



SAN MATEO COUNTY HEALTH

BEHAVIORAL HEALTH & RECOVERY SERVICES

DATE: February 25, 2003; effective April 14, 2003

BHRS POLICY: 03-01

SUBJECT: Confidentiality/Privacy of Protected Health Information (PHI)

AUTHORITY: 42CFR Part 2 - Re AOD; 45CFR Parts 160 & 165 (HIPAA Privacy Regulations), California Welfare and Institutions Code, Sections 5328-5330, California Confidentiality of Medical Information Act, Civil Code Sec. 56 et seq.

SUPERSEDES: BHRS Policy 90-12, Confidentiality

AMENDED: 3/13/13; Technical Edits 1/23/14; updated 5/15/20
Translations of Attachments added 9/26/16;
Attachments B & C (English): updated 5/15/20, Technical Edits 6/23/20
Attachment H (English): Technical Edit 7/1/20

ATTACHMENTS:

- A. **Declaration of Notice of Confidentiality**
- B. **Authorization for Use or Disclosure of Health Information (Mental Health)**
 - Chinese
 - English
 - Russian
 - Spanish
 - Tagalog
 - Tongan
- C. **Authorization for the Verbal Release of Client Information (Mental Health)**
 - Chinese
 - English
 - Russian
 - Spanish
 - Tagalog
 - Tongan
- D. Excerpts from W&I Code
- E. Privacy Complaint Form
- F. Exchange of Information: Principles and Definitions
- G. Exchange of information: Guide to Sharing



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H. Authorization for Use or Disclosure of Protected Health Information (AOD Services Unit; added October 2013)

- Chinese
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BACKGROUND

San Mateo County Behavioral Health Services complies with California's stringent confidentiality requirements and has had written policies to that effect since 1985. In 1996, by passing the Health Insurance Portability and Accountability Act (HIPAA), Congress also recognized the importance of protecting the privacy of health information. Many Federal regulations, published in the Privacy Rule cited above, are already in place in California. Where Federal law provides for additional protections and clients' rights, it preempts California law. Where California law is more restrictive, it is the defining law.

POLICY

Client health information is confidential and will be available only to authorized staff for allowable uses. Unless otherwise allowed or mandated by law, access to confidential mental health material without specific authorization by the client or the client's representative is permitted only for direct client care, for uses related to payment, and for certain approved administration functions known collectively as "operations". More stringent conditions exist for the exchange of information concerning Alcohol and Other Drugs assessment and treatment. (See Grid – Attachment G, this policy).

In most circumstances, responsibility for disclosure and documentation of disclosure of protected health information resides with the clinical team or the specific clinician treating the client, rather than with administrative staff.

Protecting the privacy of client health information is the responsibility of every individual working within San Mateo County Behavioral Health Services, including trainees, volunteers and independent contractors. A breach of confidentiality may result in sanctions up to and including termination of employment or contract.

PURPOSE

To reaffirm the basic right of the client to privacy of medical information, to define relevant terms, and to describe allowable and mandatory disclosures of protected health information.

<http://smchealth.org/bhrs-documents>

Policy 03-01 Confidentiality/Privacy of Protected Health Information_5/15/20

Technical Edits to Attachments B & C (English)_ 6/23/20; Tech Edits to Attach H (English)_7/1/20

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DEFINITIONS

Authorization – When PHI is disclosed for reasons other than treatment, payment and health care operations, HIPAA requires specific “authorization” by the patient for each disclosure. We are accustomed to referring to this “authorization” as “Consent to Exchange Information”. Generally, internal “use” does not require authorization, while external “disclosure” does.

Client Representative - The parent or legal guardian of a minor client, the guardian or legal conservator of an adult client, or the personal representative of a deceased client.

Minimum Necessary – Only the amount of information necessary to accomplish the intended purpose of the use, disclosure, or request. The Minimum Necessary Rule does not apply to releasing medical information for treatment purposes, or to releases for which there are authorizations.

PHI – Protected Health Information - Information relating to a person’s health, the care received and payment for services, including demographic information.

TPO – Refers to treatment, payment and operations within the health care system.

PROCEDURE

1. Responsibilities and Restrictions

- A. All staff, trainees, volunteers and independent contractors shall sign the San Mateo County Health Services Agency Declaration of Notice of Confidentiality (Attachment A). Such notice is maintained in personnel or contract files.
- B. Protected health information (PHI) obtained either during assigned duties or incidentally shall not be released to any person or institution except in accordance with San Mateo County and/or Behavioral Health Policy.
- C. Even when PHI is released in full compliance with all conditions described in this policy, it is critical that only the minimum necessary information to accomplish the purpose of the request be released. NOTE: minimum necessary does not refer to information released to another provider of medical care concerning treatment, or to releases for which there are client/client representative authorizations.
- D. No employee, trainee, volunteer or independent contractor shall seek access to or read confidential files of any client for whom they do not have direct treatment responsibility, or for any other reason not allowed by policy.
- E. When a therapeutic team treats a client, all members of that team shall have access to the behavioral health record as needed.
- F. Staff performing O.D. or on-call coverage may have access to all clinical charts, on a need-to-know basis.



