

 <p style="text-align: center;">County of Sacramento Department of Health Services Division of Behavioral Health Services Policy and Procedure</p>	Policy Issuer (Unit/Program)	BHS-CMH-YDF
	Policy Number	08-09
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Title: Release of Protected Health Information	Functional Area: Health Information Management	
Approved By:		
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Background/Context:

Sacramento County Juvenile Justice Institutions Mental Health Team (JJIMHT) members may not use or disclose protected health information (PHI) except as permitted or required by the federal Health Insurance Portability and Accountability Act (HIPAA). Some uses and disclosures require written authorization by the client; exceptions to this requirement apply under certain circumstances. All uses and disclosures that require the client’s authorization shall be documented. Those provisions of HIPAA concerning the privacy and confidentiality of a client’s health information do not supersede those California state law provisions, and other federal law provisions, that are more stringent than HIPAA. County staff should follow California law or other federal law if it provides greater protection than HIPAA.

Definitions:

HIPAA: Health Insurance Portability and Accountability Act of 1996 requires all health plans, health care clearinghouses, health care providers who transmit any health information in electronic form to prevent unauthorized access to Protected Health Information (PHI).

Protected Health Information (PHI): refers to a subset of confidential health information, including demographic information collected from an individual. PHI is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the (i) past, present or future physical or mental health or condition of an individual; or, (ii) the provision of health care to an individual; or, (iii) the past, present or future payment for the provision of health care to an individual; and (iv) either identifies the individual or the confidential information creates a reasonable basis to believe it can be used to identify the person. PHI is transmitted by electronic media; or maintained in electronic media; or transmitted or maintained in any other form or medium. PHI does not include employment records or education records or records covered under the Family Educational and Right to Privacy Act.

Purpose:

The objective of this policy and procedure is to establish guidelines, by which the JJIMHT members providing mental health services to youth detained in the Youth Detention Facility (YDF) will use to properly use, disclose of and document the release of a youth's PHI.

Details:

1. Use and Disclosure Without Client's Authorization for Treatment, Payment and Health Care Operations:
 - A. PHI may be used within the entity that maintains the PHI or disclosed to qualified professionals outside of the HIPAA covered entity for the provision of treatment, payment and health care operations without the client's authorization.
 - B. Treatment means the provision, coordination or management of health care and related services by one or more health care providers; consultation between health care providers relating to a client; or referral of a client for health care from one provider to another. Examples of relevant treatment providers not requiring written authorization include:
 - I. Mental Health Providers contracted with DBHS currently providing services to a youth in custody
 - II. Psychiatric Facilities
 - III. Emergency Room Treatment Personnel
 - IV. DBHS Access Team
 - C. Payment means the activities undertaken by a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or by a health care provider or health plan to obtain or provide reimbursement for the provision of health care.
 - D. Health Care Operations means certain administrative, legal, quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment. It includes activities of the covered entity to the extent the activities relate to covered functions.
 - E. The JJIMHT member releasing PHI will document verbal and/or written disclosures on a progress note in the youth's electronic mental health record (EHR).
2. Use and Disclosure with Client's Authorization:
 - A. PHI may not be used or disclosed without an authorization except as otherwise authorized by law. Any use or disclosure pursuant to an authorization must be consistent with the terms of the authorization.
 - B. The authorization may be client-initiated or County-initiated. A copy of the signed authorization must be provided to the youth and/or legally authorized entity requesting the disclosure.

- C. Psychotherapy notes require specific authorization prior to disclosure, except for very limited circumstances (completed JJIMHT Mental Health Referral Forms are not considered psychotherapy notes).
 - D. Use or disclosure of PHI for the purposes of marketing or the sale of PHI requires the client's authorization (JJIMHT members shall not use PHI for marketing or sale to a third party).
 - E. JJIMHT members will obtain a signed Client Request to Access Health Records HIPAA Form (#2093) from the youth and/or the youth's personal representative.
 - F. The JJIMHT Program Coordinator, or designee, shall review the validity of the authorization prior to release of PHI.
 - G. The completed authorization form will be scanned into the youth's EHR under the HIPAA tab and a progress note detailing the release will be completed.
3. Other Permitted or Required Use and Disclosure without a Client's Authorization
- A. In some instances, PHI may be used or disclosed without an authorization and without providing the client with an opportunity to agree or object, for purposes that have been determined to address important goals or needs.
 - B. JJIMHT members should determine the County's obligations under state law before making any of the disclosures as some of the disclosures permitted under HIPAA are required under California law. Other permitted disclosures under HIPAA are not permitted under California law.
 - C. When making such a disclosure, other than for treatment or as required by law, only that information minimally necessary to carry out the purpose of the disclosure may be released. Examples of circumstances include:
 - I. Disclosures regarding protection of individuals (Tarasoff), multidisciplinary personnel teams, child or elder/dependent adult abuse, death review teams, patient's rights advocates, protection and advocacy agency, emergency response team.
 - II. Disclosure to various state agencies such as licensing boards, public officials, public health authorities, quality assurance and Department of Juvenile Justice (DJJ).
 - III. Court Order(s), Subpoena(s)
 - IV. Disclosures to law enforcement officials for the protection of elected officials, crimes committed in the facility, Department of Justice reporting and in response to a warrant.
 - V. Correctional institutions and other law enforcement custodial situations when necessary for the provision of health care, health and safety of the individual or others (youth, officers, employees or persons responsible for transporting those in custody), or the administration and maintenance of the safety, security and good order of the facility.
 - VI. Other disclosures as permitted by law such as research, statistical data, military, national defense, coroners/medical examiners or funeral directors.

