





SANTA BARBARA COUNTY
DEPARTMENT OF
Behavioral Wellness
A System of Care and Recovery

**Departmental
Policy and Procedure**

Section	Health Information Management (HIM)	Effective:	8/08/2018
Sub-section			
Policy	Alternative Means of Communication	Last Revised:	New policy
Policy #	10.007		
Director's Approval	 _____ Alice Gleghorn, PhD	Date	<u>8/22/18</u>
Chief of Compliance Approval	 _____ Celeste Andersen, JD	Date	<u>8/22/18</u>
Supersedes:	New policy	Audit Date:	5/08/2021

1. PURPOSE/SCOPE

- 1.1. To set forth the rights of individuals served by the Santa Barbara County Department of Behavioral Wellness (hereafter "the Department") regarding their Protected Health Information (PHI), Individually Identifiable Health Information (IIHI), Personal Information (PI), and to establish a process for allowing an individual to request confidential communications of PHI, IIHI and/or PI by an alternative means.
- 1.2. To provide guidance to Departmental employees, contracted providers and other workforce members by setting forth the limitations and requirements that both parties must meet with respect to any such communications.
- 1.3. This policy applies to all workforce members in outpatient County-operated and contracted provider clinical programs.

2. DEFINITIONS

The following terms are limited to the purposes of this policy:

- 2.1. **Individual:** The person (client, resident, patient) who is the subject of individually identifiable or protected health information.
- 2.2. **Minor Consent Client:** A person over 12 years of age and under the age of 18 years who is emancipated; a self-sufficient minor [California Family Code §6922]; or in need of mental health treatment and satisfies the conditions as defined in the California Family Code §6924 and/or California Health and Safety Code §124260 that may consent to their own treatment.
- 2.3. **Protected Health Information (PHI):** Individually identifiable health information that is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- 2.4. **Individually Identifiable Health Information (IIHI):** Information that is a subset of health information collected from an individual that:
1. is created or received by a health care provider, health plan, employer, or health care clearinghouse, and
 2. relates to:
 - o the past, present or future physical or mental health condition of the individual;
 - o the provision of health care to the individual; or
 - o the past present or future payment for health care to the individual; and
 3. identifies the individual, or for which there is a basis to believe the information could be used to identify the individual.
- 2.5. **Personal Information (PI):** Any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. [California Civil Code §1798.3(a)]
- 2.6. **Minimum Necessary:** The minimum amount of PHI, IIHI and/or PI necessary to accomplish the purpose for which the PHI, IIHI and/or PI is being used, disclosed, or requested.
- 2.7. **Disclosure:** The release, transfer, provision of access to, or the divulging in any other manner of information outside the HIPAA-covered component responsible for maintaining that information.
- 2.8. **Personal Representative:** Person who has the authority, under applicable law, to act on behalf of the individual in making decisions related to health care. For example, personal representatives may include a parent of a minor patient, persons appointed by courts under applicable law, and persons with health care power of attorney.
- 2.9. **Secure/Encrypted E-mail Message:** An e-mail whose content has been encrypted. Encryption is the process of encoding the message so that it is unreadable to all but the intended recipient.
- 2.10. **Unsecure/Unencrypted E-mail Message:** An e-mail whose content has not been rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of encryption.
- 2.11. **Text Message:** An electronic communication sent from one mobile phone to another using the phone's text messaging service. This does not include the use of messaging services within social media applications.
- 2.12. **Workforce:** Includes employees, volunteers, trainees, and other persons who provide services or perform their duties under the direct control of the Department, contracted providers of mental health and/or substance abuse services, or a business associate of the Department, whether or not they are paid by the Department. [45 CRF §160.103]

3. POLICY

- 3.1. It is the policy of the Department to accommodate, to the extent practicable, a reasonable request by an individual or personal representative to receive communication of PHI, IIHI and/or PI by an alternative means or at an alternative location in accordance with the security and privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA) and all other relevant state and federal laws and regulations as well as contractual and other requirements.
- 3.2. The Department shall inform individuals and personal representatives of their option to request communication via an alternative means at the time of treatment authorization with the clinician. For example, an individual/personal representative could ask the provider not to leave a message about an appointment at their home telephone voicemail or for written communications (e.g., appointment notices, bills, or explanation of benefits) to be in plain envelopes with no identification of the provider in the return address.
- 3.3. Communication via an alternative means shall be kept to a minimum and will primarily be used to communicate regarding appointments and similar information.
- 3.4. Information related to HIV/AIDS or substance abuse treatment shall not be communicated via an alternative means.
- 3.5. The Department shall not require individuals and personal representatives to provide an explanation as to the basis for the request as a condition of approving a reasonable request to receive communication of PHI, IIHI and/or PI by an alternative means/location.
- 3.6. The Department reserves the right to deny an individual's or personal representative's request for an alternative means of communication. The individual or personal representative will be notified of the reason for the denial.
- 3.7. All procedures for granting, maintaining, and terminating an individual's request to communicate with the Department through an alternative means shall be consistent with related County and Department policies and procedures.