- G. The mental health records of clients may be read by a therapist/team in the process of referrals.
 - H. Discussion or consultation concerning a client's PHI shall be conducted in a location and manner such that the risk of being overheard by uninvolved staff or other clients is minimal.
 - I. Individuals not directly involved in the client's care shall not be present in a consultation or case review except with the client's permission or as allowed by policy and/or law. (For example, youth multidisciplinary teams have protected status within California law.)
 - J. Staff shall attend mandatory training related to privacy and confidentiality when first hired and as needed, provided or arranged for by San Mateo County Behavioral Health Services. Currently, all BHRS staff will take the on-line HIPAA training every April.
2. Allowed uses/disclosures of Protected Mental Health Information
- A. Treatment, Payment, Operations (TPO)
 - Treatment – PHI may be disclosed without authorization to persons who are directly involved in the client's medical care. Examples of such disclosures include referrals for treatment, for discharge planning, during shared treatment by a psychiatrist and another therapist, and to medical providers. Disclosures may be made to Conservatorship Investigation staff in the course of a conservatorship investigation.
 - Payment – information may be sent to an insurer or health plan to facilitate preauthorization or payment for services. Disclosures of payment records may be made to a client's spouse only in the situation where the spouse or the spouse's insurance carrier is the guarantor of payment.
 - Health Care Operations – this broadly encompasses quality improvement, peer review, other training purposes, staff supervision, internal assessment of services, using deidentified PHI for statistical or evaluation purposes, etc. in accordance with federal and California law.
 - B. Upon receipt of a properly executed authorization by the client or the client's representative (See Attachment B, Authorization for Use or Disclosure of Protected Health Information, and see BHRS Policy 03-06, Disclosure of Protected Health Information with Client Authorization).
 - C. Research – providing all the conditions of BHRS Policy 95-02, Research Policies and Procedures, have been met.
3. Mandatory Disclosures of Protected Health Information
- A. Public health activities that involve safety or communicable disease (e.g., reporting positive TB skin test).
 - B. To report victims of abuse or neglect (see BHRS Policy 01-03, Assaults on Clients: Suspected or Reported).
 - C. To the courts, (e.g., to the Juvenile Judge), as necessary for the administration of justice, in accordance with federal and California law.



- D. Law enforcement purposes
 - a) In response to a court order, subpoena, warrant, summons or similar process (see BHRS Policy 96-14, Subpoenas to Release Records).
 - b) To identify or locate a suspect, fugitive, material witness or missing person (limited to non-medical information).
 - c) About the victim of a crime, under limited circumstances (limited to non-medical information).
 - d) About a death believed to be the result of criminal conduct (consult with county counsel for any special reporting requirements).
 - e) About criminal behavior within the division (limited to non-medical information).
 - f) In emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime (limited to non-medical information).
 - E. To prevent a serious threat to the health and safety of the client or the health and safety of the public or another person (see BHRS Policy 93-08 re Tarasoff, Duty to Protect).
 - F. Health Oversight Activities – As authorized by law, disclosure of PHI may be made to state and/or federal auditors, inspectors, staff of licensing agencies, and staff/members of certain state legislative committees (upon presentation of appropriate credentials).
 - G. To the protection and advocacy agency designated by State Department of Health Care Services to fulfill the requirements of the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986.
4. Disclosures of PHI to Family Members of Adult Clients
- A. In the outpatient setting, no disclosures of PHI may be made to the adult client’s family without client authorization (an acute inpatient setting has mandatory notification requirements, unless the client specifically requests that family be denied this information).
 - B. When a family member requests information, the client shall be notified of this interest and asked to decide whether or not to authorize such a release of PHI.
 - C. Because family members are often the most consistent and knowledgeable advocates for their loved ones, it is recommended that staff review the Authorization for the Verbal Release of Client Information (Attachment C) with clients on admission or as appropriate. Signed authorization to talk with family members or other supportive individuals shall be filed in the client chart where readily available for review in the circumstance of an inquiry from a concerned person.
5. Disclosures of PHI to Parents/Guardians of Minors.
- A. In general, parents or guardians have rights to access PHI of their minor children under 12, children over 12 may have control over access to their chart at times. Staff must be certain that the authorization to release PHI or a request to review the minor’s chart is made by an individual with legal authority to do so (i.e., a parent who retains parental



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rights, the child that has consented to their own care, an appointed guardian, or representative, etc.)

- B. At times, a minor may retain privacy rights and the parent/guardian may be refused access to the mental health chart.
- C. Federal and California law allow the minor to exercise control of his/her PHI when the parent has agreed to have the minor obtain confidential treatment.
- D. The staff member may deny access to PHI, based on professional judgment that it would not be in the best interests of the youth (i.e., the individual has been or may be the victim of the representative's domestic violence, abuse, neglect or other endangerment).
- E. Additional circumstances where the youth's PHI may be denied to the representative include a good faith determination by the professional staff that access would be detrimental to that staff member's relationship with the client, or when the minor's physical safety or psychological well-being would be harmed as a result of the disclosure.
- F. A provider may disclose health information about a minor to a parent/guardian in the most critical situations, even if one of the limited exceptions discussed above apply.

Approved: _____ *Signature on File*
Scott Gilman, MSA
BHRS Director