



Monterey County Behavioral Health Policy and Procedure

Policy Number	351
Policy Title	Confidentiality of Protected Health Information - Substance Abuse Treatment Programs
References	Code of Federal Regulations, Title 45, Section 160 and 164 (45 CFR 160 and 164) 42 CFR Part 2 California Health and Safety Code sections 11942 et seq.
Form	None
Effective	August 28, 2014

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2 **POLICY**
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4 It is the policy of Monterey County Behavioral Health (MCBH) to strictly safeguard “protected health
5 information” (PHI) related to any program or treatment provider that holds itself out as providing,
6 and provides, alcohol or drug abuse diagnosis, treatment, referral for treatment or prevention
7 services to its clients. This policy also covers any records or information related to treatment or
8 services provided by an identified unit within a larger general healthcare facility that holds itself out
9 as providing, and provides, substance use disorder treatment or services, or to medical personnel
10 or staff in a larger general healthcare facility whose primary function is the provision of alcohol or
11 drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.
12 Any substance use disorder program or provider identified as providing “dual diagnosis” or “co-
13 occurring disorder” services to County clients in a setting that provides both mental health and
14 substance use disorder treatment or related services is covered by the stricter confidentiality
15 provisions described in this policy.

16
17 This policy requires all staff, including employees, volunteers and students, to also comply with all
18 other applicable federal and state confidentiality laws, including laws that pertain to the
19 confidentiality and privacy of physical health, mental health, HIV or other sensitive services records
20 as well. Contract providers are expected to follow all confidentiality laws and all guidelines outlined
21 in this policy and related County confidentiality policies, as well as any contractual obligations they
22 may additionally have.

23
24 **PROCEDURES**
25

26 **A. Required Disclosures**

27 MCBH staff shall comply with all laws that require the disclosure of PHI according to the
28 procedures outlined in this policy, and requests by individuals receiving substance use disorder
29 services to access their own records.
30

- 31 1. Child Abuse and Neglect Reporting. When required by law, physical health, mental health
32 and substance use disorder treatment program information may be disclosed to law
33 enforcement and Child Welfare Services in order to report child abuse and neglect. Only
34 that information specifically required by law to be disclosed shall be included in the verbal
35 and written reports. Follow-up information necessary to clarify questions related to what
36 gave rise to suspicion or knowledge of the reported abuse or neglect may be disclosed,
37 but other information concerning the client or others, for example, close family members,
38 may not be disclosed unless there is authorization from the client, or a court order.
39
- 40 2. Elder and Dependent Adult Abuse and Neglect Reporting.
41 If an elder or dependent adult abuse or neglect report must be made arising out of
42 substance use disorder treatment program services or records, unless staff has
43 authorization from the client, nothing may be disclosed that would identify the individual as
44 a client of the substance use disorder treatment program. The mandated reporter should
45 of course provide all information about the identity of the victim and abuser if known, the
46 nature of the abuse and neglect, etc. and should identify him or herself by name, but
47 should not identify the specific program they work with, but say instead simply that they are
48 employed by County “Behavioral Health Services.”
49
- 50 3. Tarasoff Duty to Warn.
51 When required by law, protected health information may be disclosed to law enforcement
52 and to a reasonably identifiable victim or victims (or parent/legal guardian) in order to warn
53 of a serious threat. Only that information specifically necessary to convey the specifics
54 and seriousness of the threat, and the name and whereabouts of the individual making the
55 threat, shall be disclosed. Note that when a report must be made arising out of substance
56 use disorder treatment program services or records, nothing may be disclosed that would
57 identify the individual as a client of the substance use disorder treatment program. Staff
58 should provide all relevant names and information, and the reporter should identify him or
59 herself by name, but should not identify the specific program they work with, but say
60 instead simply that they are employed by County “Behavioral Health Services.”
61
- 62 4. Court Orders and Warrants.
63 Courts may order disclosures of substance use disorder records, but only after certain
64 procedures are followed and the client has an opportunity for a hearing on the matter. A
65 subpoena, search warrant or arrest warrant, even if signed by a Judge, is not sufficient on
66 its own to require or permit a program to make a disclosure. When staff receive any legal
67 documents or Court orders related to substance use disorder records or information, they
68 should immediately notify their supervisor or manager so that appropriate steps can be
69 taken to respond per instructions from MCBH Quality Improvement (QI) and/or County
70 Counsel.
71
- 72 5. Secretary of the United States Department of Health and Human Services.
73 All requests for information from the Secretary of the US DHHS should be immediately
74 directed to the attention of MCBH QI.
75

76 **B. Permissive Disclosures**

77 MCBH staff may disclose substance use disorder records or information in the following
78 circumstances:

79
80 1. Police Emergency (Crimes or Threatened Crimes on Program Premises or Against
81 Program Staff).

