



Health Care Agency	Section Name:	Administration
Behavioral Health Services	Sub Section:	HIPAA
Policies and Procedures	Section Number:	04.05.03
	Policy Status:	<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised

	SIGNATURE	DATE APPROVED
Chief of Operations Behavioral Health Services	_____	_____

SUBJECT: Use and Disclosure of Protected Health Information – General Rules

PURPOSE:

To establish policy for Behavioral Health Services (BHS) regarding the use and disclosure of protected health information (PHI).

POLICY:

County BHS and contracted staff shall comply with the use and disclosure of PHI information in accordance with County and Agencies P&Ps as well as federal and state regulations.

SCOPE:

This policy applies to BHS staff and consumers.

REFERENCES:

Code of Federal Regulations Title 45 §164.502; §164.508; §164.514(h)(1); §164.530(j)(1); §164.532(a)

BHS P&P # 05.05.02, [Tracking Disclosures:](http://intranet.ochca.com/bhs/pap)
<http://intranet.ochca.com/bhs/pap>

BHS P&P #02.05.01, [Notice of Privacy Practices:](http://intranet.ochca.com/bhs/pap)
<http://intranet.ochca.com/bhs/pap>

County of Orange HIPAA Policies, P&P I-7, [Use and Disclosure Requiring Authorization](http://ocintranet.ocgov.com/hipaa/p&p/pp_1-7.pdf)
http://ocintranet.ocgov.com/hipaa/p&p/pp_1-7.pdf

County of Orange HIPAA Policies, P&P I-6, [Use and Disclosure of PHI for TPO](http://ocintranet.ocgov.com/hipaa/p&p/pp_1-6.pdf)
http://ocintranet.ocgov.com/hipaa/p&p/pp_1-6.pdf

Health Care Agency Administration P&P IV-7.04, [Authorization and Revocation of Authorization to Use and Disclose Protected Health Information \(HIPAA\):](http://intranet.ochca.com/pap#ADMINISTRATION)
<http://intranet.ochca.com/pap#ADMINISTRATION>

DEFINITIONS:

Protected Health Information (PHI) any individual identifiable health information that is created, transmitted, or maintained by a covered entity in any form or medium. PHI excludes individually identifiable health information:

- In education records;
- In employment records held by a covered entity in its role as employer; and
- Regarding a person who has been deceased for more than 50 years.

Treatment, Payment and Health Care Operations: (TPO) includes the following:

Treatment: generally means the provision, coordination, or management of health care and related services, consultation between providers relating to an individual, or referral of an individual to another provider for health care.

Payment: means 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 activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care, and these described activities relate to the individual to whom health care is provided, and include, but are not limited to determinations of eligibility or coverage and adjudication or subrogation of health benefit claims, risk adjustment, billing, claims management, collection activities and obtaining payment under a contract for reinsurance, review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care or justification of charges, utilization review activities and certain disclosures to consumer reporting agencies of specified PHI relating to collection of premiums or reimbursement.

Health Care Operations: include, but are not limited to activities related to covered functions, such as quality assessment and improvement activities; certain population-based activities; protocol development, case management and care coordination, contacting patients and health care providers about treatment alternatives; review of competency and qualification reviews of health care professionals, health plan performance, certain training programs, underwriting, premium rating, medical review, legal services and auditing functions, business planning and development, and general business and administrative activities. Said activities may include implementation and compliance of HIPAA regulations, customer service, resolution of internal grievances, and consistent with regulations, the creation of de-identified health information or a limited data set, as well as fundraising for the covered entity.

Disclosure: means the release, transfer, provision of access to, or divulging in any other manner of information outside the County's health care components.

Use: means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination or analysis of such information within the County's health care components.

Business Associate: means a person or entity who, on behalf of the County, and other than in the capacity of a workforce member: performs or assists in the performance of a function or activity that involves the use or disclosure of protected health information, or; provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services, to or for the County, or any other function or activity regulated by the Privacy Rule.

