

## West Virginia Executive Branch Privacy Policy: Consent

### When Consent is Legally Required

#### QUESTION:

**Is consent to collect PII required by law?**

#### ANSWER:

Some laws require us to obtain consent before we collect or use private information (PI). If this is the case, the Consent Policy mandates that the consent be obtained. Here are some tips for obtaining consent:

- ✓ Consent must be informed. This means that the person giving consent must understand how the PI will be used or disclosed and what the consequences of the use and disclosure will be. To ensure that the person does have the necessary information, be sure to provide the person with a copy of the applicable privacy notice before asking for consent.
- ✓ Consent must be freely-given. Never pressure someone into giving consent.
- ✓ Document that you have the person's consent. Be sure you have used an approved consent form. Your Privacy Officer can answer any questions that you have about the consent form.
- ✓ If you obtain consent orally (*e.g.*, over the phone), confirm that consent is being properly documented. For example, it might be important to record telephone calls where consent is obtained. Also be sure that you really do have consent. Require the individual to say "I agree" or something similar. Don't just rely on "uh-huh" or other mutterings.
- ✓ If you are obtaining consent from someone other than the person to whom the PI pertains, be clear on the relationship and whether the person has the power to give consent. For example, a parent may be able to consent to the collection and use of a child's PI, but there may be legal limits to the authority. Discuss any concerns you have about third party consents with your manager or Privacy Officer.
- ✓ You also need a process to handle revocations of consent. When consent is required for the use or disclosure of PI, individuals almost always have the ability to withdraw their consent at any time.