



SAN MATEO COUNTY HEALTH
**BEHAVIORAL HEALTH
& RECOVERY SERVICES**

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

BHRS POLICY: 03-06

SUBJECT: Disclosures of Protected Health Information (PHI) with Client Authorization

AUTHORITY: 45 CFR Part 160 (HIPAA Privacy Regulations); BHRS Policy 02-06, Confidentiality/Privacy of Protected Health Information; BHRS Policy 96-14, Subpoenas to Release Records

AMENDED: August 12, 2009, March 13, 2013; Technical Edits June 23, 2020; Technical Edits August 14, 2020 (attachments removed, link to Policy 03-01 added)

ATTACHMENTS:

See [Policy 03-01: Confidentiality/Privacy of Protected Health Information \(PHI\)](#)

- Attachment B: Authorization for Use or Disclosure of Protected Health Information
- Attachment C: Authorization for the Verbal Release of Client Information

PURPOSE

To affirm the basic right of the client to privacy of medical information including the right to request or to limit disclosures, except for those situations where existing law allows or requires disclosure without client authorization;

To reinforce minimum necessary standards for release of information; and

To describe a process to assure that all releases of clinical information have been reviewed and approved by clinicians.

DEFINITIONS

Client Representative – Also known as “Personal” Representative. For purposes of authorizing release of patient records, a representative may include: the guardian or conservator of an adult client, the personal representative of a deceased client, or the parent or guardian of a minor.



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Designated Record Set - Health information created and/or maintained by a health care provider or health plan for the purpose of making decisions about clients. The Designated Record Set includes:

- Mental Health Record or Mental Health Chart - Any item, collection or grouping of information within the designated record set that is maintained, collected, used or disseminated by or for San Mateo County Behavioral Health and Recovery Services (BHRS). The record or chart may be in paper or electronic format, microfiched or scanned and stored electronically or on disk.
- Copies of records obtained from hospitals or other treatment providers are included as part of the designated record set. **Exception: Copies of records of alcohol and other drug treatment from external providers may be scanned into the medical record but are not part of the designated record set and may not be redisclosed. This material should be filed in the “Confidential” section of the chart.**
- Financial Records – These will be available as a report from the automated system.

Minimum Necessary – Reasonable efforts to limit access to PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Does not apply to release of medical information for behavioral health treatment purposes or to information requested by the person to whom it belongs.

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

Provider - For purposes of this policy, “provider” is used interchangeably to refer to San Mateo County BHRS and to the individual administrative or clinical staff member processing the request to disclose PHI.

Redisclosure - The act of sharing or releasing health information that was received from another source (e.g., external facility or provider) and made part of a client’s health record or the organization’s designated record set.

POLICY

San Mateo County BHRS shall only disclose protected health information in accordance with current federal or state law.



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A client or the client's personal representative may authorize, in writing, disclosure of part or all of the Designated Record Set including the Mental Health Record. The provider will comply with this request in a timely manner, following all procedures for documentation of the request and of the material disclosed.

Material that is not part of the Designated Record Set should not be scanned into the Mental Health Chart and should not be released. Examples include, but are not limited to:

- Raw test data from psychological tests (Place summary of findings in medical record.)
- Art products (other than standardized test drawings) produced during art therapy (Place summary of findings in the medical record.)
- Utilization Review Worksheets
- Peer Review and Medication Monitoring Forms
- Email Messages

Other material that may be stored in the medical record (Avatar) but must not be released even with valid authorization to disclose includes:

- Conservatorship Investigation material
- Reports written for the court
- **Information disclosed from alcohol and other drug programs**

The client or personal representative may deny a request to authorize disclosure of PHI, unless such disclosure is required for treatment, payment or operations. Behavioral Health Services shall not condition treatment, payment, or eligibility for Health Plan benefits on the client's signing an authorization to exchange information that is not for purposes related to treatment, payment or operations.

The provider will observe the conditions of the disclosure scrupulously and will release only the specific information authorized.

