



# COUNTY OF MONTEREY HEALTH DEPARTMENT

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Administration  
Behavioral Health

Clinic Services  
Emergency Medical Services  
Environmental Health/Animal Services

Public Health  
Public Administrator/Public Guardian

<b>Policy Number</b>	350
<b>Policy Title</b>	Confidentiality of Protected Health Information (PHI)
<b>References</b>	Code of Federal Regulations, Title 45, Section 164.506 (45 CFR 164.506) 45 CFR 164.508 45 CFR 164.510 45 CFR 164.512 42 CFR Part 2 California Civil Code 56.10 et seq. California Welfare and Institutions Code 4515 and 5328 et seq. California Health and Safety Code 120980, 121010
<b>Form</b>	NONE
<b>Effective</b>	August 28, 2014 REVISED: April 27, 2017

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## POLICY

It is the policy of Monterey County Behavioral Health (MCBH) to safeguard “protected health information” (PHI) about its clients. This policy requires all staff, including employees, volunteers and students, to comply with all applicable federal and state confidentiality laws, including laws that pertain to the confidentiality and privacy of physical health, mental health, HIV or other sensitive services, and substance use disorder treatment program records. Contract providers are expected to follow all confidentiality laws and all guidelines outlined in this policy, as well as any contractual obligations they may additionally have.

“Protected health information” (PHI) shall have the same meaning as defined by 45 CFR Parts 160 and 164 and in related MCBH policies.

## PROCEDURES

### A. Required Disclosures

MCBH staff shall comply with all laws that require the disclosure of PHI including requests by individuals to access their own records.

1. Child Abuse and Neglect Reporting. When required by law, physical health, mental health and substance use disorder treatment program information may be disclosed to law enforcement and Child Welfare Services in order to report child abuse and neglect. Only that information specifically required by law to be disclosed shall be included in the verbal and written reports. Follow-up information necessary to clarify questions related to what gave rise to suspicion or knowledge of the reported abuse or neglect may be disclosed, but other protected health information (PHI) concerning the client

26 or others, for example, close family members, may not be disclosed unless there is authorization from  
27 the client whose PHI is being released, or a court order.

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- 29 2. Elder and Dependent Adult Abuse and Neglect Reporting. When required by law, physical health and  
30 mental health information may be disclosed to law enforcement and Adult Protective Services in order  
31 to report elder and dependent adult abuse and neglect. Only that information specifically required by  
32 law to be disclosed shall be included in the verbal and written reports. Follow-up information  
33 necessary to clarify questions related to what gave rise to suspicion, knowledge, or reported  
34 information about the alleged abuse or neglect may be disclosed, but other information concerning the  
35 client or others, for example, close family members, may not be disclosed unless there is authorization  
36 or a court order.

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38 If an elder or dependent adult abuse or neglect report must be made arising out of substance use  
39 disorder treatment program services or records, unless staff has authorization from the client, nothing  
40 may be disclosed that would identify the individual as a client of the substance use disorder treatment  
41 program. The mandated reporter should of course provide all information about the identity of the  
42 victim and abuser if known, the nature of the abuse and neglect, etc. and should identify him or herself  
43 by name, but should not identify the specific program they work with, but say instead simply that they  
44 are employed by County "Behavioral Health Services."

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- 46 3. Tarasoff Duty to Warn. When required by law, physical health and mental health information may be  
47 disclosed to law enforcement and to a reasonably identifiable victim or victims (or parent/legal  
48 guardian) in order to warn of a serious threat. Only that information specifically necessary to convey  
49 the specifics and seriousness of the threat, and the name and whereabouts of the individual making  
50 the threat, shall be disclosed.

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52 If a report must be made arising out of substance use disorder treatment program services or records,  
53 nothing may be disclosed that would identify the individual as a client of the substance use disorder  
54 treatment program. Staff should provide all relevant names and information, and the reporter should  
55 identify him or herself by name, but should not identify the specific program they work with, but say  
56 instead simply that they are employed by County "Behavioral Health Services."

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- 58 4. To Protect Elective Constitutional Officers and Their Families. Disclosures to governmental law  
59 enforcement agencies (e.g., Secret Service) must be made when needed for the protection of elected  
60 governmental officials and their families. In these cases, the HIPAA Privacy Office should be  
61 immediately notified so that appropriate steps can be taken.

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- 63 5. Court Orders and Warrants. Information must be released to the Court "as necessary to the  
64 administration of justice" pursuant to a court order or search warrant (signed by a Judge) or to the  
65 Court itself pursuant to a subpoena directing that information be disclosed to the Court in connection  
66 with a pending action or proceeding. When staff receive such an order they should immediately notify  
67 their supervisor or manager so that appropriate steps can be taken to comply with the order per  
68 instructions from MCBH Quality Improvement (QI).

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70 An LPS-designated locked facility must also provide limited PHI (whether or not the person named in  
71 the warrant or abstract is currently confined in the facility) to a law enforcement officer who personally  
72 lodges with the facility a Court-ordered arrest warrant or abstract showing that the patient is wanted for  
73 a serious or violent felony, as defined in Penal Code sections 1192.7 or 667.5.