Personal Representative: means a person who, under applicable law, has authority to make decisions related to health care on behalf of an adult or an emancipated minor; In making decisions related to health care, a covered entity must treat such a person as a personal representative with respect to protected health information relevant to such personal representation. Or, if under applicable law a parent, guardian, or other person acting in *loco parentis* who has authority to make health care decisions on behalf of an unemancipated minor, except where the minor is authorized by law to consent, on his/her own or via court approval, to a health care service, or where the parent, guardian or person acting in *loco parentis* has assented to an agreement of confidentiality between the provider and the minor. The County may elect not to treat a person as a personal representative if the County reasonably believes that treating the person as personal representative could endanger the individual, or that the individual has been, or may be, subject to domestic abuse, or the County, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

Workforce Members: means employees, volunteers, trainees and other persons whose conduct, in the performance of work for the covered entity, is under the direct control of such entity, regardless of whether they are paid by the covered entity.

Notice of Privacy Practices: (NPP) means the notice of privacy practices relating to the covered entity's use and disclosure of protected health information, and of the individual's rights and the covered entity's legal duties with respect to protected health information that is mandated under HIPAA regulations for distribution to all individuals whose information will be collected by or on behalf of the covered entity.

PROCEDURE:

- I. There are multiple types of situations in which PHI may be disclosed. Specifics related to these types of situations are detailed below. The situations break down into four main categories:
 - A. Situations requiring that the client sign an authorization to disclose.
 - B. Situations in which the disclosure is related to TPO and does not require authorization by the client.
 - C. Situations in which the disclosure is required/permitted by law or regulation.
 - D. Situations in which the disclosure is incidental to use or disclosure which is otherwise permitted by regulation.

- II. In all situations the “minimum necessary” standard shall be followed. This means that only the minimum information required to accomplish the intended purpose of the disclosure shall be disclosed.
- III. Alcohol and Drug treatment information is subject to further regulations and requirements as specified in the P&Ps of Adult and Older Adult Behavioral Health Services (AOABHS).
- IV. Mental Health treatment information is subject to further regulations and requirements as specified in the P&Ps of Adult and Older Adult Behavioral Health Services (AOABHS) and Children, Youth and Prevention Behavioral Health Services (CYPBHS).
- V. Disclosure of psychotherapy notes (as explicitly defined above under “Definitions”) are not included in these situations.
- VI. Tracking of disclosures is required in some circumstances. Refer to BHS P&P # 05.05.02, Tracking Disclosures.
- VII. BHS shall use and disclose PHI consistent with its Notice of Privacy Practices. See BHS P&P, 02.05.01, Notice of Privacy Practices.
- VIII. The disclosure of PHI by BHS workforce members, crime victims, and whistleblowers is not a violation of the regulations, if done pursuant to the regulations.
- IX. For situations requiring that the client/personal representative sign an authorization to disclose reference County P&P I-7, Use and Disclosure Requiring Authorization and HCA P&P IV-7.04: Authorization and Revocation of Authorization to Use and Disclose Protected Health Information (HIPAA):
 - A. Authorization to disclose shall be obtained using the authorization to disclose form approved by the Custodian of Records (form # F346-531 B 12/03).
 - B. Disclosure shall be consistent with the signed authorization to disclose form.
 - C. Disclosures made pursuant to a signed authorization to disclose are not subject to the tracking of disclosures requirement detailed in P&P #05.05.02, Tracking Disclosures.
- X. Situations in which disclosure is related to TPO (Reference County P&P I-6, Use and Disclosure of PHI for TPO):
 - A. When used within BHS, or for AOABHS when used within AOABHS, for purposes of treatment, payment, or healthcare operations (as defined above under “Definitions”) an authorization to disclose is not required.
- XI. Situations in which disclosure without authorization is required or permitted by law or regulation:
 - A. An authorization to disclose is not required.

- B. Tracking of these disclosures is required (see BHS P&P, 05.05.02 Tracking Disclosures for details).
- XI. Situations in which the disclosure is incidental to use or disclosure otherwise permitted by regulation:
- A. An authorization to disclose is not required.
 - B. Tracking of these disclosures is not required.