUNT OF PHI IS USED, DISCLOSED OR REQUESTED

A. Workforce Member Access and Access Documentation

Access to each DMH Designated Record Set will be limited to those Workforce Members who need access to carry out their job functions. DMH will make reasonable efforts to limit the access that is given to any Workforce Member to only those portions of the applicable Designated Record Set that the member needs for his/her job function. For each DMH Designated Record Set, DMH will (a) document by name, or job category, which individuals need access to the Designated Record Set, (b) the scope of access (e.g., D=Department-Wide, A=Area-Wide, etc.) and (c) the specific PHI to be accessed. Appendix B of this Handbook contains the Workforce Member Access to PHI Created and Maintained by DMH Table and definitions and instructions for using the table. This documentation will be maintained and kept current by the DMH Privacy Officer. The following format shall be used for the required access documentation, unless the Privacy Officer authorizes another format.

		Minimum Necessary Access To:
User Type-Individual Name or Job Type	**Scope of Access *D, A, S, F, C, U**	**Specific PHI To Be Accessed:** This establishes limitations to the types of PHI that a User Type may access. This section will refer either to a Designated Record Set(s) (as defined in Chapter 5 of the Privacy Handbook, Designated Record Sets) or specific elements of PHI that are contained in a Designated Record Set. **Electronic and Paper

Reasonable efforts must be made by DMH to ensure that access is limited in accordance with the access documentation. At a minimum, the physical, administrative and technical security requirement as set forth in Chapter 3, Physical and Technical Safeguards must be followed.

B. Routine Disclosures and Requests

Appendix C of this Privacy Handbook lists the routine disclosures and requests for PHI made by DMH. It also establishes guidelines as to the appropriate amount of PHI for each disclosure and request. Included in Appendix C are some disclosures and requests that are not subject to the Minimum Necessary Rule, but are done routinely by DMH (e.g. releases pursuant to a court order).

Each DMH Central Office unit, Area or Site Office, Facility and state-operated Program, is responsible for ensuring that all routine and recurring disclosures and requests are included in Appendix C. If any additions, deletions or changes to Appendix C are needed, the DMH Privacy Officer must be contacted so that Appendix C can be adjusted. Routine disclosures to Business Associates are not required to be included in Appendix C because the applicable Business Associate agreements will address the Minimum Necessary Rule applicable to such disclosures. (See Chapter 7, Business Associates.)

C. Non-Routine, Non-Recurring Disclosures and Requests

1. **Review Process.** Each DMH Central Office unit, Area, Site or Case Management office, Facility and state-operated Program, shall designate an individual(s) to review and approve non-routine requests and disclosures of PHI. The review process must ensure that each such disclosure and request is reviewed on an individual basis and meets the criteria set forth in this Section. Reviewers need to use their judgment and they need to balance the privacy rights of patients/clients/applicants/emergency services recipients with what is reasonable given DMH resources and limitations.

   Non-routine disclosures and requests are made only occasionally, such as to a public official investigating a crime. This section only applies to disclosures and request subject to the Minimum Necessary Rule. (See Section I., above, for the exceptions to the Minimum Necessary Rule.)

   If a non-routine request is made for an individual's entire medical record, then such request shall be referred to the DMH Privacy Officer who shall be responsible for determining if the entire record should be released.

2. **Review Criteria.** In determining what PHI may be disclosed or requested, the reviewer must apply the following criteria:

a. **The identity and authority of the requester and the need for the PHI must be clearly stated.** If the identity, authority or need is not clearly stated, an addendum to the request must be sought. A reviewer must be able to determine from the stated identity, authority and need (i) that the disclosure is of the type that is permissible under State and Federal law (See Chapter 6, Use and Disclosure of Protected Health Information); and (ii) if an exception to the Minimum Necessary Rule applies (See Section I.).

b. **The information requested must be related directly to the stated purpose.** For example, the entire medical record shall be disclosed only if it is clearly demonstrated that each part of the medical record is related to the reason the request is being made.

c. **To the extent possible, the request should be specific both as to the documents being requested and the applicable time period.** If the request is general, the reviewer should work with the requester to narrow the disclosure to specific documents or periods of time that fits the purpose of the request. Only the information specifically requested should be disclosed.

d. **Determine if authorization can be obtained from the individual or PR, if any, and/or if there are practical reasons for not obtaining authorization.**

e. **Determine if the purpose could be achieved by providing de-identified information.** (See Chapter 6, Uses and Disclosures of Protected Health Information.) This should include a consideration of the technology available to limit disclosure and the cost of limiting disclosure to de-identified information.

f. **If it is not possible or feasible to provide de-identified information, then determine to what extent it is possible to redact or remove all extraneous PHI.** This determination should include consideration of the cost of limiting the disclosure and the available resources to do so.

g. **Special Circumstances.**

    i. If the request is from another Covered Entity, then the request may be deemed to satisfy the Minimum Necessary Rule. However, supporting documentation should be

requested for any request made by another Covered Entity that would involve disclosure of a complete medical record or which does not appear reasonable under the circumstance.

ii. If the request is made by a public official or public agency, which represents that the request is required by law and that the PHI requested is the minimum necessary for the stated purpose, then the request may be deemed to satisfy the Minimum Necessary Rule. (See Chapter 10, Verification of the Identity and Authority of the Requester.)

iii. If a researcher makes the request with documentation from the DMH Central Office Research Review Committee authorizing the request, then the request shall be deemed to satisfy the Minimum Necessary Rule.

D. Monitoring and Training

To ensure that the use, disclosure and request of PHI by DMH Workforce Members is limited in accordance with this policy and procedures, DMH will conduct on-going monitoring of compliance, will take corrective action as needed, and will conduct regular training on the Minimum Necessary Rule and procedures.

IV. LEGAL REFERNCE

HIPAA 45 CFR 164.514(d)