

Information Sharing & Confidentiality

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Maine Center for Disease
Control and Prevention

*An Office of the
Department of Health and Human Services*

What information is confidential?

- Information that identifies the individual and that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual.
- Information may be held or transmitted in any form, including electronic, paper, and oral.

Releases must

- Be **as specific as possible**
- Include the nature of the information to be disclosed to/received from
- State the specific purpose(s) of the release and whether any subsequent disclosures may be made pursuant to the release
- Be **completely filled out before being signed**

What does “completely filled out” mean?

- NO
 - **Blank releases signed by the client in the chart**
 - General releases to large agencies, e.g. MaineCare, DHHS, ADAP, RTP
 - DHHS is the largest department in state government – do you really want to share info with the janitor at 221 State Street? Do you want to share info with Constituent Services and Legislative Relations?
 - Releases to multiple parties on one form

Requirements from the Rules

- Release of information forms shall be consistent with the principle of informed consent
- **A separate release is required for each recipient of client information**
- The release shall be written in plain language, approved by the Ryan White Part B Coordinator

Written Releases

- Must include:
 - The name and signature of the individual and the date of signature;
 - The nature of the health care information to be disclosed;
 - The identity or description of the third party to whom the information is to be disclosed;
 - The specific purpose or purposes of the disclosure and whether any subsequent disclosures may be made pursuant to the same authorization;
 - An authorization to disclose health care information related to substance abuse treatment or care subject to the requirements of federal law;
 - The duration of the authorization (not to exceed one year);
 - A statement that the individual may refuse authorization to disclose all or some health care information;
 - A statement that the authorization may be revoked at any time by the individual by executing a written revocation;
 - A statement that the individual is entitled to a copy of the authorization form.

22 MRSA § 1711-C

Oral Releases

- An oral authorization may be obtained when it is not practical to obtain written authorization.
- Oral authorizations shall be included with the individual's health care information
- Must document receipt of oral authorization to disclose, including the name of the authorizing person, the date, the information and purposes for which disclosure is authorized and the identity or description of the third party to whom the information is to be disclosed.

De-Identified Information

- Remember that even if you do not identify a client by name, you may still be discussing other identifying factors (eg: marital status, number of children, neighborhood, other situational factors) that would be recognizable to someone outside your agency.

Authorized Access

- The case management agency must create safeguards to limit access to records to those clinical staff members requiring access for the delivery of case management services, the client upon request, the Maine CDC for monitoring purposes, and other persons as allowed by state or federal law.
- Original client records shall not be removed from the agency except for transfer among agency office sites for essential and legal purposes and records must be secured while in transit.
- Copies of client records may be removed from the agency under rare circumstances (for example, for release to providers with client permission). These circumstances must be defined in policy by the agency.

Accounting of Disclosures

- The agency must maintain a record of disclosures.
- For instance: mandated reporting of abuse, neglect, homicide or suicide; audits for licensure and compliance; accidental disclosure; unauthorized personnel accessing client records

Physical Security

- Client paper records must be maintained in locked filing drawers, in a locking room.
- The filing drawer may be unlocked during business hours when a person with authorized access is present.
- Unattended filing drawers containing client records must always be locked when a person with authorized access is not present.

Technological Security

- Computers containing confidential client data must be password-protected
- Computers must be locked at any time when staff members with authorized access are not present

Transmission Security

- Confidential client data may occasionally be transmitted by mail or fax.
- Any electronic data that is mailed must be password-protected with the password transmitted to the other party in a separate mailing or phone call.
- Confidential client information transmitted by fax or mail shall contain a statement or warning of confidentiality, and mailings must be sealed.
- Receipt of confidential information shall be confirmed at least by phone contact or e-mail.

Email

- No email is secure unless digitally encrypted.
- **Confidential client information may not be e-mailed to other providers.**
- Email communication between case managers and clients may occur **only with client informed consent.**

Confidentiality

- All staff and volunteers will be trained on the Confidentiality Policy and sign and date the Confidentiality Statement.
- All clients will receive a plain language Notice of Privacy Practices at intake and annual assessment.
- Clients sign and date plain language Release of Information forms for all entities with which communication will occur regarding the clients.

