

Mandated for:

- County Operated Programs
- Short/Doyle Contractors
- Institutes for Mental Diseased (IMD)
- Skilled Nursing Facilities (SNF)
- Residential Care Facility (RCF) - Contract
- Fee-For-Service Providers (FFS)
- Other (Specify _____)

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POLICY & PROCEDURES MANUAL

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Last Reviewed 03/15/03

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Mental Health Director

SUBJECT: CONFIDENTIALITY

I. PURPOSE

The purpose of this section is to provide guidelines and direction for Mental Health Department (MHD) staff in order to ensure the privacy and confidentiality of clients and their family's treatment, and to guarantee the security of records and data maintained in support of that treatment. Further, the intent is for the policy to conform to pertinent legal and ethical standards. MHD "staff" is defined as professional, clerical, and managerial staff, students, volunteers, and other specifically designated as authorized to have access to the Clinical Record system and personally identifiable client information.

Personally Identifiable Client Information that is the subject of this policy is information that is created or received by MHD; and relates to the past, present, or future physical or mental health or condition of a patient; the provision of mental health care to a patient; or the past, present, or future payment for the provision of health care to a patient; and that identifies the patient or for which there is a reasonable basis to believe the information can be used to identify the patient. Personal health information includes information of persons both living or deceased.

The following components of a patient's information also are considered personal health information: a) names; b) street address, city, county, precinct, zip code; c) dates directly related to a patient, including birth date, admission date, discharge date, and date of death; d) telephone numbers, fax numbers, and electronic mail addresses; e) Social Security numbers; f) SD record numbers; g) health plan beneficiary numbers; h) account numbers; i) certificate/license numbers; j) vehicle identifiers and serial numbers, including license plate numbers; k) device identifiers and serial numbers; l) Web Universal Resource Locators (URLs); m) biometric identifiers, including finger and voice prints; n) full face photographic images and any comparable images; and o) any other unique identifying number, characteristic, or code.

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II. POLICY

Personally identifiable client information, records, and data obtained and maintained in the course of providing mental health services, both to voluntary and to involuntary clients, shall be kept confidential and shall be secured from disclosure to undesignated or unauthorized persons or agencies.

This shall be done in compliance with all legal provisions of a) the California Welfare and Institutions Code (WIC), Article 7, Section 5328; b) Santa Clara County Ordinance, No. NS300 .288; c) the Federal Privacy Act (1974); d) the Federal Healthcare Insurance Portability and Accountability Act (HIPAA) (See MHD P&P, Section 228, "*Workforce General Obligation regarding Use and Disclosure of Personal Health Information*" and Section 229, "*Disclosure of Personal Mental Health Information without an Authorization*") and shall conform to currently accepted ethical standards for mental health and health-caring professionals.

Under no circumstances will the Santa Clara County Mental Health Department or its employees or its contractors retaliate or intimidate any employee, client or other individual who complains about a violation of privacy practice/confidentiality.

III. PENALTIES

Criminal and civil penalties, including fines and jail time, can be imposed for non-compliance or violation of privacy/confidentiality laws, regulations, policies and procedures.

MHD is committed to taking and will take appropriate disciplinary measures against workforce members who violate any policy or procedure of MHD concerning the privacy of patient information. The disciplinary measures taken will be consistent with the violation and the circumstances of each case. Discipline for such infractions of our privacy policies and procedures may include reprimand, suspension, or discharge depending on the severity of the misconduct.

IV. RESPONSIBILITIES

1. The Director of Mental Health oversees the implementation of policies and procedures related to privacy and confidentiality of "*Personally Identifiable Client Information*"
2. It is the responsibility to notify immediately his/her supervisor or the Department Privacy Officer or the Department Compliance Officer of any violation. All employees should feel free to speak-up and help assure that client privacy and confidentiality violations are corrected.
3. The Department Management Team approves changes to Confidentiality Policies and Procedures.

