

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER

POLICY AND PROCEDURE MANUAL

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Policy 179 – Confidentiality Policy

I. POLICY

It is the policy of Southern Highlands Community Mental Health Center to afford its consumers a right to privacy and to confidentiality within limits established by federal and state regulations, various court decisions, the West Virginia Department of Health and Human Resources policies, and good clinical standards of practice.

II. DISCUSSION

Chapter 27, Article 5, of the West Virginia Code, 42CFR, Part II of the Federal Regulations, various court actions, and licensing regulations for community behavioral health centers have produced a myriad of requirements governing the release of consumer related information to both the consumer and others. It is also recognized that generally accepted clinical standards may impose other restrictions which are not projected by law, but for one reason or the other, may protect the consumer and others from harm. Please refer to HIPAA Policy 504, Section II Policy and Section III Procedures for additional information. **Please refer to HIPAA Policy 523 – Right to Restrict Uses and Disclosures of PHI for additional information.**

III. PROCEDURES

A. CONFIDENTIALITY OF CLINICAL RECORDS AND CLINICAL INFORMATION

1. Access to Clinical Records

The clinical record is a confidential document, access to which should be restricted to the consumer, the consumer's authorized representative and to the treating agency physician and agency staff members with a legitimate need for access.

2. Consumer Access to Clinical Information

a. A consumer or consumer's representative may have access to his/her own record upon presentation of a properly completed and signed authorization, with reasonable notice, except:

1) Minors governed by legal constraints (WV Code 16-29-1(b));

- 2) Parents who have been adjudicated as incompetent by the courts; or
 - 3) Consumers in situations where the provider has determined information would be injurious to that consumer or other person.
- b. When a consumer's request is denied for clinical reasons, the provider must:
- 1) Provide a summary in a reasonable time.
 - 2) Permit inspection by or provide copies of the record to another care practitioner who is licensed to treat the same condition as the provider and who has been so designated in writing by the consumer.
 - 3) Include with the record a statement from the provider explaining the reason for refusal.
3. Consumers are provided access to their record in a clinically responsible manner.
- a. For individuals currently in treatment who request access to their records the following process is followed.
- 1) The case manager or supervisor reviews the record initially with the consumer to provide such interpretation and clarification as may be needed to assure that the consumer has an accurate understanding of the content.
 - 2) Copies of any part of the record may be provided to the individual if requested and if, in the judgment of the staff member, it would not be clinically inadvisable. (A summary of clinical information may be provided in accordance with WV Code.) Proper release must be completed by the consumer to release the information.
 - 3) Only record room staff or the Chief Compliance Officer can release any copies of documentation to the consumer.
 - 4) All discussion with the consumer regarding the clinical record is documented in the record.

- 5) Requests by individuals to review their record with a Protection and Advocacy (PAMI) Advocate is in accordance with the provisions of 42 USC 10801-10827 (Protection and Advocacy for Mentally Ill Individuals Act of 1986). The initial review of a clinical record is with a qualified clinical staff member to provide such interpretation and clarification as may be needed to assure an accurate understanding of the content. The consumer may then request a copy of any portion of the record for review with the advocate in private.
- b. When a former consumer, who is no longer in treatment in the agency, requests access to their record, the appropriate supervisor is contacted and the process is followed as described above.
 - 1) If the request is made by mail and the consumer indicates an inability to visit the facility or agency for a review of their record, every attempt is made to provide clinical support to that consumer to assure adequate understanding of the content. Such efforts are documented in the record.

B. RELEASE OF CLINICAL INFORMATION

1. SHCMHC, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, will designate an individual to be the Privacy Officer. This person will be responsible for development, implementation and maintenance of, and adherence to the Center's policies and procedures covering the privacy of, and access to, consumer health information in compliance with federal and state laws and the Center's information privacy practices.
2. Initially all releases are given to the record room. Upon receipt of an authorization for release of information, the designated record room personnel will enter into the Release Tracking Log (see attached) the following information.
 - a. Date the request was received.
 - b. The consumer's name and case number.
 - c. The name and address of the person or agency making the request.
 - d. The date an invoice was sent to those persons or agencies that have to pre-pay for information.
 - e. The date the payment was received.

