County of San Bernardino
Department of Behavioral Health
Access and Amendment of Medical Records Policy

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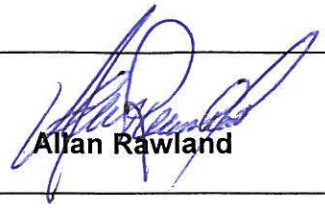

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Policy

It is the policy of the Department of Behavioral Health (DBH) to allow consumers access to inspect, copy and/or amend their protected health information (PHI), including medical records, in accordance with Federal and State laws.

Purpose

To provide guidelines and factual reference regarding consumer access and amendment of medical records, and to ensure adherence of related laws and regulations.

Definitions

Designated record set: a group of records maintained by or for a covered entity that consists of the medical records and billing records of an individual, or the enrollment, payment, claims adjudication, and case or medical management record systems maintained by a health care provider. *Record* is any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

Licensed Practitioner of the Healing Arts (LPHA): is a psychiatrist, psychologist, licensed social worker or licensed marriage/family therapist; an LPHA is authorized to approve or deny access and/or amendment to medical records containing PHI.

Right to Access Medical Records

A consumer has the right to access his/her medical records, for inspection and/or to obtain copies, in a designated record set, upon written request, for as long as the PHI is maintained in the designated record set.

Exceptions include:

- Information that is compiled to be used in reasonable anticipation of, or for the use in, a civil, criminal, or administrative action or proceeding

The following persons/agencies have the right to request access to inspect and/or copy medical records:

- Adult consumer who has the right to consent to treatment

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Right to Access Medical Records (continued)

- Minor consumer who has the right to consent to treatment (the minor is entitled to inspect only those records for which the minor is lawfully authorized to consent)
- Parent or guardian of a minor who is a consumer (except when the minor has the right to consent to treatment)
- Guardian or conservator of an adult consumer
- A person authorized under a health care directive
- Consumer's legal representative
- Law Enforcement Officials (under circumstances specified in the Notice of Privacy Practices)
- National Security Agency (when authorized by law)
- Disaster relief entities, such as the Federal Emergency Management Agency (FEMA), American Red Cross, etc.
- Court – as the result of a subpoena or court order
- A deceased consumer's executor or administrator of estate, or beneficiary

Right to Amend Medical Records

A consumer who believes any part of his/her medical record is incomplete or inaccurate has the right to request to have DBH amend the medical record(s) in a designated record set, for as long as it is maintained in the designated record set.

Note: If the amendment contains any defamatory or otherwise unlawful language, DBH is not subject to liability in any criminal, administrative, or other proceeding.

Summary in Lieu of Actual Record

A LPHA may prepare a summary of the medical record in lieu of giving the consumer access to view the entire medical record.

The following conditions must apply for a summary to be prepared:
- Consumer must agree to summary
- Staff must confer consumer's goal/purpose for obtaining summary

Disclosures

It is required that DBH obtain written consent from the consumer to disclose his/her medical records, unless otherwise permitted by law. (See Authorization to Release Confidential Protected Health Information Policy.)

Disclosure of medical records concerning drug and alcohol abuse consumers must also obtain written consent, except:

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Disclosures (continued)

- To medical personnel when necessary to meet a bona fide medical emergency
- To qualified personnel conducting scientific research, management audits, financial audits, or program evaluation (but personnel may not identify an individual consumer in a report of such research, audit, or evaluation)
- If authorized by an appropriate court order

Note: It is prohibited that records be used in making criminal charges or investigation of the consumer, unless authorized by a court order or otherwise required by law.

Inspection or coping of mental health records by an outside LPHA designated *and* authorized by the client must be permitted. The outside health care provider must not then permit inspection or copying by the client if the client is denied access. DBH's LPHA must indicate in the medical record if the client requests to provide a copy of the medical records to another health care provider.

DBH Rights

The medical records of a San Bernardino County DBH consumer, containing PHI, are the legal property of DBH. **DBH has the right to deny access to inspect, copy, and/or amend medical records.**

Denial of ***access*** to medical records may be due to the following reasons:

- Parent/guardian requests access of a minor's records and it may have a detrimental effect on DBH's treatment relationship with the consumer
- Parent/guardian requests access of a minor's records and it may have an adverse effect on the minor's safety or psychological well being
- Parent/guardian requests access of a minor's records and that minor has the right to consent to treatment
- Psychiatric consumer requests access and DBH believes disclosure may have adverse consequences for the consumer (including endangering the life or physical safety of the consumer or another individual)
- Substance abuse consumer requests access and DBH determines disclosure will harm the consumer or the program's overall provision of services to the community
- Current authorization is considered invalid (defective)

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DBH Rights (continued)

- The information was obtained from another person (other than a health care provider) under a promise of confidentiality and granting access would likely reveal the source's identity
- The medical record(s) contain PHI that is subject to the Privacy Act, 5 U.S.C. § 552a, and denial of access is required by law

Denial to ***amend*** medical records may be due to the following reasons:

- Information in the medical record was not created by DBH
- Information in the medical record is not part of the designated record set
- It is determined that the medical record ***is*** accurate and complete information is not available for inspection under Title 45, C.F.R., § 164.524

Requirements Proceeding Denial Of Access

Once denial of access is determined, the following must occur within five (5) working days:

