



**DEPARTMENT OF MENTAL HEALTH
POLICY/PROCEDURE**

SUBJECT CLIENTS' RIGHT TO ACCESS PROTECTED HEALTH INFORMATION AND CONFIDENTIAL DATA	POLICY NO. 501.01	EFFECTIVE DATE 03/09/2015	PAGE 1 of 10
APPROVED BY:  Director	SUPERSEDES 500.03 03/09/2015	ORIGINAL ISSUE DATE 04/14/2003	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 To establish a Los Angeles County Department of Mental Health (LACDMH) policy and procedure to ensure clients or clients' personal representatives have the right to access Protected Health Information and Confidential Data contained within their mental health record.

DEFINITIONS

2.1 Personal Representative:

- 2.1.1 The legal guardian or conservator of an adult client;
- 2.1.2 The parent or legal guardian of a minor client; or
- 2.1.3 The executor or administrator of the deceased's estate.

2.2 **Minor:** An individual who is under 18 years of age. The period of minority is calculated from the first minute of the day on which the individual is born to the same minute of the corresponding day completing the period of minority as defined in California Family Code, Division 11 Minors, Section 6500 (Authority 1).

2.3 **Consenting Minor:** A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied as defined in California Family Code, Division 11 Minors, Part 4 Medical Treatment, Section 6924 (3)(b)(1-3) (Authority 1):

- 2.3.1 The minor, in the opinion of the attending professional person, is mature



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enough to participate intelligently in the outpatient services or residential shelter services; and

2.3.2 The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services; or (B) is the alleged victim of incest or child abuse; or (C) a professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services; or (D) the mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian; or (E) the minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services; or (F) this section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

2.4 **Emancipated Minor:** A person under the age of 18 years is an emancipated minor if any of the following conditions are satisfied as defined in California Family Code, Division 11 Minors, PART 6. Emancipation of Minors Law, Section 7002 (a-c) (Authority 1):



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- 2.4.1 The person has entered into a valid marriage, whether or not the marriage has been dissolved;
- 2.4.2 The person is on active duty with the armed forces of the United States; and
- 2.4.3 The person has received a declaration of emancipation pursuant to California Family Code, Division 11 Minors, PART 6. Emancipation of Minors Law, Section 7122 (Authority 1).
- 2.5 **Mental Health Record:** A patient record stored in any form or medium (e.g., electronic or paper) relating to evaluation or treatment of a behavioral disorder. [(California Health and Safety Code §§ 123105(b), (d)]
- 2.6 **Protected Health Information (PHI):** Individually identifiable information relating to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for health care provided to an individual.
- 2.7 **Confidential Data (CD):** Information that is sensitive, proprietary, or personal to which access must be restricted and whose unauthorized disclosure could be harmful to a person, process, or an organization.
- 2.8 **Access:** Inspect and copy or arrange for copying PHI and CD maintained by LACDMH or LACDMH's business associates.
- 2.9 **Health Insurance Portability and Accountability Act (HIPAA):** U.S. law designed to provide privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers.
- 2.10 **Outside Documentation:** As of April 16, 2002, records or documentation that originated from other agencies or providers and were used to provide treatment or make clinical decisions for LACDMH clients, automatically become part of our clinical record or designated record set.



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POLICY

- 3.1 A client has the right to access his/her PHI and CD in all but a limited number of circumstances, which include information compiled in anticipation of or used in a civil, criminal or administrative action, or proceeding.
- 3.2 Any current or former adult client, any minor client authorized by law to consent to treatment, and/or any client's legally authorized personal representative has the right to inspect and receive copies of his/her PHI and CD contained in his/her mental health record upon presenting the treatment provider with a signed Request for Access to Health Information form (Attachment 1).
- 3.3 If a minor client is legally authorized to consent to the treatment, only the minor client may sign a Request for Access to Health Information form. The decision should be based on whether the minor could have consented to the treatment, not whether the minor was the one who actually gave the consent. Otherwise, the request form must be signed by the minor's parent, guardian, or personal representative as defined in California Health and Safety Code, Chapter 1 Patient Access to Health Records, Section 123110 (a).
- 3.4 If a personal representative makes a request for access on behalf of the client, he/she must provide the appropriate proof of legal identification as outlined in LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information. Upon verification of the personal representative's identity, the treatment provider must also ensure that the level of access does not exceed what has been provided by the supporting legal documentation such as a limited power of attorney.
- 3.5 If LACDMH does not maintain the PHI and CD that are the subject of the client's request for access and knows where the requested information is maintained, LACDMH must inform the client where to request for access directly.
- 3.6 LACDMH directly operated facilities/programs must comply with this policy/procedure.



