



Monterey County Behavioral Health Policy and Procedure

Policy Number	303
Policy Title	Medical Record Confidentiality
References	<p>HIPAA ACT OF 1996 WELFARE & INSTITUTIONS CODE SECTION 5328 (d), 5330, AS WELL AS DIVISIONS 4 – 7 CALIFORNIA CONFIDENTIALITY OF MEDICAL INFORMATIONS ACT CALIFORNIA HEALTH & SAFETY CODE 123110, 123115, 123125 CALIFORNIA CIVIL CODE 56 CALIFORNIA FAMILY CODE 6229 (g) CALIFORNIA PENAL CODE 11171.2 (b) AMERICAN ACADEMY OF PEDIATRICS v. LUNDGREN 66 CAL. RPTR. 2d 210 CALIFORNIA ADMINISTRATIVE CODE CALIFORNIA TITLE 22 CALIFORNIA TITLE 42 CODE OF FEDERAL REGULATIONS DMH INFORMATION NOTICE NO: 04-07 DMH LETTER NO: 99-02</p>
Form	<p>CONSENT/REQUEST TO RELEASE CONFIDENTIAL INFORMATION (Attachment 1) MEDICAL RECORDS AUDIT FORM (Quality Management) MCHD STAFF HIPAA PRIVACY ACKNOWLEDGEMENT</p>
Effective	<p>September 9, 1986 Revised: September 13, 1988 Revised: November 10, 1993 Revised: January 10, 1994 Revised: October 2, 1995 Revised: November 30, 1998 Revised: April 30, 1999 Revised: June 26, 2001 Revised: March 1, 2009 DISCONTINUED: August 28, 2014</p>

2 **Policy**

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4 All information and records obtained in the course of providing services under Division 4
5 (commencing with Section 4000); Division 4.1 (commencing with Section 4400); Division 4.5
6 (commencing with Section 4500); Division 5 (commencing with Section 5000); Division 6
7 commencing with Section 6000); or Division 7 (commencing with Section 7100), to either voluntary or
8 or involuntary records obtained in the course of providing similar services to either voluntary or
9 involuntary recipients of service shall be confidential. Violation of the law concerning
10 confidentiality, as specified in Welfare & Institutions Code 5330, subjects the person negligently
11 releasing the information to a minimum of \$1,000 in civil damages, plus actual damages and
12 attorney fees. The willful and knowing release of confidential information may result in a penalty
13 the greater of \$10,000 or triple the actual damages sustained, plus attorney fees.

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15 This Division will fulfill all of the requirements and regulations contained in the Welfare &
16 Institutions Code Sections and HIPAA Act with regard to confidentiality, electronic records, and
17 authorized releases of information.

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19 For paper charts, the consumer records will be kept under double lock, a locked cabinet in the
20 clinic's locked medical record room, or a locked room within a locked room. Only relevant mental
21 health staff may access the consumer data, both computer and hard copy. Charts must not be
22 kept in an unsecured area.

23
24 Request and release of confidential information (Attachment #1) shall comply with the Welfare &
25 Institutions Code as referenced above. Disclosure of records will include purpose, specific type of
26 information and the termination date of authorization. Fax requests of release will be accepted
27 only in the event of an emergency. All other request will contain original signatures.

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29 Reference: Division 5, Community Mental Health Service, Welfare & Institutions Code.

30
31 **Procedure**

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33 1. Any employee who enters into employment with the Mental Health Division on or after
34 September 1, 1988, shall be required to acknowledge their understanding and agreement with the
35 Welfare and Institutions Code and Department of Mental Health Policy regarding confidentiality,
36 authorized release of information and safety of medical records by signing the "MCHD Staff HIPPA
37 Privacy Acknowledgement" statement (Attachment 1).

38
39 2. MyAVATAR is the name for the Electronic Health Record (EHR) used by Monterey County
40 Behavioral Health. MyAVATAR contains all client health information, including a record of services
41 provided and other information pertaining to the care of the client. Every registered MyAVATAR
42 user is assigned a "user name" and a password. This user name and password is considered
43 sensitive and confidential information. Each user is categorized by user role; the user role allows
44 that user access to designated information in the beneficiary' health record. The system will prompt
45 the user to change their password every 3 months, in an effort to help preserve the confidentiality
46 of the system. Users must NOT give their password out for use by other staff, nor can a password
47 be posted in for public view. MyAvatar records all activities by users. Users must always have a

48 legitimate and/or clinical purpose for looking at the beneficiary's health record. Users must never
49 browse through health records where there is not clinical or legitimate purpose for doing so, such
50 as looking up information on friends, acquaintances or other known persons. In order to maintain
51 confidentiality, users must never leave MyAvatar logged on, when they are not at their workstation.
52 The "Lock" feature must be utilized whenever they leave the workstation, even for short breaks.
53 Users must "sign out" of the EMR at the end of the day, prior to completely logging off the
54 computer.