Common Sense

- Be aware of your surroundings when communicating with staff and clients.
- Make a reasonable effort to protect confidentiality by speaking quietly and not using client names in public settings.
- If one of the people on a phone call is using a cell phone, you must be careful what information is discussed. Do not discuss the client's status or information relating to HIV and avoid using names if possible.
- Do not discuss confidential information with people who do not need to know the information.

When in Doubt

- Don't share information
- Check in with your supervisor

HIPAA

- Health Insurance Portability and Accountability Act of 1996
- Enforced by the US Dept of Health & Human Services, Office of Civil Rights
- Provides a floor of privacy standards to protect all Americans. Confidentiality protections are cumulative; HIPAA regulations do not preempt stronger state laws that are in effect.
- Covered entities do *not* have to guarantee privacy from *any and all* potential risks, but must make a *reasonable effort* to comply with HIPAA regulations.

45 CFR Sect. 160.202, 160.203

Newer Regulations

- American Recovery and Reinvestment Act, Title XIII, Subtitle D
- Several updates to privacy and security laws
- Most changes must be put in place by February 2010
- Changes include:
 - Agencies must comply with a client's request to limit access to his or her confidential information
 - A client will have the right to request an audit report from his or her CAREWare record, to show who had access to it and what those individuals did
 - Clients must be notified (within 60 calendar days) when their confidential information is breached

22 MRSA § 1711-C: Confidentiality of Health Care Information

- A facility may disclose, or when required by law must disclose, health care information without authorization to disclose as follows:
 - For payment;
 - For treatment;
 - For health care operations:
 - Quality assurance, utilization review, peer review;
 - Regulation, accreditation, licensure or certification;
 - For mandated reporting of suspected abuse, neglect, or exploitation;
 - When an individual poses a direct threat of imminent harm to the health or safety of any individual;
 - To federal, state or local governmental entities in order to protect the public health and welfare when reporting is required or authorized by law or to report a suspected crime against the practitioner or facility;
 - As directed by order of a court or as authorized or required by statute;
 - To a governmental entity pursuant to a lawful subpoena requesting health care information to which the governmental entity is entitled according to statute or rules of court;
 - To a person representing emergency services, health care and relief agencies, corrections facilities or a branch of federal or state military forces, of brief confirmation of general health status.

5 MRSA § 19203 & 22 MRSA § 833

- With limited exceptions, no person may disclose the results of an HIV test.

22 MRSA § 3477: Persons Mandated to Report Suspected Abuse, Neglect, or Exploitation

- All case managers immediately shall report to the department when the person has reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation.
- Reports regarding abuse, neglect or exploitation must be made immediately by telephone to the department and must be followed by a written report within 48 hours if requested by the department.
- Reports must contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; that person's occupation; and where that person can be contacted. The report may contain any other information that the reporter believes may be helpful.
- **In case of treatment of individual suspected of causing abuse, neglect or exploitation**, report not required when all of the following requirements are met:
 - The basis for knowing or suspecting abuse, neglect or exploitation of an adult derives from treating the individual suspected of causing the abuse, neglect or exploitation;
 - The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and
 - In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.
- **In case of treatment of individual suspected of being abused, neglected or exploited**, report not required when all of the following requirements are met:
 - The knowledge or suspicion of abuse, neglect or exploitation of an adult derives from treating the individual suspected of being abused, neglected or exploited;
 - The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and
 - In the opinion of the person required to report, the individual is not incapacitated and the individual's life or health is not immediately threatened.

22 MRSA § 4011-A: Reporting of Suspected Abuse or Neglect

- All case managers shall immediately report or cause a report to be made to the department when the CM knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred.
- Whenever a CM is required to report, that person immediately shall notify either the person in charge of the agency or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.
- When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child or that a suspicious child death has been caused by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

22 MRSA § 3477 & 22 MRSA § 4011-A

- Mandated reporters may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Food and Rural Resources.
- The reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address.

Client Amendments

- Clients have the right to request an amendment to records. Clients may not remove any material from records. Third-party information cannot be re-generated and clients should be referred to the original source.
- Requests to amend a record must be submitted in writing and reviewed before a determination is made. Should the client disagree with the determination, he or she may use the grievance procedures outlined in the Client Rights & Responsibilities given at intake/assessment.