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4. Employees must receive information regarding their obligations and responsibilities in the use and disclosure of personal mental health information, and sign the "*Statement of Responsibility – Oath of Confidentiality*" for confidentiality of information in the record system. See Attachment A.
5. MHD staff must have legal authorization for access to information before providing information to, or receiving information from, MHD staff, including contractors. Legal authorization for access includes signed written consent of the client, or shared medical or psychological responsibility for the client's care by the professionals receiving or providing information, or as otherwise permitted by WIC or HIPAA or mandatory child, dependent adult, and elder abuse laws, "Tarasoff" procedures, requirements to report to California DMV, spousal or partner abuse recognition and reporting, release information to law enforcement personnel or subpoenas and court orders. (See MHD P&P, Sections 220, 228, 229, 230, 231, 232, 238, 235, 237, 239, 240, 241, 244 and 430)
6. All employees on their last day of work prior to termination of employment, shall submit to their supervisor any and all personally identifiable client information in the employee's possession regarding any Santa Clara County clients assigned to the employee, or any other personally identifiable client information in the possession of the employee. The supervisor and the employee shall sign a document stating that the employee has not and will not remove any personally identifiable client information. This includes submitting appointment schedules and telephone numbers.
7. Subsequent to termination of County employment, a former employee becomes an unauthorized person and may not contact former clients or other County clients known to them while an employee of the County. Subsequent to termination of employment, former employees may only obtain personally identifiable client information through written consent of the client and in compliance with the legal provision of a) the California Welfare and Institutions Code (WIC), Article 7, Section 5328; b) Santa Clara County Ordinance, No. NS300 .288; c) the Federal Privacy Act (1974); d) the Federal Healthcare Insurance Portability and Accountability Act (HIPAA) (See MHD P&P, Section 228, "*Workforce General Obligation regarding Use and Disclosure of Personal Health Information*" and Section 229, "*Disclosure of Personal Mental Health Information without an Authorization*") and shall conform to currently accepted ethical standards for mental health and health-caring professionals.

IV. PROCEDURES

- 1) It is the responsibility of the site supervisor to insure that all employees receive adequate training/information regarding the ethical and legal aspects of privacy, confidentiality, and data security, and that they sign the "*Statement of Responsibility – Oath of Confidentiality*".

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- 2) In cases where there are violations of policy regarding confidentiality, disciplinary action may be taken against staff who is involved. According to the California WIC, Section 5330, "A person may bring action against an individual who has willfully and knowingly released confidential information or records concerning her/him in violation of the provisions of this chapter". Penalties under HIPAA include both criminal and civil penalties, fines and jail time, for non-compliance. (\$100.00 per occurrence, up to \$25,000 and up to 10 years imprisonment)
- 3) Controls are established regarding computer terminals and data.
- 4) Access to confidential client information shall be limited to those with a legitimate need to know such information. These include MHD employees, students, and volunteers to whom access is reasonably necessary for the accomplishment of the clerical and management obligations of the program. Others can have access to information on the basis of specific client consent only.
- 5) As a required part of the initial client interview process, at which time a clinical case record may be opened, provides that the client be fully informed regarding privacy in treatment and confidentiality of information related to that treatment. The client is informed of the need for clerical, fiscal, and administration access for record maintenance purposes. The client is also informed about who has access to the clinical case record and under what circumstances.
- 6) All clients will be provided with a copy of the *Notice of Privacy Practices* and they will sign the *Acknowledgement Form* that will be filed in the client's chart (See MHD P&P, Section 244)
- 7) The MHD *Notice of Privacy Practices* will be given to the client and posted in all sites where the clients receive services. (See MHD P&P, Section 244)
- 8) The client's consent to release of information shall be secured where responsibility for the client's medical or psychological care is not shared by professionals receiving or providing information unless otherwise permitted by WIC or HIPAA or mandatory child, dependent adult, and elder abuse laws, "Tarasoff" procedures, requirements to report to California DMV, spousal or partner abuse recognition and reporting, release information to law enforcement personnel or subpoenas and court orders. (See MHD P&P, Sections 220, 228, 229, 230, 231, 232, 238, 235, 237, 239, 240, 241, 244 and 430)