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3.7 Contract agencies must have policies and procedures that comply with the authorities cited at the end of this policy.

3.7.1 Contract agencies may adopt LACDMH's policy/procedure and/or modify the policy/procedure to achieve the same policy objectives.

PROCEDURE

- 4.1 If the signed Request for Access to Health Information form is submitted in person, LACDMH must provide a signed copy to the requestor.
- 4.2 If LACDMH grants the request, in whole or in part, it must provide the client a notification of the acceptance by using the Letter Responding to Client's Request for Access to Health Information (Attachment 2) and provide to the client details as to how to access the requested PHI and CD in accordance with this policy.
- 4.3 LACDMH must arrange with the client/representative for a convenient time and place to inspect or obtain a copy of the client's mental health record. The inspection must take place during business hours. If requested, LACDMH may alternatively provide a copy through the mail or fax.
- 4.4 If the medical record is maintained at more than one location, LACDMH only needs to produce the PHI and CD once in response to a request for access.
- 4.5 Requests for inspection shall be honored within five (5) working days after receipt of a signed Request for Access to Health Information form.
- 4.6 Requested copies shall be provided at the time of inspection or mailed within fifteen (15) days after receiving the signed form, depending on the decision made by the treatment provider.
- 4.7 The treatment provider may provide a written summary of the mental health record or an explanation of the PHI and CD to which access has been provided if the client agrees in advance to receive such a summary or explanation.



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- 4.7.1 A reasonable fee may be charged for the summary or explanation provided the client agrees to such fees in advance (See 4.17 below).
- 4.8 Upon receipt of the request, the treatment provider or Program Head shall be responsible for establishing the identity of the requestor by following the procedures outlined in LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information. Difficulty in establishing identity shall not intentionally be used to delay or hinder authorized access.
- 4.8.1 In the absence of the therapist of record, the facility director or the Program Head shall establish the identity of the requestor and designate a competent professional to act on the client's request for access to records.
- 4.8.2 The primary therapist (or designee), attending psychiatrist, and/or program director shall be responsible for reviewing the record for completeness and making the decision to:
- 4.8.2.1 Approve the request for access to the PHI and CD; or
- 4.8.2.2 Exclude PHI and CD, to which access is denied based on reasons set forth in this policy, and give the client access to any other PHI and CD requested; or
- 4.8.2.3 Deny the request for access.
- 4.9 The parent, guardian, or conservator of a minor shall not be entitled to inspect or obtain copies of the minor's records under the following circumstance:
- 4.9.1 If the treatment provider is unable to verify the identity and relationship of the requestor due to the lack of a valid picture identification and/or supporting documentation.
- 4.10 LACDMH may deny a client/representative access to PHI and CD without



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providing an opportunity for review when:

- 4.10.1 An exception detailed in this policy statement exists;
 - 4.10.2 LACDMH is acting under the direction of a correctional institution, and the inmate's request to obtain a copy of the PHI and CD would jeopardize the health, safety, security, custody or rehabilitation of the client or other inmates, or the safety of any officer, employee or other person at the correctional institution, or a person responsible for transporting the inmate;
 - 4.10.3 The client agreed to temporary denial of access when consenting to participate in research that includes treatment and the research is not yet complete; or
 - 4.10.4 The PHI and CD were obtained from someone other than a health care provider under a promise of confidentiality and access would likely reveal the source of the information.
- 4.11 LACDMH may deny a client/representative access, provided that the client is given a right to have such denials reviewed under the following circumstances:
- 4.11.1 The treatment provider or other licensed health care professional has determined, in the exercise of professional judgment, that the access is likely to endanger the life or physical safety of the client;
 - 4.11.2 The PHI and CD make reference to another person (not including treatment provider) and a licensed health care provider, exercising professional judgment, determines that the access requested is reasonably likely to cause harm to the person referenced; or
 - 4.11.3 The request for access is made by the personal representative, and the treatment provider or other licensed health care professional has determined, in the exercise of professional judgment, that access is likely to cause substantial harm to the client or another person.