55
56 INSYST is the computer database utilized by Monterey County Behavioral Health that is designed
57 to assist staff in maintaining security and confidentiality. Each registered user is assigned a
58 password which is changed every three (3) months in order to help preserve the confidentiality of
59 the system. Users must not give their password out for use by other staff, nor can a password be
60 posted near a terminal. INSYST records all activities by users. Users must always have a
61 legitimate purpose for looking up an individual and must not browse through records looking for
62 friends, acquaintances or known persons. Users must not leave terminals logged on. The LOCK
63 feature must be utilized when leaving the terminal for short breaks. Users must not leave the
64 terminal or turn off the terminal at the end of the day before completely logging off the system.
65 When logging off the system, a user must wait to see the message telling them their name and
66 time they are leaving the system.

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68 For paper charts, these charts will be kept in a locked cabinet of the clinic's locked medical record
69 room. Those cabinets must be locked after the operation hours of the clinic. The door of the room
70 where the medical records cabinets are located, likewise, must be locked after the operation hours
71 of the clinic. The medical records cabinets are unlocked between 8:00 am and 5:00 pm on
72 weekdays. Hours may be extended by local clinic policy, but an individual designated to supervise
73 access must be present. The medical record cabinet must remain closed during these operating
74 hours except when the chart is being removed or returned. All medical records cabinets must
75 (open or closed) must be locked at all times when there are non-MCHD BHD county staff having
76 access to the room when medical records are filed/stored.

77
78 3. All charts removed from the designated cabinet for any reason shall be replaced with a properly
79 completed locator card.

80
81 4. Access of these records will be supervised by the following:

- 82
- 83 • 1441 Constitution Blvd., Salinas Adults Clinic – Senior Patient Services Rep.
- 84 • 1359 Dayton St., Salinas Adults & Children's Closed Records – Medical Records
85 Technician.
- 86 • 1200 Aguajito Rd., Monterey Adult Clinic – Patient Services Rep.
- 87 • 951 B. Blanco Cr., Salinas Children's Clinic – Senior Patient Services Rep.
- 88 • 2150 B1 Garden Rd, Monterey Children's Clinic – Patient Services Rep.
- 89 • 200 Broadway, Ste. 88, King City, Adults & Children's Clinic – Social Worker Assigned
- 90 • 115 Cayuga St., Salinas, Managed Care Clinic – Patient Services Rep.
- 91 • 1154 Fremont St., Seaside, Managed Care Clinic – Patient Services Rep.
- 92

93 5. The following behavioral health staff will have access to the locked hard copy records:

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- a. Director, Deputy Director, Medical Director, Behavioral Health Service Managers
- b. Medical Record Technician, Clerical Staff
- c. Clinicians, Physicians

6. For paper charts. Any charts which are not returned to the designated storage cabinet by the time the cabinet is locked may be stored in the clinician’s office **only** if the chart is locked in the clinician’s desk or file cabinet. For clinicians who do not have access to a locking storage area, an alternate, temporary storage area will be designed in each clinic where the chart can be secured until it can be returned to the locked storage cabinets. Charts cannot be stored in your mailbox.

7. Under no circumstance, will the EHR be signed in and left unattended by its logged in user. It is the responsibility of the logged in user to ensure confidentiality of the client record. For paper charts, no chart may be left unattended in unlocked, open areas. This includes all clinical and non-clinical staff who have access to patient charts. Closed, supervised areas will be provided for charts being updated, opened, closed, etc.

8. 9. Closed charts in the EHR are evident when a discharge date is entered for all episodes. For paper charts, all medical records of closed Adult & Children’s Behavioral Health cases will be kept in a centralized locked storage area to be designated by the Behavioral Health. All records of Children’s cases which have been closed will be kept until seven (7) years after the client’s age of majority.

10. The medical record technician (MRT) will audit all clinics that store medical records every quarter. (See Medical Record Audit form).

Minor’s Records

Parental Consent for Non-“Sensitive Services” Care

In general, parents/guardians have the right (but not absolute right) to inspect their child’s records, provided the records do not pertain to care for which the minor consented or could have consented under law. (Cal. H&S Code 123110(a), 123115(a) (1). Cal. Civil Code 56.10(b) (7); Cal. W&I Code 5328(d).

Providers may refuse to provide parents/guardians access to the minor’s medical records when “the health care provider determines that access to the patient records requested by the [parent or guardian] would have a detrimental effect on the provider’s professional relationship with the minor patient or the minor’s physical safety or psychological well-being.” Cal. H&S Code 123115(a) (2).

