



ADMINISTRATIVE/FISCAL/CLINICAL/MHP POLICY AND PROCEDURES

COUNTY OF SANTA BARBARA
ALCOHOL, DRUG AND MENTAL HEALTH SERVICES

Section - MED RECORDS	Effective: 1/11/2012
Policy - 84: Release and Access: Outpatient Medical Records	Revised:
Director's Approval _____ <i>[Signature]</i>	Date <u>1-12-12</u>
Deputy Director's Approval _____ <i>[Signature]</i>	Date <u>1-12-12</u>
Form Ref. -	Reviewed:

POLICY:

It is the policy of the Santa Barbara County Mental Health Plan (SBC MHP) to ensure that consumer rights to Protected Health Information (PHI) as defined by HIPAA, as well as consumer rights to information under the California Confidentiality of Medical Information Act (CMIA) and Health and Safety Code §123100 *et seq.* are respected and are enforced.

Furthermore, it is the policy of the Santa Barbara County Mental Health Plan (SBC MHP) to comply with all state and federal laws, regulations, and contractual requirements, as well as relevant professional standards and practices, related to medical records. In general, a consumer has the right to access his or her medical records, or to designate a personal representative who can access those records. HIPAA [45 CFR § 164.524(a)(3)] permits denial of access under certain circumstances, subject to review by a mental health professional who was not involved in the original decision to deny access. It is the policy of the MHP that individuals who are or have been consumers in any outpatient program of the MHP may be denied access to specific information in their MHP medical records when the procedures described below have been followed, as required by HIPAA.

It is the policy of the MHP that medical records will only be released, and that access to medical records will only be granted, through the MHP Medical Records program. No employee of an MHP program, including contracted organizational programs, may release information from medical records or allow access to medical records, except staff of the Medical Records program or another individual specifically authorized by the Medical Records supervisor.

It is also the policy of the MHP that consumers may amend their medical records in accordance with HIPAA.

DEFINITIONS:

For purposes of this P&P, the following definitions apply:

1. **"State Law"** means the California Confidentiality of Medical Information Act and California Health & Safety Code §123100 *et seq.*
2. **"Authorized Individual"** means any of the following individuals or agencies:
 - a. An adult consumer who has the right to consent to treatment.
 - b. A minor consumer who has the right to consent to treatment.
 - i. A minor has the right to inspect, copy and/or receive a copy of only those records for which the minor was lawfully authorized to consent at the time the records were created.
 - c. The parent or legal guardian of a minor consumer, except for records created at a time when the minor was lawfully authorized to consent to treatment.
 - d. The legal guardian or conservator of an adult consumer.
 - e. A person authorized under an Advance Health Care Directive.
 - f. The consumer's legal representative.
 - g. Law enforcement officials (only under circumstances specified in the Notice of Privacy Practices).
 - h. A National Security Agency, when authorized by law.
 - i. An officer of a court, when authorized by a subpoena or other order signed by a judge.
 - j. An executor, administrator, or beneficiary of the estate of a deceased consumer.
3. **"Inspect"** means view a printed copy of a medical record.
4. **"Copy"** means copy by writing by hand using materials provided by the consumer or other individual authorized to inspect records, or by typing on a computer provided by the consumer or other individual so authorized. Copying through the use of electronic scanners or copying machines is not considered "copying" for purposes of this P&P.
5. **"Record"** is any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the MHP or a contracted provider.
6. **"Designated record set"** means all records of an individual which are maintained by or for the MHP or an MHP contractor, including but not limited to clinical, enrollment, billing, payment, claims adjudication, and case or medical management records.
 - a. For purposes of this P&P, information that is compiled to be used in reasonable anticipation of, or for the use in, a civil, criminal, or administrative action or proceeding is not part of the designated record set of an individual consumer.
7. **"Medical records"** has the same meaning as "designated record set."
8. **"Copy of medical records"** means a physical or electronic copy of records which are part of a consumer's designated record set.
9. **"Clinician"** means an individual employed or contracted by the MHP, or an organizational provider contracted with the MHP, who:
 - a. Holds a valid California license as an MD, DO, NP, PA, Psychologist, LCSW, or MFT, or as an RN with advanced practice certification by the Board of Registered Nursing as a Psychiatric-Mental Health Nurse (PMH).

- b. Holds a valid California registration as an IMF or ASW, or holds a valid waiver by the Department of Mental Health to provide the services of a Psychologist.

B. **"Licensed mental health professional"** means an individual who holds a current California license as a:

1. Physician (MD or DO) who is Board-certified or Board-eligible as a Psychiatrist.
2. Psychologist, Licensed Clinical Social Worker, or Marriage and Family Therapist.
3. Registered Nurse with advanced practice certification by the Board of Registered Nursing as a Psychiatric / Mental Health Nurse.

