

**SANTA CRUZ COUNTY  
Behavioral Health Services**

**POLICIES AND PROCEDURE MANUAL**

**Subject: Confidentiality of  
Mental Health Medical Records**

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Quality Improvement Staff**

**Approval:**   
Behavioral Health Director

10.2.17  
Date

**POLICY:**

All Behavioral Health employees and contractors shall comply with all applicable federal and state confidentiality statutes and regulations that pertain to the exchange, release, or acquisition of client mental health information. In cases where statutes or regulations differ, the most restrictive protections shall be followed.

**PURPOSE:**

To ensure that any release of confidential client information conforms to statutory restrictions, including those contained in the state Lanterman-Petris-Short (LPS) Act, recorded in Welfare and Institutions Code, the federal Health Insurance Portability and Accountability Act (HIPAA) and all its amendments as well as any other relevant state and federal regulations.

**PROCEDURES:**

**1. Confidential Information**

**a. Description**

Electronic Medical records that contain information pertaining to Protected Health Information are particularly sensitive and are afforded special confidentiality protection by state and federal statutes and regulations (see above references).

**b. Pertinent Services**

The procedures described in this policy apply to all information and records obtained in the course of providing services to:

- i. An individual who is involuntarily treated or evaluated for psychiatric inpatient care (WIC Sections 5150 et seq);
- ii. An individual who is voluntarily treated at a county community mental health clinic (WIC Sections 5600-5778);
- iii. An individual who is involuntarily treated at a state hospital for persons with mental disorders. (WIC Sections 4100-4320 & 7200-7375).
- iv. Any individual who has received County approved Specialty Mental Health treatment or other related services where Protected Health Information has been collected and recorded in the Electronic Medical Record or prior paper records.

**c. Information Released**

Any permitted confidential information released will be the minimum amount necessary to comply with the specifics of the request and authorization.

**2. Employee/Contractor Confidentiality**

a. All Behavioral Health employees and volunteers must have a signed Confidentiality Statement on record and adhere to all its provisions and applicable state and federal confidentiality laws and regulations:

i. County employees sign the form as part of their new employee procedures at HSA Personnel.

ii. Volunteers and student workers sign the statement upon arrival at Behavioral Health.

b. Contractors must comply with all applicable state and federal confidentiality laws and regulations, as stated in their Contract.

c. Clients are offered a copy of the Notice of Privacy Practices during their initial visit and can request a copy at any time. A copy is also available on the County Website. The client signs the Patient Acknowledgement of Receipt of Notice of Privacy Practices form that is scanned into the electronic medical record.

**4. Confidential Information Provided by Client's Family**

**a. Non-Disclosure**

A clinician or other professional person 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.

**b. Authorization**

Prior to releasing any information given in confidence by a client's family members, particularly if the family members were involved in any treatment modality, Behavioral Health staff will secure a written authorization from the family member, except for applicable reporting requirements as permitted by law.

**c. Separate Record**

Programs that involve family members in therapeutic programs shall develop appropriate policies and procedures for determining when a separate client record should be created for a family member.

**5. Penalties for Violations**

**a. Agency Liability**

Unauthorized release of confidential mental health information may subject Behavioral Health and individual staff members to liability for damages and fines.

**b. Responsible Person**

An individual who has either willfully and knowingly or negligently released confidential information or records about a mental health client may be liable for fines and actual damages.

## 6. Client Authorization to Release Information

### a. Requirements for Valid Authorization

An authorization to release client information must contain the following HIPAA (45 C.F.R. Section 164.508) designated components. The form must:

- Be written in plain language in at least 14 point type or handwritten by the person who signs it.
- Be clearly separate from any other language on the page and not combined with any other document to create a compound authorization.
- Be executed by a signature that serves no purpose other than to execute the authorization.
- Be signed and dated by either the client or someone authorized by law to act on behalf of the client.
- Describe the information to be disclosed and the specific uses and limitations, if any, on information to be disclosed.

### b. Documentation of Release

- i. Include the name or other specific identification of the provider authorized to make the requested use or disclosure and any person or entity to whom the provider may make the authorized use or disclosure.
- ii. Include a specific date or event after which the authorization expires and is no longer effective.
- iii. Indicate the right of the person signing the authorization to receive a copy of the authorization.
- iv. Notify the client of the following:
  - Their right to revoke the authorization in writing.
  - The provider's ability or inability to condition treatment, payment, health plan enrollment or eligibility for benefits on the authorization.
  - The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer protected by HIPAA.

### c. Authorization Form for Mental Health Information

- i. An Authorization to Release Confidential Mental Health Information (MHE 306) form has been developed to obtain the authorization of the client that meets the above requirements.
- ii. A signed authorization must be obtained for each request for disclosure of different information or release to a different party.
- iii. The signed form should be scanned into the client's medical record and a copy should be given to the client or person who signs on behalf of the client (WIC Sections 5328.6 and 5328.7).

#### **d. Eligible Recipients**

When accompanied by the signed MHE 306 form, records or information may be released to the following persons or agencies.