Notwithstanding the above, the provider may release PHI, absent the client or client's representative's authorization, under circumstances described in [BHRS Policy 03-01: Confidentiality/Privacy of Protected Health Information](#).

Note: See [BHRS Policy 96-14](#) for releasing information under the special circumstances of a subpoena.



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PROCEDURE

NOTE: The release of mental health clinical information to another treating clinician is allowed by law, and does not require client authorization.

The release of protected health information for purposes of mental health payment or operations is allowed by law and does not require client authorization.

1. The following procedure relates to written authorization to disclose PHI (in writing or verbally) to individuals not directly treating the client. Examples might include attorneys, employers, or family members. (For client requests to have access to the mental health chart see [BHRS Policy 00-06: Client Access to Behavioral Health Records](#)).
- The request to disclose PHI related to treatment must be in writing. The request may be written on a Behavioral Health Services' form or on another document that includes all the mandated information. (See [Policy 03-01: Confidentiality/Privacy of Protected Health Information](#), Attachment B: Authorization for Use or Disclosure of Protected Health Information)
2. The written request should include the following:
 - a. name of the client
 - b. name and signature of the requester
 - c. statement of the relationship of the requester to the client (when an agent of the client is authorizing disclosure of medical records)
 - d. identification of the portion(s) of the record to be disclosed
 - e. date of the request
 - f. date authorization expires
3. BHRS will comply with the Authorization to Disclose PHI in a timely and scrupulous manner. For example, if an authorization does not state that alcohol and drug records are to be released, no records concerning such may be disclosed.
4. The authorization to disclose **expires 3 years** from the date the form is signed/authorized or sooner, if specified. Further, the authorization to disclose is only in effect for clients who are still in treatment in BHRS. Requests for information concerning



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a client whose case is closed must be accompanied by a new, appropriately written and dated, authorization.

5. The LPS Act specifies that a physician, psychologist, social worker, nurse or other health professional is not required to disclose information given in confidence by a member of the client's family, even if the client or legal representative has authorized the release of the information or records. This holds, whether the authorization is to the client's attorney, probation officer, Patients' Rights Advocate, or to any other person designated in the authorization.
6. See [BHRS Policy 03-01](#), page 4, for detailed discussion concerning disclosure of PHI to Parents/Guardians of Minors.
7. Authorized disclosures are exempt from "minimum necessary" standards. However, this does not give blanket permission to copy the entire medical record. The language of the authorization itself will govern what may be disclosed. (Minimum necessary standards are still in effect to ensure an individual's privacy for most other uses and disclosures.)
8. Upon presentation of a valid Authorization to Disclose Protected Health Information, the treating clinician, a member of the treatment team, or the unit chief shall review the medical record to assure that all material contained within it may be released. It is highly desirable to communicate with the involved physician (if applicable) and other members of the treatment team before releasing the chart. Administrative support staff may not copy and release PHI without clinician approval.
9. If present, names of individuals other than collaterals to the client should be redacted by blacking out the name(s) on the duplicated copy.
10. Material given in confidence by family members should not be disclosed to the client or client's agent.
11. Providers shall release all medical records and other information contained within the mental health chart, even when San Mateo County BHRS is not the author of such records – so long as the content of such records is included in the authorization to disclose. **NOTE: records of alcohol and other drug treatment (as opposed to co-occurring behavioral health treatment) obtained from external providers may not be released.**
12. The Authorization to Disclose Protected Health Information shall be available in the client chart. Progress notes shall document the request, the material released, and the



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name of the clinician implementing the release. Administrative support staff may then assist the clinician in the release of requested material.

13. San Mateo County BHRS has developed a special Authorization for Release of Verbal Information to be used when the client agrees to staff communication with family, friends or other social supports (see [Policy 03-01](#), Attachment C). When such persons request client information, the client will be notified of this interest and asked to decide whether or not to authorize such a release of PHI. (See [BHRS Policy 03-01](#), page 4 for further detail). This authorization for verbal release of information shall be filed in the client chart.
14. Material released under an authorization by the client or client's representative does not need to be included in an accounting of disclosures.

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