

CONFIDENTIALITY OF MENTAL HEALTH RECORDS

This Fact Sheet briefly addresses the federal Health Insurance Portability and Accountability Act (HIPAA) and Pennsylvania regulations relating to confidentiality.

Why is confidentiality important?

Confidentiality is necessary to develop the trust and confidence important for a therapeutic relationship between consumers and providers. People are entitled to receive mental health services with the expectation that information about them will be treated with confidentiality by persons providing services. But, there are certain situations when confidential information can be disclosed.

Who controls access to a consumer's mental health records?

Persons 14 and Older: Consumers age 14 or older control the release of their records if they understand the nature of the documents. Persons Under 14: Generally, the parent controls the release of records. Persons Adjudicated Incapacitated: Generally, the guardian controls the release of records. Deceased Persons: The consumer's chosen executor or administrator of the estate controls the release of records. If there is no chosen person, the court must appoint such a person.

Does a consumer have to give written authorization for release of records?

Except for those situations listed below, a provider cannot release a consumer's records unless the consumer has provided a valid written, signed, specific, and time-limited authorization. Specific authorizations must be given for psychotherapy notes and for documents with HIV-related information.

When can a provider disclose mental health information without consumer consent?

Disclosure without consumer consent is permitted for: (1) treatment of the consumer (such as coordination with other service providers); (2) payment (such as to insurance companies); (3) certain health care operations (such disclosure to agencies charged with evaluating the provider).

Disclosure without consent is also authorized in limited circumstances relating to the "public interest," including (1) when required by law (such as a statute or court-ordered warrants); (2) when appropriate to notify authorities about victims of abuse, neglect, or domestic violence; (3) for certain law enforcement purposes (such as to identify or locate a suspect or missing person); and (4) when necessary to prevent or lessen serious and imminent threat to a person or the public.

In those situations above when disclosure can be made without consumer consent, the provider must limit the information disclosed to the minimum necessary to accomplish the intended purpose of the disclosure.

Does a consumer have the right to access his own records?

Generally, yes.

How can a consumer request his records and what happens once a request is made?

A written request for records should be submitted. A provider may impose reasonable fees to cover the cost of copying and postage. The provider generally must act on the request for records within 30 days.

In what circumstances can a consumer be denied access to his own records?

A consumer's records request may be denied without review if: (1) the records were prepared in anticipation of legal proceedings, or (2) they are prison records and the prison determines that the release of records would jeopardize the health, safety, or security of the consumer, another inmate, or staff person.

A consumer's records request may be denied, subject to review by another health care professional selected by the provider, if: (1) the provider determines that access is reasonably likely to endanger the life or physical safety of the individual or another person; or (2) the records refer to another person and the provider determines that disclosure is reasonably likely to cause substantial harm to that person.

Can a consumer file a complaint relating to disclosure of confidential information?

Yes. Complaints can be filed with the U.S. Department of Health and Human Services Office of Civil Rights (HHS-OCR), 150 South Independence Mall West, Suite 372, Philadelphia, PA 19106-3499, 215-861-4441 (voice), 215-861-4440(TDD). The complaint should be filed within 180 days of when you knew the disclosure occurred. More information on filing a complaint can be found at www.hhs.gov/ocr/privacyhowtofile.htm.

Who can I contact for further information?

Further information on federal privacy rules can be obtained from HHS-OCR at 866-627-7748 or www.hhs.gov/ocr/hippaa. Further information on the issues discussed in this Fact Sheet, can also be obtained by contacting Disability Rights Network of Pennsylvania at 800-692-7443 (voice) or 888-375-7139 (TDD).

