

SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER

POLICY AND PROCEDURE MANUAL

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Policy 504 – Uses and Disclosures: Opportunity for Individual to Agree or Object

I. PURPOSE

Southern Highlands Community Mental Health Center, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification, 42-CFR Part 2 and Omnibus provisions, sets out, in this policy, the conditions for providing consumers with an opportunity, in advance, of the use or disclosure of PHI for

1. Involving other people in the consumer's care, or
2. For notification about a consumer's location, general condition, or death and to agree to that particular use or disclosure, or to prevent or restrict it.

II. POLICY

Southern Highlands Community Mental Health Center will verbally inform each consumer, during the intake process, of their right to agree to or object to:

1. Disclosing PHI about them to persons involved in their care; and
2. Notifying persons about their location, general condition, or death.

III. PROCEDURES

A. Disclosures Regarding Outpatient Services

1. SHCMHC staff will not confirm orally, in writing or through any other medium that a consumer is either on-site or a current or former consumer of SHCMHC, with the exceptions listed below under "Disclosures to Person's Involved in a Consumer's Care".

B. Disclosures to Person's Involved in a Consumer's Care or for Notification Purposes

1. Guardians, and Other Legal Custodians

- a. At times SHCMHC will have consumers who are not able to direct or make decisions about any or some of their health care. In the event that a legal guardian has been established, SHCMHC may communicate with the guardian in accordance with document establishing guardianship. Legal documents must be obtained and retained in the medical record.
 - b. Withholding PHI: If the treatment professional believes that, even though a disclosure of PHI is authorized, disclosure of the information will cause harm to the consumer they should:
 - 1) As the primary clinical professional: Make the decision to not disclose and document the decision in the medical record including the reasons why, in their professional judgment, the PHI was not disclosed.
 - 2) If not the primary clinical professional: Consult with the primary clinical professional or Program Director who will make the decision and follow the procedure in 1) above.
2. Family Members, Partners, and Others Authorized by Consumer to be Involved in Consumer's Care.
- a. Many consumers who receive treatment at SHCMHC choose to have family members, significant others, friends, and other community support involved in their care on a regular, on-going basis. This is something SHCMHC encourages because it is often beneficial to the consumer's ability to successfully integrate and stay in the community. However, it is important that before any PHI is disclosed to these individuals, we understand the consumer's wishes with regards to these disclosures and we offer them an opportunity to object or agree to the disclosure.
 - 1) In all cases the PHI disclosed must be limited to what is directly relevant to the person's involvement in the current care of the consumer or to the payment for services delivered to the consumer.
 - 2) Staff who make disclosures pursuant to this procedure should, in addition to documenting the disclosure, record the nature and the duration of the relationship, if known, in a progress note.

- 3) In all cases the consumer must be offered the opportunity to privately agree or object to the individual's involvement. If the treating professional believes that this involvement will be regular and consistent in content, they can document the verbal permission of the consumer on the Request for Confidential Communication located in the electronic medical record, which should include the date the permission was given by the consumer, and the names of the individuals to who disclosures can be made. This permission can be given at any time during the current treatment episode. This should indicate if permission has been given to discuss treatment information, diagnosis, medications, attendance or other information, which should be listed.
 - 4) In all cases, before disclosing information to someone involved in the consumer's care, the medical record should be consulted. Staff who are not actively providing treatment or services to the consumer should not disclose information to individuals involved in the consumer's care and should refer all inquiries to the appropriate clinician or Program Director.
- b. In some cases, the consumer will not want another involved in their care except on a very limited basis or only in a specific circumstance.
- 1) In these cases, the consumer must be present to give their permission directly to the treating professional.
 - 2) The staff should take the consumer to a private location and should ask for their agreement or objection and should discuss the limits of the disclosures the consumer wishes to be made.
 - 3) Each disclosure made should be documented in the medical record only if material to the consumer's care.
 - a) For example, another individual's participation in a counseling session should be documented in the progress note along with confirmation of the consumer's permission. If permission has been given only to inform another of the next appointment date, this does not need to be documented.

- b) The judgment of the disclosing staff, in consultation with their supervisor, should determine whether or not a disclosure needs to be documented.
- c. If the consumer has presented as an emergency and is not capable, in the judgment of the treating professional, to agree or to object, and the treating professional believes the disclosure is in the best interests of the consumer, then the disclosure of the minimum necessary PHI can be made to the individual. This disclosure should be in the clinical documentation along with the reasons the treating professional believed the disclosure should have been made.
- d. If the consumer is not present and there has been no permission given to disclose information to another individual as documented in the medical record, then a disclosure of PHI cannot be made unless the treating professional believes the disclosure is in the best interests of the consumer, then the disclosure of the minimum necessary PHI can be made to the individual.
- e. In all cases, if the treatment members or other professionals they have consulted believe that the disclosure of PHI, even if agreed to by the consumer, may cause harm to the consumer or others, they should refuse to make the disclosure.

C. Disclosures of Disaster Relief Purposes

- 1. Disclosures for notification purposes may be made to a private or public entity charged by law or by charter to assist in disaster relief efforts.
 - a. The PHI needed for notification purposes includes the name, location, and general condition of the consumer.
 - b. The requirements described in c above apply in these circumstances unless it is determined that the procedures will interfere with the ability of the relief agency to respond to the emergency situation.
 - c. The decision about whether or not to disclose in these circumstances should be made by the Program Director, in consultation with the Privacy Officer.