Emancipated Minor

A parent of an emancipated minor is not permitted shared information of the minor’s records without the minor’s written authorization. Cal. Civil Code 56.10, 56.11; Cal. H&S Code 123110(a), 123115(a) (1).

140 *Parental Access Based on the Type of Service Provided*

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142 Federal confidentiality law applies to any individual, program, or facility that meets the following two
143 criteria:

144 1. The individual, program, or facility is federally assisted. (Federally assisted means authorized,
145 certified, licensed or funded in whole or in part by any department of the federal government.
146 Examples include programs that are: tax exempt, receiving tax-deductable donations; receiving
147 any federal operating funds; or registered with Medicare.) 42 C.F.R. 2.12

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149 2. The individual or program:

150 a. Is an individual or program that holds itself out as providing alcohol or drug diagnosis,
151 treatment, or referral; OR

152 b. Is a staff member at a general medical facility, whose primary function is, and who is
153 identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR

154 c. Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse
155 diagnosis, treatment or referral. 42 C.F.R. 2.11; C.F.R. 2.12.

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157 *Abortion*

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159 A health care provider is not permitted to share information or records regarding abortion services
160 with a parent/legal guardian without the minor's written consent, irrespective of who consented for
161 the care. Cal. Civil Code 56.10, 56.11; Cal. H&S Code 123110(a), 123115(a) (1); American
162 Academy of Pediatrics v. Lungren, 66 Cal. Rptr. 2d 210 (1997).

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164 *Drug – Alcohol Related Problems*

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166 **Federal Rules:**

167 For those providers who must comply with federal rules, the federal regulations prohibit disclosing
168 any information to parents/guardians without a minor's written consent if the minor acting alone
169 under applicable state law had the legal capacity to apply for and obtain alcohol or drug abuse
170 treatment, whether a parent/guardian also consented to the care or not. However, a provider or
171 program may share with parents/guardian if the individual or program director determines the
172 following three conditions are met:

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174 (1) the minor's situation poses a substantial threat to the life or physical well-being of the minor
175 or another;

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177 (2) that threat may be reduced by communicating relevant facts to the minor's
178 parents/guardians; and

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180 (3) the minor lacks the capacity because of extreme youth or mental or physical condition to
181 make a rational decision on whether to disclose to his/her parent/guardian. 42 C.F.R. 2.14, see
182 Cal H&S Code 123125.

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184 **State Rules:**

185 For providers who do not have to follow the federal rules, state law applies. Cal. H&S Code
186 123125. Under the state law, if a parent or guardian consents for a minor's drug or alcohol
187 treatment, "the physician (must) disclose medical information concerning the care to the minor's
188 parent or legal guardian upon his or her request, even if the minor child does not consent to
189 disclosure, without liability for the disclosure." Cal. Family Code 6929(g).
190 When a minor consents for his own drug or alcohol treatment, state law prohibits a health care
191 provider from sharing records with a parent or legal guardian without the minor's written
192 authorization. Cal. Civil Code 56.10(a), 56.11(c); Cal. H&S Code 123110(a), 123115(a) (1). At the
193 same time, state law requires health care providers to involve the minor's parent/guardian in the
194 treatment plan, if appropriate, as determined by the professional person or treatment facility
195 treating the minor. The professional person providing care to the minor must state in the minor's
196 treatment record whether and when the professional attempted to contact the minor's
197 parent/guardian, and whether the attempt was successful, or the reason why, in the opinion of the
198 professional person, it would not be appropriate to contact the minor's parent or guardian. Cal.
199 Family Code 6929(c).

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201 Involving parents in treatment will necessitate sharing certain otherwise confidential information;
202 however, having them participate does not mean parents have a right to access all confidential
203 records. Providers should attempt to honor the minor's right to confidentiality to the extent possible
204 while still involving parents in treatment.

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206 A health care provider is not permitted to share information or records regarding the following
207 without the minor's written authorization:

- 208 * family planning, including contraception (not Title X funded);
- 209 * HIV/AIDS services;
- 210 * infection, contagious, or communicable diseases (reportable);
- 211 * mental health treatment (unless the parent/guardian consents for a
- 212 * minor's mental health treatment as indicated in the Parental Consent for
- 213 non-sensitive services;
- 214 * prevention or treatment of a minor's pregnancy;
- 215 * rape, for minors 12 and older (under 12, the health care provider must attempt to contact the
- 216 minor's parent/guardian and must note in the minor's rape treatment record the date and time
- 217 of the attempted contact and whether it was successful. That provision does not apply if the
- 218 treating professional reasonably believes the parent/guardian committed the sexual assault).
- 219 Cal. Family Code 6928(c).