PROCEDURE:

A. Right to inspect records, copy records, or receive a copy of records

1. All requests to inspect or copy records, or to receive a copy of records, must be provided in writing to the MHP Medical Records program.
 - a. If such a request is received by the staff of any other MHP program, or any provider contracted by the MHP, the request will be forwarded to Medical Records program via fax or United States mail, or by county "brown mail" using a secured bag provided for confidential information.
2. Authorized Individuals, as defined above, have the right to inspect and/or copy medical records, and/or to receive a copy of medical records, unless the criteria set forth in section 5 below are met.
3. A consumer who has the right to consent to treatment may designate another adult to accompany and/or assist the consumer while inspecting or copying medical records, or to inspect and/or copy records in the place of the consumer.
4. In order to inspect, copy, or receive a copy of records, a consumer or Authorized Individual must submit a written and signed request to the MHP Medical Records program, or an order or search warrant signed by a judge.
 - a. Requests must clearly identify the consumer and the records to be inspected, copied, or provided. Requests must also be signed and dated by the consumer or Authorized Individual.
 - i. If a request is received by the Medical Records program which does not meet these requirements, the request will be returned to the requesting individual by Certified Mail with a statement of the reason the request is denied.
 - b. If the consumer requests another individual to inspect and/or copy the records, that individual must be clearly identified in the written request.
 - c. Use of an approved MHP form for making such requests is encouraged but not required.

5. A request to inspect, copy, or receive a copy of records does not authorize release of PHI to any individual other than the consumer, Authorized Individual, or other individual designated by the consumer.
6. State Law allows a licensed mental health professional the option of providing a written summary instead of the actual records, or refusing to permit inspection, copying, or release of records to the consumer under specific circumstances. HIPAA does not provide this exception. **In this situation, HIPAA takes precedence over State Law.**
 - a. This means that a summary may be provided in lieu of actual records only if the consumer or Authorized Individual voluntarily agrees to accept a summary.
 - b. If a staff member is concerned that there is a significant possibility that access to specific information in the consumer's medical records would have a detrimental effect on the consumer's health and safety:
 - i. Staff may communicate such concern to the consumer or other Authorized Individual and request that a summary be voluntarily accepted in lieu of that specific information. The discussion and decision will be documented in the consumer's mental health record.

B. Denial of Access

1. The MHP may deny a consumer access to his/her medical records only in the following circumstances:
 - a. A licensed mental health professional has determined, in the exercise of professional judgment, that the requested access to MHP medical records is reasonably likely to endanger the life or physical safety of the consumer or another person, or
 - b. The Protected Health Information (PHI) makes reference to another person who is not a health care provider, and a licensed mental health professional has determined, in the exercise of professional judgment, that the requested access to MHP medical records is reasonably likely to cause substantial harm to such other person, or
 - c. The request for access is made by the consumer's personal representative, and a licensed mental health professional has determined, in the exercise of professional judgment, that the requested access by such personal representative is reasonably likely to cause substantial harm to the consumer or another person.

C. When Access to MHP Medical Records Is Denied

1. The consumer or personal representative requesting access must be informed, in writing, of the right to review of the denial.
2. Reasonable steps will be taken to redact specific information which a licensed mental health professional has determined to be reasonably likely to endanger

life or physical safety, or to cause substantial harm, and to allow access to other information in the MHP medical records.

D. Review of Denial

1. If access is denied on the basis of circumstances described above, the consumer has the right to have the denial reviewed by a licensed mental health professional who is designated by the covered entity to act as a reviewing official, and who did not participate in the original decision to deny.
2. The covered entity must provide or deny access in accordance with the decision of the reviewing official.

E. Time Requirements

1. Request to inspect or copy records:
 - a. Unless access for inspection or copying is denied, the consumer or other individual authorized to inspect or copy the records will be given access to the records within 5 business days following receipt of the request.
 - b. Inspection and copying must occur during regular business hours, at a time and place mutually agreed by the MHP and the consumer or other individual authorized to inspect or copy records.
 - c. If the MHP and consumer or other individual are not able to agree to a time and place, or if the MHP does not provide an opportunity to inspect or copy the requested records within 5 business days, the MHP Medical Records program will notify the Client Rights Advocate and Quality Assurance program as soon as possible, and in no case later than the end of the fifth day.
 - d. An MHP employee must be present at all times when medical records are being inspected or copied pursuant to this P&P.
 - e. The copies of medical records provided for inspection and copying may not be removed from the room provided for inspection or copying by the consumer or other individual authorized to inspect or copy the records.
 - f. If medical records are inspected or copied pursuant to this P&P without an MHP employee present at all times, or if records are removed by the consumer or any other individual not employed by the MHP, an Unusual Occurrence Incident Report is required.