Role	Responsibility
LPHA	Make a written record in the client's file noting the date of the request and an explanation of the reason for the denial, including a description of the specific adverse or detrimental consequences that may result if access is permitted
Medical Records	Notify the requestor of denial by written notice, which shall include: • the basis for denial • how the client may appeal • the clients right to require DBH to permit inspection or copying of medical records by a designated LPHA

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Requirements Proceeding Denial Of Amendment

Once denial of amendment is determined, the following must occur:

Role	Responsibility
LPHA	Make a written record in the client's file noting the date of the request and an explanation of the reason for the denial
Medical Records	Notify the requestor of denial by written notice, which shall include: • the basis for denial • appeal rights and instructions

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Unreviewable and Reviewable Grounds for Denial

DBH may deny a requestor access to PHI *without* providing an opportunity for review/appeal; likewise, DBH must allow an opportunity for review of denial in certain circumstances. Please see the illustration below, which indicates the circumstances a requestor may or may not review/appeal a denial:

Denial Grounds	Circumstance
Unreviewable	• Request for access is for PHI that is contained in records subject to the Privacy Act, 5 U.S.C. § 552a • Request for access is for PHI that was created or obtained over the of research that includes treatment (access may be suspended for as long as the research is in progress *and* if the consumer agreed to the denial of access when consenting to participate in the research) • Request for access is made by an inmate within a correctional institution, and it is determined that obtaining access will jeopardize the safety, security, custody or rehabilitation of the individual or other inmates, or the safety of any officer, employee or other person (**DBH must seek legal counsel prior to denying access to an inmate**) • Request for access is for PHI that was obtained by DBH by another health care provider under a promise of confidentiality and access would be reasonably likely to reveal the sources of the information
Reviewable	• An LPHA has determined that access is reasonably likely to endanger the life or physical safety of the consumer • The PHI makes reference to another person or provider and the LPHA determines that access is reasonably likely to cause substantial harm to such other person • Request for access is made by a personal representative and the LPHA determines the provision of access to such representative is reasonably likely to cause substantial harm to the individual or another person (legal consul should be consulted under this circumstance)

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Right to Appeal Denial of Access

A requestor whom is denied access to medical records may appeal, or seek review of the decision *if* the decision was based on reviewable grounds (see above).

The requestor may appeal by submitting a written request for the review of the decision to Medical Records. A separate LPHA will re-review the request and decision, and respond to the requestor within thirty (30) days of the written request.

If...	Then...
The requestor is not satisfied with the second decision and believes privacy policies and/or federal regulations were not met	He/she may file a complaint by contacting DBH's Office of Compliance, the County's Ethics and Compliance Office, or the U.S. Office for Civil Rights. (This information is made available in the *Response to Request Access to Medical Records Request form* sent back to the requestor.)

Right to Appeal Denial of Amendment

A requestor who is denied amendment capabilities, has the right to submit a written statement of disagreement, not to exceed one (1) page. The statement of disagreement will be included in any future disclosures of the medical record, along with any rebuttals answering to the disagreement, written by DBH. The consumer must receive a copy of the rebuttal if one is created.

If...	Then...
The requestor believes privacy policies and/or federal regulations were not met	He/she may file a complaint by contacting DBH's Office of Compliance, the County's Ethics and Compliance Office, or the U.S. Office for Civil Rights. (This information is made available in the *Response to Request to Access Medical Records Request form* sent back to the requestor.)

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Response Time Requirements

Inspection of medical records must be permitted within **five (5) working days** after receipt of the written request. *Copies* must be provided within **fifteen (15) days** of the written request. If access, including inspection or copies, requires an extension, DBH is allotted a thirty (30) day extension from the date of receiving the initial request.

Amendments must be acted upon no later than **sixty (60) days** after receipt of the written request. If additional time is needed, DBH is allotted thirty (30) additional days after the sixty (60) day original time limit.

Summaries must be made available within **ten (10) working days** from the written request. If additional time is needed, DBH is allotted thirty (30) days from the request to provide a summary.

Note: The requestor must be notified in if an extension is required.

Fees

Fees for copies of medical records vary depending upon the requestor; Medical Records Office maintains a price list of copy fees. DBH must furnish one free copy of the "relevant portion" of a consumer's record, ***if*** the consumer is requesting them to support an appeal regarding eligibility for a public beneficiary program (including: Medi-Cal, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for Aged, Blind Disabled (SSI/SSP) benefits) ***and*** the consumer is not being legally represented by a private attorney. Any other representative (not including a private attorney) is also limited to one free copy.

Note: "Relevant portion" of the medical record pertains to records regarding services rendered to the consumer during the time period beginning with the date of the client's initial application for public benefits up to and including the date that a final determination was made by the public benefits program with which the consumer's application is pending.

References

- California Evidence Code, Chapter 2, Article 4, § 1560-1567
- California Health and Safety Code, Division 106, Part 1, Chapter 1, §123100
- California Hospital Association. (2008). Consent Manual: *A Reference for Consent and Related Health Care Law.* Sacramento, California: California Hospital Association.
- Code of Federal Regulations, Title 42, § 2.1, Title 45, §164.506, §164.508, §164.524, §164.526 (HIPAA Privacy Rule)
- The Privacy Act, 5 U.S.C., § 552a