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221 *Sexual Assault Treatment*

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223 The health care provider must attempt to contact the minor's parent or guardian and must note in
224 the minor's sexual assault treatment record the date and time of the attempted contact and
225 whether it was successful. This provision does not apply if the treating professional reasonably
226 believes that the guardian committed the sexual assault. Cal. Family Code 6928 (c).

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229 *Sexually Transmitted Diseases*

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231 For agencies delivering services funded in full or in part by Title X, federal law mandates that “all
232 information as to personal facts and circumstances obtained by the project staff about individuals
233 receiving services must be held confidential and must not be disclosed without the individual’s
234 documented consent, except as may be necessary to provide services to the patient or as required
235 by law, with appropriate safeguards for confidentiality.” 42 C.F.R. 59.11.

236
237 For all other services, state law applies. California law says that a health care provider is not
238 permitted to share information or records regarding a minor’s STD services with a parent or legal
239 guardian without the minor’s written authorization. Cal. Civil Code 56.10 (a), 56.11 (c); Cal. Health
240 & Safety Code 12311 (a), 12311 (a) (1).

241 242 *Suspected Child Abuse Victims*

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244 *Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to*
245 *information reported pursuant to this law in any court proceeding. Cal Penal Code 11171.2 (b).*

246
247 State law requires health care providers to involve a parent/guardian in the minor’s treatment
248 unless, in the opinion of the professional person who is treating the minor, the involvement would
249 be inappropriate. The professional must state in the client record whether and when the
250 professional attempted to contact the minor’s parent/guardian, and whether the attempt was
251 successful, or the reason why, in the professional person’s opinion, it would be inappropriate to
252 contact the minor’s parent/guardian. Involving parents in treatment will necessitate sharing certain
253 otherwise confidential information; however, having them participate does not mean parents have a
254 right to access all confidential records. Providers should attempt to honor the minor’s right to
255 confidentiality to the extent possible while still involving parents in treatment. Health care
256 providers must attempt to contact the minor’s parent/guardian and must note in the minor’s sexual
257 assault treatment record the date and time of the attempted contact and whether it was successful
258 (unless the treating professional reasonably believes the parent/guardian committed the sexual
259 assault). **For agencies delivering services funded in full or in part by Title X, federal law**
260 **mandates** “all information as to personal facts and circumstances obtained by the project staff
261 about individuals receiving services must be held confidential and must not be disclosed without
262 the individual’s documented consent, except as may be necessary to provide services to the
263 patient or as required by law, with appropriate safeguards for confidentiality.” **For all other**
264 **services, state law applies.** California law indicates a health care provider is not permitted to
265 share information or records regarding a minor’s STD services with a parent/guardian without the
266 minor’s written authorization. In regard to suspected child abuse, neither the physician-patient
267 privilege nor the psychotherapist-
268 patient privilege applies to information reported pursuant to this law in any court proceeding. Cal.
269 Penal Code 11171.2(b).

Avatar 2011

Home **Test C**


 **TEST CLIENT (000800292)**
M, 5, 07/23/2007
Ht: 6' 1", Wt: 185 lbs, BMI: 24.5

Chart **Release of Information**

Release of Information
Revoked

Submit

Authorization Start Date: [Date Picker] T Y

Authorization End Date: [Date Picker] T Y

Regarding records

- Clinical records from other sources
- Drug/Alcohol
- Psychiatric/Medical

Information to be released

- From
- To

Provider

- Monterey County Alcohol and Drug Svcs
- Monterey County Mental Health Plan

Information to be released

- From
- To

Copy of release: [Dropdown]

Form interpreted: [Dropdown]

Client Signature: [Text Area] **Get Signature**

Witness Signature: [Text Area]

Parent/Guardian Signature: [Text Area] **Get Signature**

If not client, relationship to client: [Text Area]

Date: [Date Picker] T Y

Draft/Final Status: [Dropdown]

Name: [Text Area]

Address: [Text Area]

Type of Information to be released

- Diagnosis
- Discharge Summary
- Intake Assessment

Purpose and Limitations, if any, for release: [Text Area]

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Revoked

The screenshot shows a web application interface for a medical record. At the top right, it says "Avatar 2011". Below that is a navigation bar with "Home" and "Test C". The main header area displays a patient profile for "TEST CLIENT (000800292)", including a photo, gender (M), age (5), date of birth (07/23/2007), height (6' 1"), weight (185 lbs), and BMI (24.5). Below the header is a green bar with "Chart" and "Release of Information" tabs. The "Release of Information" tab is active, showing a sub-tab for "Revoked". A "Submit" button is visible. To the right, there is a "Date Revoked" field with a date picker and a "Revoked Notes" text area with a scroll bar. A toolbar with various icons is located at the bottom left of the main content area.

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