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- 4.12 If LACDMH denies access, in whole or in part, to PHI and CD, it must, to the extent possible, give the client access to any other PHI and CD requested after excluding the PHI and CD to which it denied access.
- 4.13 The treatment provider shall inform the patient in writing of the denial of access, using the Letter Responding to Client's Request for Access to Health Information.
 - 4.13.1 The Letter Responding to Client's Request for Access to Health Information must contain:
 - 4.13.1.1 The basis for the denial;
 - 4.13.1.2 A statement of the client's review rights including a description of how the client may exercise such review rights; and
 - 4.13.1.3 A description of how the client may complain to LACDMH or to the United States Department of Health and Human Services.
 - 4.13.2 If access is denied, the Request for Review of Denial of Access form (Attachment 3) shall be included with the Letter Responding to Client's Request for Access to Health Information.
- 4.14 A copy of the Letter Responding to Client's Request for Access to Health Information shall be placed in the client's mental health record.
- 4.15 If the client requests a review of a denial, where the grounds for denial are subject to review, the client must submit a Request for Review of Denial of Access form.
 - 4.15.1 Upon receipt of a Request for Review of Denial of Access form, a licensed health care professional designated by LACDMH, who was not directly involved in the decision to deny access, will review the case.



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- 4.15.2 Within five (5) working days, the licensed health care professional must determine whether or not to deny the request access based on this policy and notify the LACDMH Program Head or the manager involved in the denial of access, Patients' Rights and the designated representative of the LACDMH Privacy Officer of the final decision per LACDMH Policy No. 504.01, HIPAA Privacy Complaints.
- 4.15.3 The LACDMH Privacy Officer or his/her designee must provide written notice within two (2) additional working days to the client/representative of the findings of the review, using the Letter of Response to Client's Request for Review of Denial of Health Information (Attachment 4).
- 4.15.4 A copy of the final review letter will be sent to the County's Chief Privacy Officer and placed in the client's mental health record along with a copy of the client's Request for Review of Denial of Access form.
- 4.15.5 If the client requests a review of a denial, where the grounds for denial are not subject to review, no further action by the treatment team is required.
- 4.16 The client or personal representative is allowed to have one other individual accompany him/her during the inspection of mental health records.
- 4.17 LACDMH may charge a reasonable fee for copies of a client's PHI and CD at a cost of twenty-five (25) cents per page for paper or fax copies.
- 4.18 All requests, decisions or information relating to client/representative access to mental health records, shall become part of the clinical record.
- 4.19 This policy and procedure and associated forms will be retained for a period of at least seven (7) years from the date of its creation or the date when it was last in effect, whichever is later.



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AUTHORITY

1. California Family Code §§ 6500, 6924, 7002, 7120, 7122
2. California Health and Safety Code §§ 123105 *et seq.* (to the extent that State law is not preempted by HIPAA) HIPAA, 45 CFR § 164.524
3. California Health and Safety Code § 123110 (a)

ATTACHMENTS

1. [Request for Access to Health Information form](#)
2. [Letter Responding to Client's Request for Access to Health Information](#)
3. [Request for Review of Denial of Access form](#)
4. [Letter of Response to Client's Request for Review of Denial of Health Information](#)

REFERENCES

1. LACDMH Policy No. 504.01, HIPAA Privacy Complaints
2. LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information

RESPONSIBLE PARTY

LACDMH Patients' Rights Office