



**DEPARTMENT OF MENTAL HEALTH
POLICY/PROCEDURE**

SUBJECT CLIENT RIGHT TO AGREE OR OBJECT TO USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	POLICY NO. 501.08	EFFECTIVE DATE 04/14/2003	PAGE 1 of 4
APPROVED BY:  Director	SUPERSEDES 500.25 04/14/2003	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 To establish a Department of Mental Health (DMH) policy and procedure for clients to agree or object to the use and disclosure of their Protected Health Information (PHI).

POLICY

- 2.1 DMH will ensure that each Department facility will provide a client the opportunity to agree or object before DMH uses or discloses the client's PHI: (i) to family members and other persons the client indicates as involved in the client's care or payment for the care; and (ii) for notification to family members and other persons responsible for the client's care about the his/her general condition and/or location.
- 2.2 This policy allows disclosure of limited PHI for disaster relief purposes.
- 2.3 This policy applies to all DMH workforce members who interact directly with clients, their family members and other, including, but not limited to, licensed or certified health care providers, admissions clerks, chaplains and medical staff members.

DEFINITIONS

- 3.1 "**Disclosure**" means, with respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner of PHI outside of the Department's internal operations or to other than its workforce members.



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- 3.2 **“Protected Health Information”** (PHI) means information that (i) is created or received by a health care provider, health plan, employer or health care clearinghouse; (ii) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (iii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual).
- 3.3 **“Use”** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within the Department’s internal operations.

PROCEDURE

4.1 Provision of an Opportunity to Agree or Object

- 4.1.1 Before using or disclosing PHI, DMH shall be responsible for providing a client the opportunity to agree or object to such use or disclosure described in Sections 4.2 and 4.3, unless the client is not present and/or does not have the capacity to agree or object.
- 4.1.2 Agreements or objections may be made either orally and/or in writing. Oral agreements or objections must be documented in the client’s chart.
- 4.1.3 When a client is present and has the capacity to agree or object, DMH may use or disclose PHI if (i) the client agrees; (ii) the client does not object to the requested disclosure after being given the opportunity to object; or (iii) the DMH workforce member involved in the care of the client reasonable infers, based on professional judgment, that the client does not object to the use or disclosure. If the client objects, DMH will not use or disclose the PHI in the manner objected to.
- 4.1.4 When a client is not present or lacks the capacity to agree or object, DMH may use or disclose PHI if the DMH workforce member involved in



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the care of the client determines, based on professional judgment, that the use or disclosure of the PHI is in the client's best interest.

4.1.5 If the DMH workforce member involved in the care of the client believes that an emergency exists, DMH may use or disclose PHI if it is in the client's best interest.

4.1.6 In a disaster situation (described in Section 4.4), the above requirements apply only to the extent that the DMH workforce member involved in the care of the client determines, based on professional judgment, that such requirements do not interfere with the ability to respond to the emergency.

4.2 Involvement in a Client's Care or Payment for the Care

4.2.1 If a client does not object, the DMH workforce member involved in the care or account of the client may use and disclose his/her PHI to a family member or any other person identified by the client as involved in his/her care of payment for care.

4.2.2 PHI that is disclosed to family members or other persons involved in the client's care or payment must be limited to PHI that is directly relevant to the person's involvement in the client's care or payment.

4.3 Notification to Family Members and Other Persons Responsible for a Client's Care

4.3.1 If a client does not object, the DMH workforce member involved in the care of the client may use and disclose his/her PHI to a family member or any other person responsible for the client's care for the purpose of notification (which includes assisting in the notification, identification or location).



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4.3.2 For notification purposes, PHI that is disclosed to family members or other persons responsible for the client’s care must be limited to the client’s location, general condition or death.

4.4 Disaster Relief Purposes

4.4.1 If a client does not object, the DMH workforce member involved in the care of the client his/her PHI to public or private disaster relief agencies to coordinate or assist in the notification (which includes assisting in the notification, identification or location) of family members or other persons responsible for the client’s care.

4.4.2 For notification purposes, PHI that is disclosed to family members or other persons responsible for the client’s care must be limited to the client’s location, general condition or death.

DOCUMENTATION RETENTION

5.1 All documents created pursuant to this policy shall be retained for at least seven (7) years from the date of creation or the date when it was last in effect, whichever is later.

AUTHORITY

HIPAA, 45 CFR, Section 164.510