



Health Care Agency Mental Health and Recovery Services Policies and Procedures	Section Name:	Administration
	Sub Section:	HIPAA
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	SIGNATURE	DATE APPROVED
Director of Operations Mental Health and Recovery Services	<u>Signature on File</u>	<u>3/9/2023</u>

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

PURPOSE:

To establish a policy for Mental Health and Recovery Services (MHRS) regarding the use and disclosure of protected health information (PHI).

POLICY:

County MHRS staff shall comply with the use and disclosure of PHI in accordance with County policy and as consistent with applicable procedures as well as federal and state regulations. In the event of a conflict between County policies and federal and state regulations, the latter shall take precedence over the former.

SCOPE:

This policy applies to all MHRS County staff to ensure compliance with the use and disclosure of PHI regulations when providing services to Orange County beneficiaries/clients.

REFERENCES:

Code of Federal Regulations, Title 45, §164.501; §164.502; §164.508; §164.514(h)(1); §164.530(j)(1); §164.532(a)

California Health and Safety Code §123105; §123110(a) and (b); §123115(a)(2); §124260

[MHRS P&P 05.05.02 Tracking Disclosures](#)

[MHRS P&P 02.05.01 Notice of Privacy Practices](#)

[County of Orange HIPAA Policy, P&P I-6 Use and Disclosure of Protected Health Information \(PHI\)](#)

[County of Orange HIPAA Policy, P&P I-8 Use and Disclosure of Protected Health Information for Treatment, Payment and Health Care Operations Purposes](#)

[Health Care Agency Administration P&P IV-7.04 Authorization and Revocation of Authorization to Use and Disclose Protected Health Information \(HIPAA\)](#)

DEFINITIONS:

Protected Health Information (PHI) - any individual identifiable health information that is created, transmitted, or maintained by a covered entity or business associate 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 - 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 - 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 - 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 - a person who, under applicable law, has authority to make decisions related to health care on behalf of an adult, a minor, or an emancipated minor client/beneficiary. A covered entity must treat such a person as a personal representative with respect to protected health information relevant to such personal representation. The County may elect not to treat a person as a personal representative if the covered entity reasonably believes that (i) the client/beneficiary has been or may be subjected to domestic violence, abuse, or neglect by such person AND (ii) the covered entity in the exercise of its professional judgment decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

Psychotherapy Notes – Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Workforce Members - 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) - 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 used and/or disclosed. Specifics related to these types of situations are detailed below. The situations break down into four main categories:
 - A. Situations requiring that the beneficiary/client sign an authorization to disclose.
 - B. Situations in which the disclosure is related to TPO and does not require authorization by the beneficiary/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.
- IV. Disclosure of psychotherapy notes (as explicitly defined above under “Definitions”) are not included in these situations.
- V. Tracking of disclosures is required in some circumstances. Refer to MHRS P&P 05.05.02 Tracking Disclosures.
- VI. MHRS shall use and disclose PHI consistent with its Notice of Privacy Practices. See MHRS P&P 02.05.01, Notice of Privacy Practices.
- VII. The disclosure of PHI by MHRS workforce members, crime victims, and whistleblowers is not a violation of the regulations, if done pursuant to the regulations.
- VIII. For situations requiring that the client/personal representative sign an authorization to disclose, reference County of Orange HIPAA Policy, P&P I-6 Use and Disclosure of Protected Health Information (PHI) 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 (F346-531 B (Rev. 03/17 General)).
 - 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 MHRS P&P 05.05.02 Tracking Disclosures.
- IX. Situations in which disclosure is related to TPO (Reference County of Orange HIPAA Policy, P&P I-8 Use and Disclosure of Protected Health Information for Treatment, Payment and Health Care Operations Purposes):
 - A. When used within MHRS for purposes of treatment, payment, or healthcare operations (as defined above under “Definitions”) an authorization to disclose is not required.
- X. 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 MHRP P&P 05.05.02 Tracking Disclosures of Protected Health Information 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.