



# Monterey County Behavioral Health Policy and Procedure

<b>Policy Number</b>	304
<b>Policy Title</b>	Direct Patient Access To Treatment Records
<b>References</b>	Welfare And Institutions Code Section 5328, 5350 ET SEQ.; Health And Safety Code Sections 1795-1795.26; Civil Code Section 25.9 And 2436; Probate Code Sections 2354; 2355.
<b>Form</b>	Client Request For Access To Records
<b>Effective</b>	March 1, 1991 Revised: August 1, 2008 Revised: April, 20, 2011

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## 2 **Policy**

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4 Every person who has ultimate responsibility for their own health care has the right to complete  
5 information about their care and conditions. This Division will provide a prompt response and  
6 cooperative assistance to those persons seeking such information.

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8 The policy shall apply to persons who seek direct access to their own records or the records of  
9 those for whom they have legal responsibility. This policy shall not apply to requests which are  
10 made pursuant to legal actions or from third party payors.

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12 Questions as to applicability shall be referred to the Behavioral Health Director or his/her designee.

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14 When appropriate, the applicable sections of the law (attached), shall be consulted.

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## 16 **Definitions**

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18 Definitions given in Section 1795.10 shall be used. In additions, the following terms are defined:

19 Client: A person who is receiving, or has received treatment under the Mental Health Plan  
20 or his/her authorized representative.

21 Clinician: Member of the Behavioral Health Division staff who is designated by the  
22 Behavioral Health Director to respond to a request. If the client is currently being treated, it  
23 shall be the treating clinician. If the client is no longer in treatment it shall be the  
24 Behavioral Health Service Manager or designee of the Behavioral Health Director.

25 Representative: A person, such as a parent or conservator who has legal authority to  
26 consent to the specific treatment which is described in the subject records or who is  
27 otherwise specifically authorized by law to have access on behalf of another. A  
28 representative may have direct access to client records.

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30 **Procedure**

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32 1. When a client or legal representative makes a request for direct access to client records, the  
33 client/representative shall be directed to the Medical Records Technician at 1441 Constitution  
34 Blvd., Bldg. 400, Ste. 201, Salinas, CA where they will be required to make the request in writing.

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36 2. Specific forms may be provided for the convenience of both the client/representative and the  
37 Division, however the request shall be deemed to be made when a written request is received by  
38 the Division.

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40 3. The clinician shall verify the identity of the client and/or the authority of anyone making a  
41 request on behalf of another. The Technician shall consult the Keeper of Records where questions  
42 of identification or authority arise.

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44 4. The Technician shall assemble all individual records or reasonable facsimiles requested  
45 pertaining to the client/representative's request within five working days.

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47 5. The Technician may contact the client/representative for clarification of the request for  
48 verification of identity and to inform the client/representative of the response to the request. The  
49 Technician will determine if any limits of disclosures apply. (If any limits apply, see #12).

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51 6. If contact is to be made, it shall be made with maximum discretion, and the Technician shall act  
52 promptly to comply with time limits.

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54 7. The records shall be made available for inspection by the client within 5 working days of the  
55 receipt of the request.

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57 a) If, after examining the requested records, the Technician believes that the client's  
58 request would be better served by a summary of the record, the clinician shall consult with  
59 the Keeper of the Records and provide a comprehensive and accurate summary of the  
60 record in accordance with Section 1795.20 (See #12).

61

62 b) If for any reason the records can not or will not be provided within the prescribed time  
63 limits, the client/representative shall be notified of the delay within the time limits that would  
64 have been applicable.

65

66 8. When inspection is requested, inspection shall mean:

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68 a) The patient's records [as defined in Health and Safety Code Section 1795.10 (d)] shall be  
69 provided to the client during business hours].

70

71 b) A mutually convenient time shall be arranged for the inspection of the records.

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73 c) When the appointment is arranged, the client shall be notified of the Health and Safety Code  
74 procedures, potential costs and the right of access to the Patients' Rights Advocate.

75

76 d) The client/representative shall be given separate table space and a place to sit to read the  
77 records.

78

79 e) The Technician shall sit with the client/representative during the inspection.

80

81 f) A reasonable time shall be allowed for inspection.

82

83 g) The client/representative may make notes; the client/representative may not remove any  
84 materials from the chart. Copies shall be requested from the technician.

85

86 h) The client/representative may be accompanied by a person exclusively of their choosing.

87

88 9. The client/representative is entitled to copies of part or all of the patient's records that are  
89 subject to inspection.