4. INITIATING THE REQUEST

- 4.1. Requests for confidential communication of PHI, IIHI and/or PI by an alternative means must be submitted in writing using the electronic health record (EHR) form *Request for Confidential Communication by Alternative Means or Alternative Location* ([see Attachment A](#)). The form shall include, at a minimum:
 1. What information is to be communicated by the alternative means (e.g., appointment reminders, payment information, other matters related to treatment, or all information); and
 2. A specific alternate address or other method of communication.

- 4.2. **Alternative Means or Location:** If an individual or personal representative expresses interest in requesting confidential communication through an alternative means or location, that person will be provided explanation or discussion and forms needed to make an informed decision.
- 4.3. **Text Messaging:** If an individual or their personal representative expresses interest in requesting communications via text messaging, that person will be provided explanation or discussion and the *Request for Confidential Communication by Alternative Means or Alternative Location* form ([see Attachment A](#)) and a copy of the *Important Information About Agency/Client Text Messaging* ([see Attachment B](#)) form to make an informed decision.
- 4.4. **Request for Communicating Via E-mail:** If an individual or their personal representative expresses interest in requesting communications via secure (encrypted) e-mail or unsecure (unencrypted) e-mail messaging, staff will provide that person the appropriate assistance and *Request for Confidential Communication by Alternative Means or Alternative Location* form ([see Attachment A](#)) and a copy of the *Important Information About Agency/Client E-mail Messaging* ([Attachment C](#)) form to make an informed decision and complete the request.
- 4.5. Minors (excluding minor consent clients), and adults who are conserved and whose conservator has the sole right to authorize medical treatment, may not validly sign a request. In such cases, a request must be signed by the personal representative and must specify that communication by alternative means with the individual or personal representative is requested.

5. REVIEW AND APPROVAL OF THE REQUEST

- 5.1. Whenever program staff receives a completed request, the request will be forwarded to the staff member(s) currently providing treatment/services to the individual, for review and approval.
- 5.2. Upon receipt of a completed request, the identified staff member will review the request to ensure that all required information has been completed, and that the form has been signed and dated by the individual or personal representative.
 1. If a request is determined to be incomplete, staff will make reasonable attempts to contact the individual or personal representative in person, by mail, or by telephone to inform him or her of the steps necessary to complete the request.
 2. No further action will be taken until the request is complete.
- 5.3. Each staff member will use professional discretion in determining whether to approve or deny each request, and may specify limitations regarding specific issues or topics which will or will not be discussed via e-mail messaging and/or text message.

- 5.4. If a staff member denies a request, the reason for the denial will be indicated on the request, and the denial will be signed by the staff member.
 1. The staff member will ensure that the individual or personal representative is notified of the denial within five (5) business days of the denial.
 2. The individual or personal representative will also be notified of the reason for denial unless the staff member determines doing so would not be in the best interest of the individual or personal representative.
- 5.5. When a staff member has signed a request, the original will be scanned in the individual's EHR, and a copy will be faxed or scanned and e-mailed to the Health Information Management (HIM) program within five (5) business days.

6. REVOCATION OF ALTERNATIVE COMMUNICATIONS

- 6.1. An approved alternative communication method may be revoked in writing at any time by the individual or personal representative, or by the staff member identified in the request.
- 6.2. Revocations by the individual or the personal representative become effective when received by the staff member to whom the request applies.
- 6.3. Revocations by the staff member become effective as of the date the revocation is signed by the staff member. When a staff member revokes approval of an alternative communication method, the staff member will ensure that the individual or personal representative is notified as soon as practical.
- 6.4. Whenever a request for alternative communication method is revoked, the original documentation will be scanned in the individual's EHR, and a copy will be faxed or scanned and e-mailed to the HIM program within five (5) business days. The staff person who completes the revocation will also notify the case manager and/or supervisor (when applicable) by e-mail of any program which the client is open to that there has been a change to the Alternative Means of Communication Agreement immediately when possible, but no later than three (3) business days following the revocation. This communication will be documented in Clinician's Gateway.

