



PSYCHIATRIC HEALTH FACILITY POLICY AND PROCEDURES

COUNTY OF SANTA BARBARA
ALCOHOL, DRUG AND MENTAL HEALTH SERVICES

Section - MEDICAL RECORDS

Effective: 4/6/2011

Policy- RELEASE OF INFORMATION #P17

Revised: 4/6/2011

PHF CEO's Approval

Date: 4/6/2011

Executive Medical Staff Chair's Approval

Date: 4/6/2011

Committee Chair's Approval

Date: 4/6/2011

Form Ref.

POLICY:

It is the policy of the Santa Barbara County Mental Health Plan (SBC MHP) to fully comply with all relevant federal and state laws and regulations, as well as all contractual requirements, as well as relevant professional standards and practices, with regard to medical records.

PROCEDURE:

A. MANDATED RELEASE WITHOUT WRITTEN CONSENT

1. In certain circumstances, state and federal laws and regulations, mandate that PHF staff release confidential information (Protected Health Information, or PHI) regarding a consumer, regardless of whether the consumer or legal guardian has provided written consent. When release is mandated, the information released will be the minimum necessary to comply with the mandate, per HIPAA Section 164.502(b). The circumstances in which release is mandated are:
 - a. When PHF staff find reasonable suspicion of Child Abuse, per California Penal Code Sections 11166-11174 and HIPAA Sections 164.512(a) and(c), as clarified by applicable case law (*e.g.*, *James W. v. Superior Court*, *Searcy v. Auerbach*, *People v. Stritzinger*).
 - b. When PHF staff find reasonable suspicion of Elder Abuse, or Abuse of a Dependent Adult, per California Welfare & Institutions Code Sections 15600-15755, and HIPAA Sections 164.512(a) and (c), as clarified by applicable case law.
 - c. When ordered by a court of competent jurisdiction (*e.g.*, subpoena, search warrant, or other document signed by a judge; or written or verbal order from a court), per HIPAA Section 164.512(a) and (f).
 - i. Any subpoena, including *subpoena duces tecum* (SDT), will be referred to the Medical Records Administrator, who is the Custodian of Records for the PHF. No information will be released under a subpoena without approval in advance from the Medical Records Administrator, ADMHS Director, ADMHS Compliance Officer, or County Counsel.

- ii. If a search warrant or other document is presented to PHF staff, and the person or agency presenting such a document states that the document authorizes release of information, release of electronic or physical medical records, or inspection of medical records, the staff to whom such a document is presented will notify the PHF Manager, Medical Records Administrator, ADMHS Director, or ADMHS Compliance Officer immediately. If none of those individuals can be contacted within 10 minutes, County Counsel will be notified immediately.
 - (1) The person or agency presenting such a document will be informed of the efforts to make notification and will be asked to wait until notification has been made.
 - (2) However, no staff will interfere with the actions of a law enforcement officer or officer of the court if such persons are not willing to wait until notification has been made.
- d. When a consumer has made a serious threat of physical violence toward a reasonably identifiable victim, per California Evidence Code Section 43.92 and HIPAA Section 164.512(a) and (j), as clarified by applicable case law (*e.g., Tarasoff v. Regents, Hedlund v. Superior Court, Thompson v. County of Alameda, Mavroudis v. Superior Court, Menendez v. Superior Court, Ewing v. Goldstein, Calderon v. Glick*).
- e. When PHF staff, in their professional capacity and the scope of their employment, provide medical services to a consumer for a **physical** condition, and determine that either of the following criteria apply:
 - i. The consumer is suffering from any wound or other physical injury inflicted by means of a firearm (by the consumer or another person), **or**
 - ii. The consumer is suffering from any wound of other physical injury which is the result of assaultive or abuse conduct by another person, as defined by Penal Code Section 11160. [HIPAA Section 164.512(a), (c), and (f)]

NOTE:

- No report is mandated or permitted when a consumer is suffering only from a psychological, mental, or emotional injury.
- No report is mandated or permitted when PHF staff are providing only mental health treatment, or when PHF staff are providing treatment for only a mental or emotional condition.
- If the consumer is determined to be a danger to the physical health or safety of another person, reports may be mandated or permitted depending on the specific circumstances involved, as described in other sections of this P&P.

B. PERMITTED RELEASE WITHOUT WRITTEN CONSENT

- 1. In certain circumstances, PHF staff are permitted to release confidential information (PHI) regardless of whether or not the consumer or legal guardian has provided written authorization, although it is the preference of the MHP that staff make reasonable attempts to obtain such authorization.

When release is permitted, the information released will be the minimum necessary to comply with relevant laws and regulations, per HIPAA Section 164.502(b).

The circumstances in which release is permitted are when, in the opinion of a licensed health care professional and/or a registered IMF or ASW, or Waivered Psychologist, one or more of the following criteria is met:

- a. When, as a result of a mental or emotional condition all three of the following conditions are met [California Evidence Code Section 1024; *Bellah v. Greenson* (1978); HIPAA Section 164.512(j)]:
 - i. The consumer presents a serious and imminent danger to the physical health or safety of self, other persons, or the public; and
 - ii. Release of information is necessary to prevent or lessen such serious and imminent threat to the health or safety of a person or the public; and
 - iii. The release is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

- b. When release of specific information to another health care provider for treatment purposes would be in the consumer's best interests (HIPAA).
- c. When release of specific information to a consumer's family member or other support person is in the best interests of the consumer, and both of the following criteria are met:
 - i. The information is limited to information directly relevant to that person's anticipated involvement in the patient's care subsequent to discharge, and
 - ii. The consumer has not specifically requested that information not be shared with such individuals.
- d. In other situations as permitted by state and federal law. Any release of information without written consent, except those described above, must be approved in advance by the Medical Records Administrator, MHP Medical Director, MHP Director, MHP Compliance Officer, or an individual designated by one or more of those individuals.

C. RELEASE TO CONSUMER OR LEGAL GUARDIAN

- 1. See separate P&P on Consumer Right to Access Information.

D. RELEASE TO OTHER INDIVIDUALS OR AGENCIES

- 1. Information from the medical records, but not physical or electronic copies of actual records, may be released upon receipt of a written consent or authorization to release (usually referenced as "ROI") which complies with the requirements of HIPAA Section 164.508.
 - a. Information will only be released if the information complies with the limitations stated on an ROI which is valid as of the date of release (specific information to be released, purpose of the release, type of information, etc.).
- 2. Any written request to release medical records must be forwarded to the Medical Records Administrator. Individuals or agencies requesting release of records must be referred to the Medical Records Administrator or designee.
 - a. The PHF will not release copies of physical or electronic medical records without approval in advance from the Medical Records Administrator or designee.
 - b. All requests to release medical records must be in writing, must be signed by the consumer or legal guardian, and must include the name, address, date of birth, and Social Security Number of the consumer.
 - i. Requests must include the reason for release, specific information to be released (if release of the entire record is not requested), and dates of service covered by the release.
 - ii. If HIV-related information is to be released, that must be clearly indicated on the request.
 - iii. It is preferred, although not required, that such requests be made using the official form developed by the MHP, and available through the Medical Records program.
 - c. The format of released records will be determined by the Medical Records Administrator or designee. Careful consideration will be given to the feasibility of providing records in a specific format, if requested.
 - d. Copies of medical records will be as clear and legible as possible.
 - e. A fee may be charged for copying records.
 - i. A schedule of copying fees will be provided to any requesting health care or mental health professional or requesting agency.
 - ii. The fact that an individual or agency has been invoiced for copying records does not preclude the provision of copies.