- 75 6. Coroner. All requests for information from the Coroner shall be immediately directed to the attention of  
76 the MCBH QI. The County mental health facility or clinic, and the physician in charge of the patient  
77 shall release the medical record to a medical examiner, forensic pathologist, or coroner, upon request.  
78 The record may not be further redisclosed unless required or permitted by law.  
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- 80 7. Secretary of the United States Department of Health and Human Services. All requests for  
81 information from the Secretary of the US DHHS should be immediately directed to the attention of the  
82 MCBH QI. Certain limited disclosures are required when necessary to investigate HIPAA complaints  
83 and compliance.  
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86 **B. Permissive Disclosures**

87 MCBH staff shall comply with all laws that permit the disclosure of PHI including requests by individuals  
88 that information be disclosed to third parties if it is deemed appropriate by staff.  
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- 90 1. For Treatment, Payment or Operations. Staff may use or disclose a client's PHI without an  
91 authorization a) for treatment of the client, b) in connection with payment for services provided, or c)  
92 for the County's own internal operations as defined under 45 CFR section 164.501 and permitted  
93 under 45 CFR section 164.506 and related state and federal laws.  
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95 In the case of substance use disorder treatment program records, PHI will only be disclosed between  
96 and among staff having a need for the information in connection with their duties that arise out of the  
97 provision of diagnosis, treatment or referral for treatment of alcohol or drug abuse if the  
98 communications are within the substance use disorder program or between the program and those  
99 that have direct administrative control over the program as permitted by 42 CFR section 2.12.  
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- 101 2. With Authorization. Staff may use or disclose a client's PHI with written authorization on a HIPAA-  
102 compliant Authorization Form. Mental health records may be disclosed with authorizations, subject to  
103 the approval of the physician and surgeon, licensed psychologist, social worker with a master's degree  
104 in social work, licensed marriage and family therapist, or licensed professional clinical counselor, who  
105 is in charge of the client. In most cases this approval will be implied, unless records room staff  
106 question the appropriateness of the disclosure, or the validity or completeness of the form.  
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- 108 3. Facility Directory. The LPS designated inpatient facility will not specifically acknowledge a patient's  
109 presence in the facility unless a) there is specific permission from the patient to permit the disclosure  
110 (e.g., to notify family, or to put an outside phone call through to a patient's room). If the patient has  
111 asked that his or her presence at the facility not be shared with specific individuals, or with anyone,  
112 staff will simply tell a caller or visitor that "because of confidentiality rules and our policy, information  
113 cannot be provided about our clients over the phone" or words to that effect. If a close family member  
114 calls and inquires about the whereabouts of their loved one, staff may use discretion to acknowledge  
115 that they are at the facility if the client has been unable initially to either give or refuse permission for  
116 the disclosure.  
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- 118 4. To Third Parties Without Authorization. Under certain conditions staff may use discretion to make  
119 certain other disclosures without authorization from the client when required or permitted by law.  
120 These include providing limited PHI to public health or other authorities charged with preventing or  
121 controlling disease, injury or disability; to outside quality assurance teams such as elder death review  
122 teams; to health licensing boards or agencies, or for administrative audits or investigations (e.g., CMS  
123 audits); to law enforcement to report a crime or threatened crime on the premises, to report the

124 release of a patient from an involuntary hospitalization or elopement when law enforcement has  
125 requested this information on the 5150 application form; and for approved research. In all of these  
126 cases, or where a disclosure is requested and it is not clear whether it is appropriate or permitted, it is  
127 important that staff discuss the disclosure with a supervisor or manager, or with MCBH QI before the  
128 disclosure is made.

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

132 Any other request for information pertaining to a client, or for copies of records or other materials regarding  
133 a client of MCBH, should be directed to the attention of the MCBH QI. If there is ever any question as to  
134 the propriety of disclosing PHI to third parties, it is always better to check first! If information is disclosed in  
135 a manner not required or permitted by the HIPAA Privacy Rule or under California or other federal law, it  
136 will likely require patient notification and breach reporting to the US DHHS. Fines and penalties are often  
137 assessed even in the case of mistaken, non-intentional violations of the law.

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140 **D. Minimum Necessary.**

141 Staff will use or disclose only the minimum amount of information necessary to provide services and  
142 benefits to clients, and only to the extent provided in County policies and procedures. Staff will not  
143 disclose an entire medical record unless specifically requested by the client or specific justification is  
144 documented.

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147 **E. Limited Verbal Disclosures.**

148 In certain limited instances, staff is permitted to disclose limited information to those involved in the client's  
149 care or treatment when verbally requested or permitted by the client. For example, the client may ask staff  
150 to tell his girlfriend who is waiting in the outpatient waiting room that he will be ready to go in 15 more  
151 minutes. Similarly, a client may ask staff to explain to her daughter where to pick up the client's recently  
152 ordered medication. A simple note in the chart stating that "at the client's request her daughter was given  
153 brief information about picking up her medicine" is sufficient. If a client asks that more than very limited  
154 information be disclosed, it is always best to have a written authorization form completed and signed by  
155 the client.

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158 **F. Fundraising, Marketing, and Sale of PHI.**

159 Under no circumstances will clients' PHI be used for fundraising, marketing or sale without specific action  
160 by Administration and approval of County Behavioral Health and MCBH QI.

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163 **G. Accessing Client Data.**

164 MCBH staff and contractors are to access health records only as required for the provision of appropriate  
165 treatment to clients and/or for the legitimate operations needs of MCBH. Staff and contractors are  
166 required to enter into the electronic health records the reason (in sufficient detail to clearly outline such  
167 reason) they are accessing client health records not within their assigned caseload.