##### **i. Client's Attorney**

If the patient is unable to sign, the records may be released to the attorney, if the staff has determined "that the attorney does represent the interests of the patient" WIC Section 5328(j)). The attorney may use format for release to attorney as authorized by CA Evidence Code 1158.

##### **ii. Patient's Right Advocate**

An individual who is receiving or has received services from a mental health facility, service, or program is a "client" of a county patients' right advocate if the individual has personally or through a guardian ad litem entered into an agreement with the county patients' rights advocate for the provision of advocacy services.

##### **iii. All Others**

Any person, government agency or private physician that the client authorizes to receive his/her confidential medical information.

#### **e. Release by Person Responsible for Client**

Any person designated in writing by a client's parent, guardian, conservator, or guardian ad litem if the patient is a minor, ward, or conservatee [WIC Section 5328(d)].

#### **7. Release Without Client Authorization**

Records or information may be released without the client's authorization only in the following circumstances:

##### **a. Service Providers**

Information may be released to mental health service providers:

- i. Behavioral Health professionals who are providing services or appropriate referrals, or in the course of conservatorship proceedings.**
- ii. Qualified professionals outside the facility who have medical or psychological responsibility for the care of the individual [WIC Section 5328(a)].**
- iii. Facilities that provide intensive treatment or comprehensive evaluations may disclose records and information that may facilitate the investigation to the officer who provides a conservatorship investigation (WIC Section 5354).**

##### **b. Teams and Committees**

Information may be released to:

- i. Professionals serving on "multidisciplinary personnel" teams provided the information disclosed is relevant to the prevention, identification, management, or treatment of an abused child and his or her parents;**
- ii. A quality assurance committee established in compliance with WIC Sections 4070, 5328(n) and 5624.**

##### **c. Third Party Payors**

Information may be released to:

- i. Third party payors or other persons or organizations in connection with processing a claim for aid, insurance, or medical assistance to which the individual may be entitled.
- ii. The records and information may be disclosed only to the extent necessary to make the claim, and release should be restricted to those records pertaining to the services for which the claim is being made.

d. Law Enforcement

Information may also be released to government law enforcement agencies in the following circumstances:

- i. As needed by law enforcement agencies for the protection of federal and state elective constitutional officers and families [WIC Section 5328(g)];
- ii. To give notification of the disappearance of a client who, as a result of a mental disorder, is a danger to self or others or is gravely disabled, and therefore meets the criteria for involuntary commitment for 72-hour treatment and evaluation, provided the disclosure is necessary for the protection of the individual or others [WIC Section 5328.3(a)];
- iii. As necessary to comply with statutory requirements regarding the reporting of abuse or violence (e.g., elder and dependent adult abuse, child abuse, domestic violence, or Tarasoff; see\_policy 3215: Mandatory Reporting Requirements).
- iv. Courts, as necessary to the administration of justice [WIC Section 5328(f)].

e. Researchers

Information may be released to researchers provided that all research must be carried out according to the rules developed by the Director of the state Department of Health Care Services, Director of State Hospitals, Director of Social Services or Director of Developmental Services. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality described in regulation [WIC Section 5328(e)].

f. Government Agencies

Information may also be released to:

- i. The state Committee on Senate Rules or the State Committee on Assembly Rules for the purpose of legislative action [WIC Section 5328(h)].
- ii. Youth authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice [WIC Section 5328.02].
- iii. Authorized licensing personnel who are employed by or who are authorized representatives of the state Department of Health Care Services, and who are licensed or registered health professions.
- iv. Authorized legal staff or special investigators who are peace officers employed by or who are authorized representatives of the state Department of Social Services, as necessary to the performance of their duties to inspect, license, investigate health facilities and community care facilities and to ensure that the standards of care and services provided in such facilities are appropriate or to ascertain compliance with the regulations to which the facility is subject [WIC Section 5328.15(a)].

g. Tarasoff Notification to Potential Victims

Information may be given to a person(s) whom the client has threatened to harm and to law enforcement agencies that the clinician determines are needed for the protection of that person(s), when in the opinion of the clinician, the client presents a serious danger of violence to such person(s) [WIC Sec 5328].

h. Coroner

AB 2119 amended WIC 5328.8 to permit disclosure of mental health information when requested by the medical examiner or forensic pathologist. Coroner cannot redisclose to a third party without a court order or authorization of individual's personal representative.

i. Child Death Review Team

Per AB 2083, healthcare providers may disclose confidential mental health information to an interagency child death review team that is investigating a child's death. (Penal Code 11174.32)

8. Protection and Advocacy

a. Identified Agency

i. Information may also be given to Protection and Advocacy, Inc. the agency established in California to fulfill the requirements and assurances of the federal Protection and Advocacy of the Mentally Ill Individuals Act of 1986 [42 U.S.C. Section 10801 et seq.] for the protection and advocacy of the rights of individuals identified as mentally ill [WIC Section 5328.06].

ii. Access to such information and records must be in accordance with the requirements in WIC Section 4900 et seq.

b. Access to Records

The protection and advocacy agency shall have access to the records of the following persons with mental illness:

