

SAN MATEO COUNTY HEALTH SYSTEM  
BEHAVIORAL HEALTH AND RECOVERY SERVICES

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

BHRS POLICY: 03-04

SUBJECT: Disclosure of Protected Health Information (PHI), Minimum Necessary

AUTHORITY: Federal 45 CFR, 164.514(d)(2-3) (HIPAA Privacy Rule); Federal 45 CFR Part 2; California W&I Code, 5328-5330; BHRS Policy 03-01, Confidentiality/Privacy of Protected Health Information

AMENDED: 1/23/14

ATTACHMENTS:

- A. Minimum Necessary Access by Workforce Class
- B. Routine Requests and the Degree of Disclosure Allowed
- C. Management Information System (MIS) – Outline of Access by Function

PURPOSE

To ensure compliance with federal and state law concerning minimum necessary disclosures of Protected Health Information for clients seen within Behavioral Health and Recovery Services (BHRS).

DEFINITIONS

**Disclosure of PHI** – The “release, transfer, provision of access to, or divulging in any other manner PHI outside of the entity holding the information”.

**Minimum Necessary Standard** The HIPAA Privacy Rule states that a covered entity must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. It further requires the provider to identify those in the workforce who need access to client information, to determine how much access is necessary to perform the work function, and to limit access accordingly. In general, for mental health clients, the minimum necessary rule does not apply to the disclosure of health information between treating providers.

**Protected Health Information (PHI)** Includes information relating to a person’s health, the care received and payment for services, including demographic information.

**Use of PHI** - The “sharing, employment, application, utilization, examination, or analysis of PHI within an entity that maintains such information”.

**Workforce** – Refers to all employed staff, contracted professionals at Behavioral Health and Recovery (BHRS) sites, students/trainees and volunteers.

**42 CFR Part 2** –The federal law that restricts “disclosure” of any alcohol or drug abuse program client record. It applies to an individual who has applied for or been given a diagnosis or treatment for alcohol or drug abuse at a federally assisted program. 42 CFR Restrictions do not apply to mental health treatment programs that do not “hold themselves out” as providers of alcohol or drug abuse treatment.

## POLICY and PROTOCOLS

*BHRS Policy 03-01, Confidentiality/Privacy of Protected Health Information remains the primary source for rule and policy on this topic. Nothing in this Minimum Disclosure Policy is intended to alter or replace the conditions of BHRS Policy 03-01.*

**San Mateo County Behavioral Health Services will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.**

**Workforce Access to PHI** (including the electronic mental health record and/or any paper copies of material with PHI).

Behavioral Health Services will:

- Identify those persons or classes of persons in its workforce who need access to PHI to carry out their duties;
- Identify, for these individuals, the categories of PHI to which access is needed and any conditions appropriate for such access.
- Create and maintain as attachments to this policy a grid and other listings identifying classes of individuals and the conditions of their minimum necessary access (see Attachments A, B and C).

All requests for staff/independent contractor access to Behavioral Health or Hospitals and Clinics screens or menus shall be made in writing using the approved form; requests require supervisor signature. Supervisors shall request only the standard access (as identified in attachments A, B or C) to electronic data for staff. Exceptions to this rule shall require manager approval and the approval of the manager of behavioral health information services.

## **Routine and Recurring Disclosures**

Behavioral Health Services will create and maintain as an attachment to this policy a grid identifying routine and recurring requests and the degree of disclosure allowed (see Attachment D).

## **Disclosures for Purposes of Treatment (HIPAA Rules)**

In general, disclosures between treating medical professionals for the purpose of a mental health referral or the referral of a mental health client for physical health care are not subject to the Minimum Necessary Rule.

It is not necessary under HIPAA to monitor requests received from another covered entity (provider). Nonetheless, Behavioral Health Services staff shall communicate with any provider who is requesting the disclosure of the entire mental health chart, or for any other disclosure that does not seem reasonable under the circumstances. Supervisors and/or Managers shall be notified if the staff member continues to feel uncertain about the appropriateness of the disclosure after consulting with the requesting provider.

Example: Staff shall use clinical judgment concerning how much PHI shall be disclosed to a provider treating certain coexisting medical conditions (i.e., acute orthopedic injuries such as broken bones) when the request asks for but does not appear to support disclosure of the entire mental health record.

## **42 CFR Part 2 –Consent Requirements Prior to Disclosure of Information in AOD Record**

Except in the case of a medical emergency, 42 CFR Part 2 requires the written permission of a client for disclosure of PHI or any portion of a substance abuse program record - even for the purposes of treatment, payment or healthcare operations.

## **Non-Routine Disclosures**

*This item does not refer to disclosures necessary for purposes of mental health Treatment, Payment or Operations, or to those listed in Attachment B.*

Even in the presence of a correctly issued Authorization, BHRS staff shall evaluate all disclosures that fall outside of those cited above, and shall be prepared to negotiate the intent and content of the request as appropriate. Supervisors and/or Managers shall be notified in the event of an Authorization to Disclose PHI that appears questionable and shall review the request with the Quality Improvement Manager or his delegate prior to the disclosure.

## Requests for Disclosures Originating Within Behavioral Health Services

When requesting information from other sources, BHRS staff shall make a good faith effort to request only that amount of information necessary for the purpose they describe.

Approved: Signature on file  
Stephen Kaplan, Director  
Behavioral Health and Recovery Services