F. Request for a copy of records

1. Unless a copy of records is denied, the Medical Records program of the MHP will provide a copy within 15 business days of receipt of the request.
2. A copy may be provided by mail, or a copy may be made available for the person who requested the copy at the MHP Medical Records office, at the discretion of the person making the request.
3. If the MHP does not provide a copy of the requested records within 15 days, the Medical Records program will notify the Client Rights Advocate and Quality Assurance program within one business day after the 15th day.

G. Costs of Copying Records

1. When a consumer requests a copy of medical records, a reasonable charge, not to exceed \$0.25 per page, may be made for consumers who have an ability to pay as indicated by UMDAP, and who have an outstanding UMDAP balance. The charge for copying will not exceed the consumer's UMDAP, or the outstanding UMDAP balance due during the month in which the copies are provided.
2. In such cases, payment may be required at or prior to the mailing or delivery of copies of records.

H. Duplicate Requests for Copies

1. If a consumer requests copies of records, and copies of the same records have been provided within the past 24 months, the MHP may decline the request.
2. If a consumer requests copies of a combination of records which have already been provided within the past 24 months in addition to other records, MHP will provide copies of the records not provided during the previous 24 months.

I. Request to Amend Records

1. All requests to amend or add information to a consumer's medical record must be provided in writing to the MHP Medical Records program.
 - a. If such a request is received by the staff of any other MHP program, the request will be forwarded to the Medical Records program via the county "brown mail" system, utilizing approved procedures for sending confidential information.
2. State Law: If an adult consumer, or the legal guardian of any consumer, disputes the correctness and/or completeness of information in the consumer's medical record, that individual has the right to provide a written statement of no more than 250 words for each specific disputed item in the consumer's medical record. [Health & Safety Code §123111(a)]
 - a. If such a statement is received, with a written statement that the adult consumer or legal guardian requests that the information be made part of the consumer's medical record, the statement will be made part of that medical record and must be included whenever the disputed information in the medical record is released.
 - b. If a statement is received which exceeds 250 words for each specific item which the consumer or legal guardian disputes, the Medical Records program will return the statement to the individual who provided it, with a statement of the reason the statement is not accepted as part of the medical record. This shall be done through Certified Mail.
3. HIPAA: Any consumer, or the legal guardian of any consumer, who believes any part of the consumer's medical record is incomplete or inaccurate has the right to request that the MHP amend the medical record(s) for as long as the records are maintained.
 - a. Amendment means the addition of information to the medical record. Information which exists in the medical record cannot be removed or modified pursuant to request by the consumer or legal guardian.
 - b. A request for amendment must be made in writing and must include the following information:

- i. The name, address, telephone number, and relationship to the consumer of the individual making the request.
 - ii. The name and date of birth of the consumer.
 - iii. The date(s) of service for which amendment is requested.
 - iv. A description of the information for which amendment is requested.
 - v. The information which is requested to be added to the medical record.
 - vi. The reason for which amendment is requested.
- c. Note: If the amendment contains any defamatory or otherwise unlawful language, the MHP is not subject to liability in any criminal, administrative, or other proceeding.

J. Denial of Request to Amend Records

1. A request to amend medical records may be denied for the following reasons:
 - a. The information for which amendment is requested was not created by the MHP. Requests to amend medical records created by MHP contractors must be made to the contractor.
 - b. The information for which amendment is requested is not part of the consumer's medical record.
 - c. The information for which amendment is requested are Psychotherapy Notes as defined by HIPAA.
 - i. Psychotherapy notes are notes recorded by a clinician documenting or analyzing the contents of conversation during a private counseling session or in a group, joint, or family counseling session, and that are maintained separate from the medical record and are not shared with others. Progress notes in Clinician's Gateway are not considered psychotherapy notes.
 - d. A licensed mental health professional determines that both of the following are true:
 - i. The medical record is accurate and
 - ii. The information for which amendment is requested is not subject to inspection by the consumer (see "Denial of Access" above).
2. If a request to amend records is denied, MHP staff will document the date of the request and the reason for the denial. The MHP Medical Records program will notify the requestor of the denial in writing, by Certified Mail.
3. Notification will include the basis for denial, and the consumer's appeal rights and instructions for filing an appeal.

K. Appeal of Denial of Access and/or Amendment

1. An individual who is denied access to medical records, or who is denied amendment of medical records, has the right to appeal by submitting a written statement to the MHP Quality Assurance program.

2. The appeal will be reviewed by a licensed clinician who was not involved in the original decision.
3. The decision of the reviewer will be forwarded to the requestor by Certified Mail within 30 days of receiving the appeal.
4. In the case of an appeal of denial of amendment, the appeal and decision will be included in any future disclosures of the medical record.
5. If the requestor is not satisfied with the outcome of the appeal and believes privacy policies and/or federal regulations were not met, he or she may file a complaint with the County Privacy Officer or the U.S. Office for Civil Rights.
6. The information above will be made available at the time a request for access to medical records is denied.

Assistance: Medical Records Administrator, Compliance Officer

Reference:

Replaces: