# 14 DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

193 BUREAU OF MENTAL HEALTH

CHAPTER 7 RULES GOVERNING THE DISCLOSURE OF INFORMATION

PERTAINING TO MENTALLY DISABLED CLIENTS

LEGAL AUTHORITY AND SCOPE:

These rules are promulgated under the authority of 34-B M.R.S.A. 1207, sub-5 and apply to agencies licensed or funded by the Department of Mental Health and Mental Retardation for the provision of mental health services and to public or private inpatient psychiatric units, including the state operated mental health institutes.

These rules do not permit disclosure of information from records protected by federal laws and regulations governing the confidentiality of alcohol and drug abuse patient records unless the provisions of those laws and regulations are also met.

Information regarding HIV infection saws or of the results of an HIV test is not subject to disclosure under these rules unless the provisions of 5 M.R.S.A. are met.

A. DEFINITIONS

(1) Client. A client is a person receiving mental health services from an agency licensed, funded or operated by the Department of Mental Health and Mental Retardation or from any public or private inpatient psychiatric unit.

(2) Direct care. An individual provides direct care if, on other than a fee for service basis, the individual assists a client in the tasks of daily living, such as the taking of medication, making or meeting appointments, the planning or preparing of meals or other household chores. The provision of transportation or of financial support alone do not constitute direct care.

(3) Licensed mental health professional. For the purposes of these rules, a licensed mental health professional is an individual who is practicing in one of the following professions and who meets the licensing standards of that profession as described below and who also either is contracted by or in the employ of an agency licensed or funded by the Department of Mental Health and Mental Retardation for the provision of mental health services or is in the employ of or practicing in a public or private inpatient psychiatric unit, including the state operated mental health institutes.

a. A psychiatrist who has a current and valid license to practice medicine in the State of Maine and who is certified by, eligible for certification by, or who upon completion of a current residency program and post-residency requirements will become eligible for certification by the American Board of Psychiatry and Neurology.

b. A psychologist who is licensed as a psychologist by the Maine Board of Examiners of Psychologists.

c. A nurse who is licensed as a registered professional nurse by the Maine State Board of Nursing and who holds a Master's or higher degree in psychiatric or mental health nursing awarded by an accredited institution of higher learning or who is certified by the American Nurses' Association as a psychiatric and mental health nurse or as a clinical specialist in adult psychiatric and mental health nursing.

d. A social worker who is licensed as a licensed clinical social worker or as a licensed master social worker by the Maine Board of Social Worker Licensure in accordance with 32 M.R.SA 7001-A, et seq.

e. A licensed clinical professional counselor who is licensed by the Maine State Board of Counseling Professionals Licensure in accordance with 32 M.R.S.A. 13851 et seq.

(4) Lives with. An individual lives with a client only if the client and individual have a marital, familial or other significant relationship and reside in the same household. For purposes of this section, a landlord, boarding or foster home operator or other individual who receives payment for a client's lodging and/or care, or an individual who has a cost sharing arrangement with a client, as would a roommate, is not an individual who lives with the client.

B. DISCLOSURE OF CONFIDENTIAL INFORMATION Permitted Disclosure by Licensed Mental Health Professional

(1) Authorized Release. A client may give authorization for the release of information that is otherwise confidential upon properly executing written authorization for release of information in accordance with 34-B M.R.S.A. 1207(l)(A); or by executing a declaration in accordance with 34-B M.R.S.A. 11001 and including in it a provision for the release of information to designated persons, providing the contingencies that make the declaration operative have occurred.

(2) Disclosure Request. A family member of a client or other person may request release of confidential information pertaining to a client that is maintained by agencies licensed, funded or operated by the Department of Mental Health and Mental Retardation, if a family member or other person lives with or provides direct care to the client. The request must be made in writing and include the following information:

a. The client's name and information such as birth date or social security number, to assure proper identification of the client,

b. The requester's name, address and telephone number,

c. The individuals relationship to the client;

d. Whether the person lives with the client and, if so, a description of the arrangement;

e. A description of the direct care the person provides to the client;

f. The reason for requesting the information, including why the individual making the request believes it would be in the client's best interest;

g. The information requested, which may not include information beyond that listed in section B.4.; and

h. A description of the significant deterioration the person believes the client would suffer if the information is not provided.

(3) Client Notification. Upon receipt of the written request, the agency shall direct the request to a licensed mental health professional in its employ who works with the client either directly or in a supervisory capacity. The licensed mental health professional shall then provide a copy of the request to the client within 2 work days, ask whether he or she consents to the disclosure and shall advise the client of other means by which the information may be disclosed.

(4) Client Consent to Request. If the client gives written consent to the disclosure, the licensed mental health professional may disclose information as requested, but shall not include information beyond the following:

a. The client's diagnosis;

b. The names of any medications prescribed, the side effects of such medication and the likely consequences of the client's failure to take the medication as prescribed;

c. The client's treatment plan and goals that relate to the assistance the person provides;

d. Behavioral management strategies that might involve the family member or other person;

e. Whether the client is currently in a treatment facility, or whether such admission is anticipated in the near future;

f. If the client is currently in a treatment facility, the expected discharge date; and

g. If the client has recently been discharged from a treatment facility, the date of discharge.

The disclosure shall not include written copies of documents from the client's record, but may be given orally or in a writing generated as a response to the request.

(5) Authorized Disclosure. The authorization or disclosure of information authorized under these rules is not a continuing authorization. Further disclosures may be made only with a renewed request or upon compliance with section B.1. above and with the provisions of law referenced therein.

(6) Notice of Denied Consent. If the client does not give written consent, the licensed mental health professional shall give written notice to the person requesting the disclosure that the requested information may not be released. The notice shall also inform the person of the right to appeal the denial of release of information to the Commissioner of the Department of Mental Health and Mental Retardation, that the appeal must be filed within 10 work days and that, in order to facilitate speedy processing, the appeal should include a copy of the original request for information. The notice shall include the Commissioner's address and a copy of the original request. A copy of the notice shall be mailed or hand delivered to the client.

(7) Documentation in Client File. If the client does not give written consent to the release, the licensed mental health professional shall indicate in writing for entry in the client's file:

a. Whether he or she believes that disclosure is in the best interest of the client and a stated basis for the belief;

b. Whether he or she believes that the client would suffer significant deterioration if the disclosure were not made, a description of the deterioration and a stated basis for the belief; and

c. Whether the mental health professional believes that disclosure would cause an imminent risk of serious physical harm to the client and, if so, the basis for the belief

(8) Processing of Written Request. The mental health professional must process the request for information within 5 working days of receipt of the written request, or within 5 working days thereafter, if the person requesting the information agrees to the extension.

(9) Format of Request For purposes of complying with the provisions of these rules, licensed mental health professionals may provide copies of the attached form to family members and other persons for their use. Any request that complies with the requirements as set out above, however, shall be treated as a valid request and use of the form shall not be required. Licensed mental health professionals may use copies of the attached form in meeting their obligations under these rules.

C. APPEAL

(1) Appeal of Denied Request. A family member or other person who has requested information and whose request has been denied because the client does not consent to the disclosure, may appeal the denial to the Commissioner of the Department of Mental Health and Mental Retardation by filing an written letter of appeal with the Commissioner.

(2) Submission of Copy of Request. If the appeal does not include a copy of the original request, the Commissioner shall request that the family member or other person submit a copy. If the person requesting the appeal fails to submit a copy of the request within 30 days, the Commissioner shall dismiss the appeal and notify the individual and the client of the dismissal.

(3) Commissioner’s Designee. An appeal shall be heard by a designee of the Commissioner who is a licensed mental health professional, although not necessarily in the employ of an agency funded, licensed or operated by the Department of Mental Health and Mental Retardation. The designee shall have no interests in the matter or information regarding the parties that may affect his or her impartiality.

(4) Commissioner's Actions Upon receipt of an appeal under these rules, the Commissioner shall take the following actions immediately:

a. Assign a qualified designee to adjudicate the appeal.

b. Set a date and place for hearing the appeal. The date shall be within 10 working days of receipt of the appeal, unless the person filing the appeal and the dint agree to a delay. The location for the hearing shall be at a place convenient to both the client and to the person filing the appeal. If convenience is in dispute, the hearing officer will use his or her discretion in deciding upon a place that the officer believes affords the utmost convenience to all parties to the hearing.

c. Notify the client and the agency licensed mental health professional that an appeal has been filed. The notice to the client shall include a copy of the appeal, a description of the appeal process, notice of the right to be represented in the proceedings and to appear at a hearing and/or to have a representative appear, a listing of agencies that may be able to provide representational assistance, the date and location of the hearing and notice that they may waive formal hearing in accordance with the provisions of C.7. below.

d. Notify the licensed mental health professional that an appeal has been filed and request that the professional inform the Commissioner immediately if he or she has reason to believe that disclosure would cause an imminent risk of serious physical harm to the client and, if so, the basis for the belief. The Commissioner and the Commissioner's designee shall not disclose this information to the person filing the appeal.

e. Notify the person filing the appeal of the date and location of the hearing, provide a description of the appeal process and include notice of their right to waive a formal hearing in accordance with the provisions of C.7. below.

(5) Dismissal of Appeal Without Hearing. If, upon examination of the appeal and the original request, it appears on the face of the documents that the appeal is without merit, that there has been a prior appeal resulting in denial of disclosure of information, or that the licensed mental health professional has reason to believe that disclosure would cause an imminent risk of serious physical harm to the client, the Commissioner or the Commissioner's designee shall dismiss the appeal and simply note the dismissal in a notice to the client and to the person filing the appeal.

(6) Hearing and Written Submissions. A hearing on the appeal shall be held unless both the client and the person filing the appeal request that the hearing requirement be waived and that the issue be decided on the basis of written submissions, including the original request, the request for appeal and any other relevant written materials the client or the person filing the appeal submit for consideration. If the appeal is to be decided in this manner, the Commissioner or the Commissioner's designee shall require that any additional written information be submitted within 10 working days. After considering the written submissions, the Commissioner's designee shall issue a decision in accordance with the provisions of C.9. through C.1.3. below.

(7) Hearing Requirements. If the requirement of hearing has not been waived, the Commissioner's designee shall convene a hearing that meets the requirements below:

a. The hearing shall be as informal as possible while assuring that the rights of the client and the person filing the appeal, as set out herein, are protected.

b. The Commissioner or the designee shall open the hearing by exploring whether any agreement to disclosure of information may be obtained, whether to some or all of the information requested.

c. The client and the person filing the appeal may be represented by an individual of his or her choice in the proceedings.

d. The client and the person filing the appeal may present evidence in writing, through their own testimony or through that of witnesses.

e. The client and/or the client's representative may examine all evidence presented and may pose questions of any person who offers testimony.

f. The person filing the appeal and that person's representative, if any, may examine the evidence of the client, and be present during the presentation of any oral testimony presented by the client, only upon the client's consent.

(8) Written Decision. Upon conclusion of the hearing, the Commissioner or designee shall issue a written decision on whether disclosure of information may be authorized. The decision shall be rendered within 3 days of the hearing, or of the date on which all written material was to be submitted. Disclosure may be allowed only upon a finding, based upon clear and convincing evidence, that the request for information meets each of the following requirements:

a. The person requesting the information is a family member or other person who either "lives with" or "provides direct care" to the client as these terms are defined by these rules.

b. The individual who is the subject of the request is a client as that term is defined by these rules.

c. The person from whom the information was requested is a licensed mental health professional as that term is defined by these rules.

d. Disclosure of the information is in the best interest of the client.

e. A denial of the disclosure would result in significant deterioration of the client's daily functioning.

(9) Written Findings and Conclusions. The decision shall include written findings and conclusions with respect to each of the requirements set out above at 9.a. through e. and may include a discussion of the evidence presented by the client only if the client consented to allow the person filing the appeal to hear and examine the evidence.

(10) Information to be Disclosed. If the Commissioner or designee decides that information may be disclosed, he or she shall state with particularity what information shall be disclosed. The information shall be limited to that which is necessary to avoid the client's significant deterioration, was specified in the person's request and is within the limitations as set out at B.4. above. The manner of disclosure shall be stated in the decision. It may be oral disclosure of the licensed mental health professional to the person requesting the information of through a writing generated in response to the request, but the disclosure may not include documents from the client's file.

(11) Authorized Disclosure. The decision shall specify that the authorization of disclosure of information, if such authorization is given, is not a continuing authorization, but shall be for the limited purpose of responding to the pending request for information.

(12) Copies of Decision Provided. A copy of the decision shall be sent to the client and the person filing the appeal and their representatives, if any. A certified copy of the decision shall also be sent to the licensed mental health professional to whom the original request was made.

(13) Final Agency Action. The decision of the Commissioner or designee shall constitute final agency action.

D. IMPLEMENTATION OF APPEAL DECISION

(1) Upon receipt of a certified copy of the decision, the licensed mental health professional to whom the copy was directed shall disclose such information as may be allowed by the decision, within the limits and by the means established by the decision.

(2) The licensed mental health professional shall provide information to the client on how otherwise to effect the release of information with an authorization for release of information or other means of disclosing information and shall otherwise offer such professional services as the agency may have means to provide to resolve the disagreement that gave rise to the appeal.

EFFECTIVE DATE: August 15, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 15, 1996

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 16, 2025

CAREGIVER REQUEST FOR DISCLOSURE OF INFORMATION

(You may use additional paper for explanations)

Name of person making request (your name):

Address:

Telephone:

Name of Licensed Mental Health professional from whom you are requesting information:

Agency

Address:

Phone:

I wish information regarding:

Name:

DOB:

Address:

Phone:

My relationship to the person is:

Do you live with the person? YES NO

If you do not live with the person, what direct care do you provide them (describe)?

Do you receive payment for providing direct care to this person? YES NO

I request that you provide the following information (check information you wish to be disclosed).

Diagnosis.

Behavioral management strategies I may be able to assist with.

Treatment plan and goals that relate to the direct care I provide.

Medications prescribed, side effects and likely consequences of not taking it as prescribed. (over)