- f. The name of the person the release was given to and the date.
3. In keeping with the tenet of informed consent, a properly completed and signed authorization to release consumer information includes at least the following:
 - a. Name of the agency that is to release the information.
 - b. Name of the individual or agency that is to receive the information.
 - c. Consumer's full name, address and date of birth.
 - d. Purpose or need for the information.
 - e. Extent or nature of the information to be released, with inclusive dates of treatment. (An authorization specifying "any and all information" should not be honored.)
 - f. Specific date, event or condition upon which authorization will expire unless revoked earlier.
 - g. Statement that authorization can be revoked but not retroactive to the release of information made in good faith.
 - h. Date the consent is signed. (Date of signature must be later than the date of information to be released.)
 - i. Signature of the consumer or legal representative.
 - 1) In the case of treatment given a minor without parental knowledge, the agency shall refrain from releasing the portion of the record relevant to this episode of care when responding to a request for information for which the signed authorization is that of the parent or guardian. An authorization by the minor shall be required in this instance.
 - j. A copy should be given to the consumer for their records.
4. All information released is strictly limited to that information required to fulfill the purpose stated in the authorization. Released information is accompanied by a statement prohibiting re-disclosure and requiring destruction after the stated need is fulfilled.

5. Following authorized release of information, the signed authorization is retained in the clinical record with notation of the specific information released, the date of the release and the signature of the individual who released the information. The date the information was released is then recorded in the Release Tracking Log.
6. The tracking log will be submitted to the Chief Compliance Officer as needed for review.
7. If the record request involves a consumer with the same name as another consumer additional scrutiny will be applied with additional reviews prior to the release of information such as birthdate and / or social security number.
8. The names, addresses, and dates of admission or discharge are not released to the news media or commercial organizations without the express written consent of the consumer or his/her authorized agent.
9. Materials acquired from a separate service agency such as a general hospital or private nursing home are not exchanged without prior written consent of the consumer for the release of the information.
10. Any report generated within a center or facility such as a psychological or social work assessment may be fully exchanged even if the original request for the report came from an outside agency such as Rehabilitation Services. However, certain restrictions may apply to drug and alcohol records (see Section C).
11. Consumer records may be released without consent as follows.
 - a. In a proceeding under Section 4, Article 5, Chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant to Section 2, 3, or 4, Article 5, of Chapter 27 of the West Virginia Code.
 - b. In a proceeding under Article 6-A of Chapter 27 of the West Virginia Code to disclose the results of an involuntary examination make pursuant thereto.
 - c. Pursuant to an order of any court.
 - d. To protect against a clear and substantial danger of imminent injury by a patient or consumer to himself or herself or another.
 - e. For treatment or internal review purposes to staff of the center.

- f. To persons designated by the Department of Health and Human Resources who have a legitimate need for access to these records or clinical information. Legitimate need includes, but is not necessarily limited to:
 - 1) Record audits
 - 2) Treatment or program monitoring
 - 3) Treatment planning
 - 4) Assuring continuity of care
 - g. To other agencies under contract to the Department of Health and Human Resources who are required by policy to assure continuity of services. Specifically the provisions of Chapter 27, Article 5, Section 2, Code of West Virginia, require that behavioral health centers be notified of admissions to state operated behavioral health facilities of persons from the areas they serve. Such centers are required by contract and policy to provide information to the facilities relative to the persons that information be shared between agencies and facilities.
 - h. The WV Advocacy Review Board has been established to provide an external review of the advocacy process. Whenever it is necessary for members of the Board to review clinical records for a proper discharge of this duty, they shall be entitled to do so with the clear understanding that members of the Board are bound by the same rules of confidentiality which apply to employees of the Department, facilities and contract agencies.
12. Records may be released pursuant to an order of a Court of Record. Any order signed by the Judge of a Court of Record requiring the release of a record, or part thereof, shall be honored and the record provided as ordered.
- a. Whenever a physician or psychologist is required to provide testimony at a hearing relative to the involuntary commitment of an individual, records pertaining to that individual must be taken to the hearing, unless other arrangements have been made with the court.
 - b. When sending information to the court, certified copies should be used whenever possible.