7. VERIFICATION OF SETUP

- 7.1. Prior to communicating any PHI, IIHI and/or PI to an individual or personal representative, the following procedure, appropriate to a request, must be completed successfully:
 1. **Text messaging:** A text message is sent to the individual or personal representative. The message will contain the identification validation question selected by the individual or personal representative on the request form.

- a. When the individual or personal representative returns a text message containing the answer indicated on the request, that fact will be documented in a progress note coded with a Non-Billable service code.
 - b. Until the answer indicated on the request form is received by text message, no further communication may occur via text messaging, except to re-send the original verification message.
2. **Encrypted (secure) e-mail transmission:** In accordance with the Department's current E-mail Encryption Policy¹, staff will notify the individual or personal representative about the e-mail encryption process prior to sending an encrypted e-mail.
- a. In the Outlook email application, an encrypted e-mail message is sent by including the phrase [Secure] in the subject line. The subject line is not encrypted and shall not include any PHI, IIHI and/or PI in the subject line of the e-mail, only in the encrypted body of the e-mail and attachments. The message will contain the identification validation question selected by the individual or personal representative on the request form.
 - b. When the individual or personal representative has successfully created an account, logged in, and returned an encrypted e-mail message containing the answer indicated on the request, that fact will be documented in a progress note coded with a Non-Billable service code.
 - c. Until the answer indicated on the request form is received in an encrypted e-mail message, no further communication may occur via e-mail transmission, except to re-send the original verification message.
 - d. Contracted providers of the Department may use other e-mail and encryption services than those used by County-operated programs; however, use of encrypted e-mail transmissions must follow contractual requirements. If a contracted provider has no capability to encrypt e-mail transmissions, that provider cannot use e-mail as an alternative means of communication.

8. **REQUIREMENTS FOR COMMUNICATIONS**

- 8.1. Alternative communications containing PHI, IIHI and/or PI will never be sent to anyone except an individual or personal representative for whom an approved alternative communication method is in the individual's EHR. In particular, no staff member will communicate PHI, IIHI and/or PI to another staff member using an unsecured (unencrypted) method.

¹ Please refer to the Department's E-mail Encryption Policy for additional guidance on setting up a secure environment for e-mail transmission.

- 8.2. Communication via an alternative means may only be made when:
1. The staff member communicating via an alternative means has confirmed that there is a current valid request on file.
 2. The staff member uses an electronic device provided by the employer. The use of personal telephones or other cellular devices for communicating with individuals or personal representatives is strictly prohibited.
- 8.3. Only the Minimum Necessary PHI, IIHI and/or PI or other confidential information may be communicated via an alternative means.
1. Communicating via an alternative means such as e-mail and text messaging does not replace, and is not a suitable replacement for, communication in person or by voice telephone.
 2. The use of communicating via an alternative means will be kept to a minimum and will primarily be used to communicate regarding appointments and similar information.
 3. No information related to HIV/AIDS or substance abuse treatment may be communicated via an alternative mean.
- 8.4. All communication via an alternative means will be documented in progress notes, using non-billable service codes.
- 8.5. No alternative means of communication message to or from an individual or personal representative will be forwarded to any person or agency outside the workforce without additional authorization.

9. EXPIRATION DATE

- 9.1. Approved requests are valid from the date the request is signed by the individual or personal representative and will remain in effect until treatment termination or written revocation occurs.

ASSISTANCE

HIPAA Subcommittee

ATTACHMENT

[Attachment A – Request for Confidential Communication by Alternative Means or Alternative Location](#)

[Attachment B – Important Information About Agency-Client Text Messaging](#)

[Attachment C – Important Information About Agency-Client E-mail Messaging](#)

REFERENCE

Code of Federal Regulations – A Right To Alternative Communications
 Title 42, Section 164.522(b)

California Family Code – Consent by Minor
 Division 11, Part 4, Chapter 3, Section 6924

California Health and Safety Code – Mental Health Services for Minors
 Division 106, Part 2, Chapter 4, Article 3, Section 124260

National Center for Youth Law (NCYL)

RELATED POLICIES

[E-mail Encryption](#)

[Consent For Treatment of Minors](#)

REVISION RECORD

DATE	VERSION	REVISION DESCRIPTION

Culturally and Linguistically Competent Policies

The Department of Behavioral Wellness is committed to the tenets of cultural competency and understands that culturally and linguistically appropriate services are respectful of and responsive to the health beliefs, practices and needs of diverse individuals. All policies and procedures are intended to reflect the integration of diversity and cultural literacy throughout the Department. To the fullest extent possible, information, services and treatments will be provided (in verbal and/or written form) in the individual’s preferred language or mode of communication (i.e. assistive devices for blind/deaf).