- i. A person who is a client of the agency if that person (or the legal guardian, conservator, or other legal representative of that person) has authorized the agency to have such access.
- ii. A person, including an individual who is deceased or cannot be located, to whom all of the following conditions apply:
  - The individual, due to his or her mental or physical condition, is unable to authorize the agency to have access to his or her records.
  - The individual does not have a legal guardian, conservator, or other legal representative, or the individual's representative is a public entity, including the state.
  - The agency has received a complaint that the individual has been subject to abuse or neglect, or has determined that probable cause exists to believe that the individual has been subject to abuse or neglect.
  - A person who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the agency, or with respect to whom the agency has determined that probable cause exists to believe the individual's health or safety is in serious and immediate jeopardy, whenever all of the following conditions exist:

- 1) The representative has been contacted by the agency upon receipt of the representative's name and address.
- 2) The representative has been contacted by the agency upon receipt of the representative's name and address.
- 3) The agency has offered assistance to the representative to resolve the situation.
- 4) The representative has failed or refused to act on behalf of the person.

#### c. Information Available

Information and records which must be made available to the agency include but are not limited to, the following:

- i. Information and records obtained in the course of providing intake, assessment, and services, including reports prepared by a member of the staff of a facility or program rendering care and treatment.
- ii. Reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, or injury occurring at the facility that describe any or all of the following:
  - Abuse, neglect, or injury occurring at the facility.
  - The steps taken to investigate the incidents.
- iii. Discharge planning records.

#### d. Information Not Available

The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery of Quality Improvement (QI) review records specified in Evidence Code Sections 1157 and 1157.6. Therefore, records created pursuant to these Evidence Code provisions should not be released to the protection and advocacy agency.

### 9. Processing a Request for Medical Record Information

#### a. Origin of Requests

- Requests for release of medical information normally come to the Medical Records Custodian.
- The medical records custodian will forward the request to the designated clinician/supervisor in either Adult or Children's services to insure that release will not harm the individual.
- There is a 15 day turnaround from receipt of request to mailing out the requested information unless other regulation supersedes.

#### b. Information Requested

- The request usually involves information for a specific time period.
- The medical records custodian will gather the requested information for the period requested, unless otherwise specified in the request or prohibited by law.

### c. Medical Record Custodian Responsibilities

#### i. Release of Information Form

- 1) The medical record custodian will verify that the request for information is accompanied by a Release of Information form signed by the client, conservator or guardian before proceeding with the request.
- 2) If a signed authorization is not present, the requesting party will be notified that request cannot proceed until authorization is received.

#### ii. Record Request Log

Upon receipt of a record request, the medical record custodian will enter the request in the Record Request Log, including:

- Date Received
- Name of client & DOB
- Name of party making request
- Information requested
- Purpose of request
- Date records sent out and method (e.g. USPO, FAX or encrypted email)

#### iii. Medical Record

##### Medical Record Custodian

- Reviews the record for all requested information for the designated period of time.
- Sends email to provider(s) for review and return within five (5) days.
- The clinician's supervisor is sent email to review record, if the provider is not available.
- Upon their response, the medical record custodian assembles the records with the signed cover letter sheet and sent via USPO, FAX or encrypted email.

## 10. Fees

For information on any fees that may apply for the copying of medical records, see "Copying Fees" in Policy 3212: Client Access to Medical Record Information (page 4).

## 11. Documentation of Release

### a. Notification to Recipient

- i. When information is released, Behavioral Health will advise the recipient that the information he or she has received is subject to the LPS Act confidentiality provisions, and HIPAA.
- ii. The information received may not be further disclosed unless the client or legal representative authorizes the disclosure or unless the disclosure is otherwise required or permitted by law.



**12. Client Access to Records/Information**

All pertinent information related to client access to his/her medical records are contained in the policy 3212: Client Access to Medical Record Information.

**13. Subpoenas and Court Orders**

Relevant information and procedures regarding responding to subpoenas and court orders for access to confidential information are contained in the policy 3213: Release of Confidential Information Pursuant to a Court Order.

**14. Confidentiality Throughout Behavioral Health**

In order to maintain the confidentiality of all client medical information, policies and procedures have been developed for client related activities throughout Behavioral Health. It is also identified in HSA HIPAA Policies & Procedures.

**15. Breach of Confidentiality of Mental Health Information under LPS**

Per WIC 5330, (a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for the greater of the following amounts:

- Ten thousand dollars (\$10,000).
- Three times the amount of actual damages, if any, sustained by the plaintiff.

(a) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for both of the following:

- One thousand dollars (\$1,000): In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.

(b) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in above, the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court.

Furthermore, breaches of HIPAA will be reported to state & federal authorities and can result in penalties and fines.

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**PRIOR VERSIONS:** 12/11/2012

**REFERENCES:** LPS Act, Welfare and Institutions Code (WIC) Sections: 4100-4320; 5150-5344; 5328-5328.9; 5354; 5600-5778; 7100-7107; 7200-7375; Health Insurance Portability and Accountability Act (HIPAA)