13. The consumer's attorney is entitled by statute to receive all or any part of a consumer's record.
 - a. Any attorney requesting a record must show written proof that he has been retained or appointed to represent the consumer.
 - b. In the interest of economy, the attorney may be requested, but is not required, to review the record to determine what portions of the record he/she wishes to have copied. If the attorney does not agree to such a request, however, the entire record must be provided. The facility or agency is entitled to charge for the actual cost of copying any documents where the consumer has funds to pay – not to exceed seventy-five cents a page. Consumers with court appointed attorneys should be considered unable to pay such costs.
14. E.H. v. Matin: Petitioner's counsel in the "Hartley" civil action shall have access to information, facilities and consumer records of the Department and its contractees relative to individuals receiving Hartley services for any purpose relative to E.H. v. Matin. To the extent such information is confidential, it shall be so maintained by petitioner's counsel.
15. With the consent of the individual or a person authorized to act for the individual, clinical records may be released to:
 - a. Persons or agencies which require the information in order to provide continuing services to the individual.
 - b. Insurers or other third party payers may be provided only such information as is necessary to permit such payment.
 - c. Other persons who have obtained required authorizations.
 - d. The Federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAMII) established a protection and advocacy system for mentally ill individuals under 42 U.S.C. SS 10801-10827. The purposes of the PAMII Act are to ensure that the rights of mentally ill individuals are protected and to assist states to establish and operate a protection and advocacy system for mentally ill individuals which will protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes and to investigate incidents of abuse and neglect of mentally ill individuals.
 - e. By Federal Law, the Eligible PAMII System and its Advocates have access to all records of:

- 1) Any individual who is a consumer of the system if such individual, or the legal guardian, conservator or other legal representative have authorized the PAMII System (Advocate) to have access.
 - 2) Any individual, who by reason of their mental or physical condition, is unable to authorize the system to have access.
 - 3) Any individual who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the state.
 - 4) Any individual in whose behalf a complaint has been received by the PAMII System or for whom there is probable cause to believe the individual has been subjected to abuse or neglect.
 - 5) Copying of the record must be preceded by the receipt of a written authorization from the consumer in compliance with the Allen v. Smith decision.
- f. The PAMII System/Advocate may not disclose information from the record to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to that individual has provided the PAMII System with a written determination that disclosure of such information would be detrimental to the individual's health.
- g. If disclosure of information is denied to an individual, that individual, their legal representative, conservator or other legal representative, or the PAMII System acting on their behalf, may select another mental health professional to review such information and to determine if disclosure would be detrimental to the individual's health. If such mental health professional determines that disclosure of such information would not be detrimental to the health of the individual, the PAMII System may disclose such information to the individual. Please refer to Policy 503 – Uses and Disclosures: Authorizations.
- h. The PAMII System and its Advocates are required by law to maintain information from records in a confidential manner to the same extent that the provider of mental health services is required to maintain their confidentiality.

16. Requests for information received via telephone require proper identification and verification to assure that the requesting party is entitled to receive such information. A record of the request and information released must be kept. Verification is required by returning the party's call prior to releasing the information.
17. Failure to follow prescribed procedures regarding the release of consumer information may result in disciplinary action up to and including termination.

C. CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE RECORDS

1. Federal regulations require that records of the identity, diagnosis, prognosis, or treatment of any person connected with any drug or alcohol abuse prevention program shall be disclosed only upon the specific written authorization of the person or under the following circumstances.
 - a. To medical personnel to the extent necessary to meet a bona fide medical emergency.
 - b. To qualified research personnel, providing that the consumer's identity remains anonymous.
 - c. Upon an appropriate court order after a hearing has been held.
2. Federal regulations in 42 C.F.R. Part 2 requires that consent must be in writing and must contain the following.
 - a. The name of the program that is to make the disclosure.
 - b. The name or organization to which disclosure is to be made.
 - c. The name of the patient/consumer.
 - d. The purpose or need for the disclosure.
 - e. The extent or nature of information to be disclosed.
 - f. A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it will expire without express revocation.
 - g. The signature of the consumer or other person authorized to sign under the regulations and the date the consent is signed.