4. Obtaining Authorization

- A. Except as otherwise permitted or required by law, JJIMHT members will obtain a completed and signed Form #2093 from the youth or his/her personal representative prior to using or disclosing PHI to or from a third party.
- B. Authorization to obtain or release PHI requested by a party other than the youth or his/her personal representative requires a completed Form #2099.
- C. JJIMHT members shall verify or obtain a youth's signature on the form. A copy of the completed, signed form will be provided to the personal representative.
- D. Uses and disclosures must be consistent with what the youth and/or personal representative authorized.
- E. An authorization must be voluntary and clients will not be asked to sign an incomplete authorization form for future use.
- F. Valid authorization forms must contain the following information:
 - I. Client's name and identifiers in order to ensure the PHI obtained or disclosed is for the correct individual.
 - II. The type of PHI to be obtained or disclosed must be clearly described and must identify the information to be used or disclosed in a meaningful fashion (e.g. discharge summary, laboratory reports, and clinical assessments).
 - III. An expiration date or event that relates to the client or the purpose of the use of the disclosure. The expiration date must be of no more than one year from the date the form is signed and the date must be written on the form.
 - IV. The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure.
 - V. A description of each purpose of the requested use or disclosure. The information may not be obtained or disclosed for any purpose other than what is indicated on the form.
 - If the client or their legal representative initiates the authorization, it is sufficient if the purpose indicates "at the request of the individual."
 - VI. The name or other specific identification of the person or class of persons to whom the covered component will obtain or disclose the PHI.
 - VII. A statement advising that PHI disclosed pursuant to the authorization is subject to re-disclosure by the recipient and no longer protected by the Privacy Rule.
 - VIII. The authorization must advise the client of his/her right to revoke the authorization in writing and a description of how it may be revoked.
 - IX. The authorization must advise the individual that the County may not condition treatment, payment and/or enrollment in a health plan or eligibility for benefits on signing of an authorization by client.
 - X. A signature and date. If signed by a personal representative of the youth, the authorization must contain a description of the representative's authority to act for the individual.

- A copy of the legal authority or other documentation of the personal representative must be attached, if applicable.
 - Youth falling under the provision of Child Protective Services/Dependency Court are represented by the Children's Law Center of California. The attorney representing the youth must sign the authorization form and provide proof of representation.
 - If the form is faxed or mailed to the program, a copy of the client's or personal representative's valid photo identification or other acceptable types of identification shall be included and attached to the authorization form.
- XI. The printed name of the County of Sacramento employee assisting the client with the form or verifying the identity of the individual(s) signing the form.
- G. Completed authorization forms shall be scanned into the youth's EHR under the HIPAA tab and a progress note detailing the PHI released will be completed.
5. Invalid Authorization Forms
- A. An authorization is invalid and will prevent the release of PHI if it has any of the following defects:
- I. The expiration date has passed or the expiration event is known to have occurred.
 - II. The authorization is not filled out entirely with respect to required elements.
 - III. The authorization has been revoked.
 - IV. The authorization is an impermissible compound authorization.
 - V. Material information on the authorization is known to be false.
- B. Revocation of Authorization: an individual may revoke authorization at any time if the revocation is in writing.
- C. Revocation does not apply to PHI already released while the authorization was valid and in effect.

Reference(s)/Attachments:

County of Sacramento Form 2093-Client Request to Access Health Records

County of Sacramento Form 2099-Authorization to Obtain or Release Protected Health Information

Related Policies:

BHS-CMH-YDF-02-03-Confidentiality

BHS-CMH-YDF-08-01-Administrative, Technical and Physical Safeguards

BHS-CMH-YDF-08-02-DBHS Compliance Program

BHS-CMH-YDF-08-06-HIPAA Complaints and PHI/EPHI Breach Protocol

BHS-CMH-YDF-08-07-Record Management

BHS-CMH-YDF-08-08-Penalties for Privacy Violations

BHS-CMH-YDF-08-11-Methods for Releasing Protected Health Information

BHS-CMH-YDF-08-12-Accounting of Disclosures

BHS-CMH-YDF-09-01-Countywide Personnel Policies and Procedures

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