

**SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER**  
**POLICY AND PROCEDURE MANUAL**

**Date of Issue: 4/6/99**

**Section Number 141**

**Date Revised: 3/17/05; 3/31/16; 6/10/20**

**Policy 141 – Duty To Warn**

**I. STATEMENT OF PURPOSE**

The purpose of this policy is to set forth guidelines for the duty to warn. The duty to warn arises when a health care provider reasonably has determined that a consumer poses a serious danger of violence to others. The consumer may have indicated to the health care provider through verbal interview, assessment, conduct or in writing of their intention to inflict imminent physical injury upon a readily identifiable individual. The provider must not force or coerce the consumer to identify the victim. Once a health care provider determines that a consumer poses a serious danger, the duty to exercise reasonable care to protect the foreseeable victim of the danger should be carried out.

The duty is deemed to have been discharged if the health care provider makes reasonable and timely effort to:

- A. Formulate a diagnostic impression and establish and undertake a documented treatment plan designed to eliminate any foreseeable or evident threats to do harm to a third party.

The five components of dangerousness that have been defined as decision making tools for judges, jurors, probation officers, and mental health professionals are:

1. **Nature of Harm or Conduct:** - Is the victim readily identifiable, does the individual threaten bodily harm, or is it harm to property, or individual sensitivities (specific plan)?
2. **Magnitude of Harm:** - Does the individual threaten murder or is the threat “a punch in the nose?” Does the individual have access to weapons?
3. **Probability:** - How likely is it that the verbalized harm will occur?
4. **Imminence:** - When will the threatened action occur?
5. **Frequency:** - How frequently will the threatened action occur?

- B. Evaluate the consumer for possible voluntary or involuntary hospitalization if he meets criteria for intensive inpatient treatment.
- C. Inform the appropriate law enforcement agency, and warn the specified individual or others likely to apprise the victim of the danger to notify the policy or to take whatever other steps are reasonably necessary under the circumstances.
- D. Probability to do harm should be determined in a factual manner, during the course of treatment, however, the physician or other health care provider is under no obligation to “interrogate” the consumer to determine the identity of a potential victim, nor is the health care provider required to “conduct an independent investigation” to determine a potential victim’s identity.

## **II. IMMUNITY FOR BREACH OF CONFIDENTIALITY**

According to case law (Tarasoff), it is inherent in the special relationship that exists between a consumer and health care provider, and implied in law, a duty to warn. A discharge of the duty to warn will vary according to the circumstances of each specific case. In discharging this duty, no cause of action or disciplinary action may arise under any patient confidentiality act against a health care provider or administrator for confidences disclosed or not disclosed in good faith to third parties in an effort to discharge the duty to warn.

### **A. Procedure**

- 1. Staff Responsibilities
  - a. Prior to implementing the duty to warn in any specific case, the initiating provider will consult with the treatment team, consisting of nursing staff, physicians, therapists, or social workers and the supervisor.
  - b. The supervisor, or designee, will consult with the Chief Executive Officer, or designee.
  - c. The case manager or other provider will then make reasonable efforts to discharge the duty to warn as outlined in Section C under Purpose.

2. Documentation

- a. All staff are to enter into the consumer's medical records any threats made by the consumer against a third party. This is an especially critical requirement for direct care providers who may typically spend a greater amount of time with the consumer and whose chances of hearing a consumer's threats are consequently increased. Staff should obtain the name and address of the person willing to give the information.
- b. Staff shall notify the attending physician, supervisor or designee of specific threats immediately for further assessment.
- c. Any and all warnings to law enforcement officials or a potential victim of the consumer's threats should be carefully documented. If written notification is sent, a copy should be retained for the medical record. For telephone notification, documentation should include the name and comments of the informant, law enforcement official and the potential victim(s).

**B. Special Precautions**

Appropriate precautions should be taken to detain consumers who have been assessed, and identified to pose imminent and foreseeable risk of harm to third parties. Should such a consumer leave the site, immediate attempts should be made to warn the potential victim of the consumer's threats. The police should be notified. The supervisor of any area may carry out the duty.

It should be noted that a court may find a health care provider liable for harm inflicted on innocent third parties by their consumer even if no duty to warn statute exists. Documentation must be complete and accurate to protect the provider as well as the Center.