3. Disclosure is prohibited if consent is nonconforming on its face or if program personnel know, or in the exercise of reasonable care should know, that the consent is materially false in any way.
4. Redisclosure of information released is prohibited and each disclosure is accompanied by a written statement substantially similar to the following:
 - a. This information has been disclosed to you for records whose confidentiality is protected by Federal law. Federal Regulation 42 C.F.R. Part 2 prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is not sufficient for this purpose.
5. A consumer's legal counsel may have access to records with the consumer's written authorization. Family members, third party payers and the criminal justice system, however, must obtain full written consent for disclosures if:
 - a. There is no suggestion in the written consent or in circumstances surrounding it, as known to the program, that the consent was not given freely, voluntarily and without coercion.
 - b. Granting the request for disclosure will not cause substantial harm to the relationship between the consumer/patient and the program or to the program's capacity to provide services in general.
 - c. Granting the request for disclosure will not be harmful to the patient/consumer.

Disclosure must be limited to only that information needed to accomplish the purpose of the disclosure.

D. VERBAL EXCHANGE OF CONSUMER SPECIFIC INFORMATION SHALL NOT OCCUR OUTSIDE THE AGENCY UNLESS:

1. A written release of information has been obtained, or
2. A situation exists where there is the possibility of imminent danger to the consumer or someone else, or
3. A medical emergency exists, or
4. A court order has been received, or

5. The consumer is subject of a mental hygiene hearing, or
6. The consumer is currently in a state operated facility and the material is necessary for his/her treatment, and/or
7. Child or adult abuse or neglect is suspected, or
8. If the consumer is not a ward of the state or does not have an Advance Directive, court-appointed guardian or other fiduciary, or
9. If we determine in the exercise of our professional judgment that it is in the consumer's best interests.

All such exchanges should be documented in the consumer's record.

E. With regard to consumers who are present and have the capacity to make decisions, PHI may only be disclosed to people involved in their care (meaning relatives, friends, or community support people), we:

1. Notify the consumer in advance of the anticipated disclosure and obtain their agreement to disclose;
2. Provide the consumers with the opportunity to object to disclosures of PHI and the consumer does not express an opinion; or
3. Can, in the exercise of our professional judgment, infer from the circumstances that the consumer does not object to the disclosure of PHI.

F. RELEASE OF WRITTEN MATERIAL REGARDING THE CONSUMER IS FURTHER LIMITED

1. A bare subpoena duces tecum is not sufficient to release information to an attorney. The consumer should be consulted and given written consent. If the consumer cannot be contacted or refuses to give such consent, the attorney should be informed that he must obtain a court order if he wants the information. Even then the consumer should be informed of the action.

F. RELEASE OF SECONDARY CONSUMER INFORMATION

1. All internal or external requests for secondary data are to be routed to the Chief Executive Officer who assures the appropriateness of the request, evaluates the priority of the request, and, if necessary, obtains appropriate approvals for data release.

2. Secondary data with consumer or provider identification is released only for the purpose specified and only to those authorized to receive such data by law or consumer authorization.
3. The agency has a roster of staff who are granted regular system access. One time and special access by others on a need to know basis consistent with the purposes and routine uses of the system is authorized by the Chief Executive Officer.

G. PROTECTION OF CONSUMER INFORMATION OUTSIDE OF CENTER SITES

During the day to day operations of the Center, employees frequently have protected health information outside of the Center's buildings. Examples of this include, but are not limited to, community day habilitation, home visits, assisting with medical appointments, and crisis situations. The following protocol is to be maintained with this information.

1. Information taken must be limited to only that which is needed for the service.
2. Information will be kept in the zipped bag supplied by Southern Highlands CMHC.
3. If the employee does not need the information, the bag will be left in the locked vehicle, preferably in the trunk, if the vehicle has one. If the vehicle does not have a trunk, the bag must be out of sight.
4. If the employee keeps the information overnight, the employee will not take the information into his home but will leave the bag in the locked vehicle. This will avoid "forgetting" the information at home and others having access to the information.