82 Substance use disorder treatment programs or staff may disclose PHI to law enforcement
83 officers that is directly related to a client's commission of a crime on the premises of the
84 program or against program staff, or a threat to commit such a crime. The disclosure is
85 limited to the circumstances of the incident, including the patient status of the individual
86 committing or threatening to commit the crime, that individual's name and address, and
87 that individual's last known whereabouts.

88
89 2. Medical Emergency.

90 Substance use disorder treatment programs or staff may disclose PHI to medical
91 personnel who have a need for information about a patient for the purpose of treating a
92 condition which poses an immediate threat to the health of the individual and which
93 requires immediate medical intervention. This includes information that may be disclosed
94 to medical personnel of the Food and Drug Administration (FDA) who assert a reason to
95 believe that the health of any individual may be threatened by an error in the manufacture,
96 labeling, or sale of a product under FDA jurisdiction, where that information will be used for
97 the exclusive purpose of notifying patients or their physicians of potential dangers.
98 Immediately following any disclosure under the "medical emergency" exception, staff will
99 document the disclosure in the client's records, including the name of the medical
100 personnel to whom disclosure was made and their affiliation with any health care facility,
101 the name of the individual making the disclosure, the date and time of the disclosure, and
102 the nature of the emergency (or circumstance if the report is made to the FDA).

103
104 3. Internal Communications Within a Program For Treatment.

105 PHI disclosures for "treatment purposes" will only be permitted between and among staff
106 having a need for the information in connection with their duties that arise out of the
107 provision of diagnosis, treatment or referral for treatment of alcohol or drug abuse if the
108 communications are within the substance use disorder program. Communications with
109 providers who are not directly involved in the client's treatment within the program, or
110 providers who are not directly employed or contracted to provide services within the
111 program, are not permitted without consent of the patient. For example, communications
112 with the client's mental health professional in another program, or primary care provider in
113 the community, or another distinct substance use disorder program, are not permitted
114 without consent from the client.

115
116 4. Internal Communications for Operations.

117 Staff may use or disclose a client's PHI within a program or between the program and an
118 entity that has direct administrative control over the program without consent from the
119 client if the communication is made in connection with the substance use disorder
120 program's own internal operations as defined under 45 CFR section 164.501 and
121 permitted under 42 CFR section 2.12. This includes disclosures to a qualified service

122 organization that has a business associate relationship with the program when there is a
123 need for the communication in order to carry out contracted services.

124

125 5. With Consent.

126 Staff may use or disclose a client's PHI with written authorization on a HIPAA-compliant
127 Authorization Form ("consent" form), subject to the approval of the substance use disorder
128 provider, or person who is in charge of the program in which the client participates.

129

130 **C. Other Disclosures to Third Parties Not Listed Above.**

131 Any other request for information pertaining to a client, or for copies of records or other
132 materials regarding a client of a MCBH substance use disorder program, should be directed to
133 the attention of MCBH QI.

134

135 **D. Minimum Necessary.**

136 Staff will use or disclose only the minimum amount of information necessary when disclosures
137 must, or may, be made. Staff will never disclose an entire substance use disorder record
138 unless specifically ordered by a court as described above, or requested by the client, or where
139 specific justification is documented.

140

141 **E. Limited Verbal Disclosures.**

142 In certain limited instances, staff is permitted to disclose limited information to those involved in
143 the client's care or treatment when verbally requested or permitted by the client. For example,
144 the client may ask staff to tell his girlfriend who is waiting in the outpatient waiting room that he
145 will be ready to go in 15 minutes. A simple note in the chart stating that "at the client's request
146 his girlfriend was given a message regarding pick-up time" should be put in the record. If a
147 client asks that more than very limited information be disclosed, written consent from the client
148 is required.