



Monterey County Behavioral Health Policy and Procedure

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| Policy Number | 352 |
| Policy Title | Confidentiality of Protected Health Information (PHI) – Multi-Disciplinary Teams |
| References | Code of Federal Regulations, Title 45, Section 164.506 (45 CFR 164.506) 45 CFR 164.512 42 CFR Part 2 California Welfare and Institutions Code 830 (CA W&I Code 830) CA W&I Code 18961.7 CA W&I Code 18986.40 CA W&I Code 18986.46 California Penal Code 11174.8 (CA PC 11174.8) CA PC 11163.3 |
| Form | None |
| Effective | August 28, 2014 |

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POLICY

It is the policy of Monterey County Behavioral Health (MCBH) to safeguard protected health information (PHI) about its clients regardless of the setting. This policy applies to the sharing of PHI during multi-disciplinary team (MDT) meetings made up of individuals from different disciplines, including healthcare providers and non-healthcare providers, who may be representing different agencies and be employed or contracted by different legal entities. PHI will not be disclosed to an MDT unless there is authorization from the client, a Court order or “standing” Court order, or an exception to confidentiality that satisfies both federal and state laws. There is no exception for the sharing of substance use disorder treatment program records, and information or records pertaining to drug or alcohol treatment will never be shared with an MDT without patient consent, or a direct and specific Court order.

DEFINITIONS

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

A “multi-disciplinary team” or “MDT” is a team of two or more individuals trained and qualified to address a common goal related to the educational, health, safety, housing, social services, legal, or other needs of an individual and in some cases, his or her family, and to develop a plan to address those needs. An MDT may also be formed to more generally address the needs of the community, e.g., veterans and homelessness. Typically, an MDT may include representatives from social services, mental health, physical health, substance use disorder treatment programs, child care agencies, law enforcement, education, prosecutors, probation, counselors, and specialists in the particular area being discussed (e.g., environmental health). In those cases

28 where the disclosure of PHI may be necessary to achieve the goals of the MDT, this policy
29 provides guidance to healthcare providers on how and when PHI may be used or disclosed to the
30 MDT.

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32 This policy requires all staff, including employees, volunteers and students, to comply with all
33 applicable federal and state confidentiality laws, including laws that pertain to the confidentiality
34 and privacy of physical health, mental health, HIV or other sensitive services, and substance use
35 disorder treatment program records. Contract providers are expected to follow all confidentiality
36 laws and all guidelines outlined in this policy, as well as any contractual obligations they may
37 additionally have.

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39 NOTE: The sharing of information between treatment providers from different medical disciplines
40 is sometimes referred to as a “multi-disciplinary” approach to the patient’s care. Similar terms that
41 describe this collaborative approach to medicine include “integrated care,” “case-managed care”
42 and “coordinated care.” This policy does NOT apply to the sharing of information among
43 healthcare providers from different disciplines for “treatment” purposes. With the exception of
44 substance use disorder providers, medical and mental health care providers are permitted by
45 HIPAA and by state law to share information about a common patient for treatment purposes.
46 Substance use disorder providers would always need consent from the patient before sharing
47 information with other providers outside of their treatment program except in emergency situations.

48 49 **PROCEDURES**

50 51 **A. Required Disclosures**

52 MCBH staff shall comply with all laws that require the disclosure of PHI including requests by
53 individuals to access their own records and the mandatory reporting of child abuse and
54 neglect, and elder and dependent adult abuse and neglect. Staff shall also comply with a
55 direct Court order to disclose PHI to a specific individual or group of individuals.

56 57 **B. Permitted Disclosures**

58 No law requires the disclosure of PHI to a MDT, and all permitted disclosures are subject to the
59 HIPAA “minimum necessary rule.”

60 61 1. With Authorization.

62 County Behavioral Health Staff who are present at an MDT meeting may use or disclose a
63 client’s PHI if there is written authorization on a HIPAA-compliant Authorization Form. In
64 the case of mental health information, the disclosure of PHI pursuant to the client’s
65 authorization shall be subject to the approval of the physician and surgeon, licensed
66 psychologist, social worker with a master’s degree in social work, licensed marriage and
67 family therapist, or licensed professional clinical counselor, who is in charge of the client.
68 In most cases this approval will be implied, unless staff questions the appropriateness of
69 the disclosure, or the validity or completeness of the form. One authorization form can be
70 used to permit the use, disclosure or exchange of information by and among members of
71 an MDT that are specifically listed on the form and checked or initialed by the client.

72 73 2. Pursuant to Court Order.

74 County Behavioral Health Staff who are present at an MDT meeting may use or verbally
75 disclose a client's PHI as they deem necessary to meet the goals of the MDT, subject to
76 their discretion and the minimum necessary rule, if there is a specific Court order or
77 "standing" Court order permitting such disclosures to the MDT. A "standing" Court order by
78 itself is not sufficient for the sharing of substance use disorder treatment program records.

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80 3. Death Review Teams

81 State law and HIPAA permits disclosures at Death Review Team MDT meetings that are
82 deemed to be disclosures to a public health authority that is authorized by law to collect or
83 receive information for the purpose of preventing or controlling disease, injury, or disability,
84 including the conduct of public health surveillance, investigations and interventions. (Penal
85 Code 11174.8, 11163.3; 45 CFR section 164.512(b).) Substance use disorder treatment
86 program records may not be disclosed unless there is client consent or a specific Court
87 order.

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89 4. Other State laws governing MDTs

90 There are a number of California laws that permit limited (verbal) disclosures of PHI within
91 the confines of an MDT meeting (for example, Welfare and Institutions Code 18961.7).
92 Some of the California MDT laws require authorization, while others permit limited
93 disclosures without authorization. But, nothing in HIPAA would permit even a limited
94 disclosure (beyond the making of a mandated abuse report) without authorization or Court
95 order. So, always get authorization from the client or a Court order before disclosing PHI
96 for non-treatment purposes.

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98 For examples of State laws that require authorization, see Welfare and Institutions Code
99 18986.86 that permits the creation of an MDT to provide an integrated and comprehensive
100 health and human services system, but specifically requires authorization from the client
101 before medical or mental health or drug treatment records can be shared. Similarly, see
102 Welfare and Institutions Code 18986.46 (children's multi-disciplinary teams) requiring
103 authorization from the parent or legal guardian, or from the minor if the minor has the legal
104 right to consent. If the State law requires patient authorization, then it is also HIPAA-
105 compliant and the confidentiality issue is resolved.

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107 Any request for verbal information pertaining to a client, or for copies of records or other
108 materials regarding a client of MCBH from an MDT where there is no clear Court order, or
109 authorization from the client, should be directed to the attention of the MCBH Quality
110 Improvement (QI).

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112 If there is ever any question as to the propriety of disclosing PHI to third parties, it is
113 always better to check first! If information is disclosed in a manner not required or
114 permitted by the HIPAA Privacy Rule or under California or other federal law, it will likely
115 require patient notification and breach reporting to the US DHHS. Fines and penalties are
116 often assessed even in the case of mistaken, misguided, or non-intentional violations of
117 the law.