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91 10. When copies are requested without inspection, procedures 1-6 shall be followed, then the  
92 technician shall provide copies of patient records within 15 working days of the receipt of the  
93 request.

94

95 a) Within 3 working days of the request, the Technician shall determine the number of pages to be  
96 released and copied, compute the costs, and inform the client/representative of the required  
97 charges and request payment.

98

99 b) Costs shall be limited to 25 cents per copied page and \$15 for additional  
100 clerical costs. Clerical costs are computed by multiplying the hourly wage of the worker by the  
101 number of hours normally required to locate and copy the records. Overhead and administrative  
102 costs shall not be charged. Total charges may not exceed total copying and clerical costs.  
103 Records shall be made available at the lowest possible cost.

104

105 c) If the Technician determines that the therapeutic interests of the consumer/representative are  
106 best served by providing the patient's own record, the records will be provided at no charge, with  
107 the permission of the Keeper of the Records.

108

109 d) The Technician shall be responsible for ensuring that the charges are collected prior to  
110 releasing copies.

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112 e) When payment is received, the Technician will be responsible for releasing the copies.

113 1) If payment is not received within 10 days of the request for payment, the Technician  
114 shall notify the client.

115 2) If no payment is received within 30 days from the notification of non- receipt, a new  
116 written request will be required to re-open the process, unless other arrangements have  
117 been made between the client and the Division.

118

119 11. When copies are requested at the time of the inspection, the Technician shall indicate the  
120 pages to be copied. The Technician shall follow the steps in 10 (a-e) and provide copies as soon  
121 as practicable, but in no event later than 15 days from the date of the request.

122

123 12. The Technician shall determine whether any of the following limits on disclosure apply.

124

125 a) If the provisions of Section 1795.14 (a) relating to minors applies:

- 126 1) A minor shall be entitled to see their own records relating to treatment to which they  
127 may legally consent (see Civil Code 25.9). Parents may not see those records without the  
128 minor's consent.
- 129 2) The provider may prevent disclosure to the minor's representative if the provider  
130 determines that such disclosure would have a detrimental effect on the relationship  
131 between the provider and the minor.
- 132 3) If disclosure is denied under Section 1795.14 (a), the Behavioral Health Director, or  
133 their designated representative shall be notified. The technician shall notify the  
134 representative of the refusal within 5 days of the request and provide the applicable  
135 sections of the law (i.e.) Section 1795.14 (a) providing for denial and 1795.16 providing for  
136 appeal (attached).

137

138 b) If there is a substantial risk of adverse or detrimental consequences to the patient if  
139 records are released (as determined by the clinician), the Technician shall:

- 140 1) Inform the patient of the refusal of the Division to permit him/her to  
141 inspect or obtain copies of the requested records, and inform the  
142 patient of the right to require the Division to permit inspection by, or  
143 provide copies to, a licensed physician and surgeon, licensed  
144 psychologist, or licensed clinical social worker designated by  
145 written authorization of the patient.
- 146
- 147 2) Indicate in the mental health records of the patient that such a  
148 request was made and denied.
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- 150 3) Make a written record, to be included with the mental health  
151 records requested, noting the date of the request and explaining  
152 the health care provider's reason for refusing to permit inspection  
153 or provide copies thereof, including a description of the specific  
154 adverse or detrimental consequences to the patient which the  
155 provider anticipates would occur if inspection or copying were  
156 permitted.
- 157
- 158 4) Permit inspection by, or provide copies or, the mental health  
159 records to a licensed physician and surgeon or licensed  
160 psychologist designated by request of the patient/representative.
- 161
- 162 5) Provide copies of Sections 1795.14 (b) and 1795.16 to the clients, if  
163 needed.

164

165 c) If the records contain information which is not subject to disclosure  
166 under Section 1795.10 (d) [i.e. confidential information from other(s) the  
167 non-disclosable materials shall be removed by the Technician, kept in  
168 the Technician's custody until after the release process is concluded.  
169 The Technician is responsible for returning the materials to the chart].

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171 13. The Technician shall be responsible for ensuring that a record of all procedures regarding the  
172 request are noted in the patient record, that each release is documented in the record and all  
173 requests and relevant correspondence are filed in the records.

174

175 14. In the event that a record or part of a record is missing, the Keeper of the Records shall be  
176 notified and all reasonable steps will be taken to locate the record. The client shall be notified  
177 within the applicable time limits.

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179 15. When the person requesting the medical record had been discharged or request originates  
180 from a legal office, the written request signed by the discharged client will be forwarded to the  
181 Medical Record Technician.