




Los Angeles County
DEPARTMENT OF MENTAL HEALTH

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DIRECTOR

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TO: Department of Mental Health Outpatient Programs

FROM: Roderick Shaner, M.D., Medical Director 

SUBJECT: **FREQUENTLY ASKED QUESTIONS (FAQS) REGARDING RECEIVING AND SHARING CLIENT INFORMATION WITH FAMILY MEMBERS, FRIENDS OR OTHER INDIVIDUALS INVOLVED IN THE CLIENT'S CARE**

The purpose of this memorandum is to clarify Los Angeles County Department of Mental Health's (LACDMH) policy and privacy laws with respect to sharing and receiving client information with family members, friends, and other individuals.

Please review the FAQs below, which provide clarification and scenarios on sharing and/or receiving information pertaining to our clients.

RECEIVING INFORMATION FROM FAMILY AND FRIENDS

1. Can a clinician receive information regarding a client from family members, friends, or other individuals?

Yes. Clinicians can receive information from individuals concerning a client, even when a client may object. However, no protected health information (PHI) can be disclosed unless the client has been provided an opportunity to object to the sharing of PHI or the client authorized the sharing.

Sample Script: "Hello. My name is John Smith from the LACDMH and I am returning your call. How may I help you?"

Depending on the query: "I'd be happy to receive any information about someone you believe is a LACDMH client. However, I cannot release information about anyone who is receiving or has received services at DMH without an authorization from him/her or pursuant to a legal requirement or an exception. You can ask the person that you are concerned about to provide an authorization to their clinician. I will also do what I can to facilitate communication between you and anyone that you have concerns about who

may be seen at our clinic. I am sorry for any distress that this may cause for you, but please know that we strive to include family members or interested individuals whenever possible”

2. Can clinicians receive information about a client who has expressly unauthorized LACDMH to disclose, release or receive information to or from family members, friends or other individuals involved in the client’s care?

Yes. However, the clinician/staff should clearly state to the outside party that they may receive, but cannot provide any information pertaining to the client.

Sample Script: “Hello. My name is John Smith from the LACDMH and I am returning your call. How may I help you?”

Depending on the query: “I’d be happy to receive any information about someone you believe is a LACDMH client. However, I cannot release information about anyone who is receiving or has received services at DMH without an authorization from him/her or pursuant to a legal requirement or an exception. You can ask the person that you are concerned about to provide an authorization to their clinician. I will also do what I can to facilitate communication between you and anyone that you have concerns about who may be seen at our clinic. I am sorry for any distress that this may cause for you, but please know that we strive to include family members or interested individuals whenever possible”

DISCUSSING PHI WHEN FAMILY OR FRIENDS ARE PRESENT

3. In situations where a client and a family member and/or friend are present, is it required to get the client’s permission to discuss any information about the client and if not, it is necessary to obtain a written release for ongoing communications once the session has ended?

No. It is not necessary to obtain the client’s permission in order to share information with a family member or a friend in the presence of the patient. A clinician may infer from the circumstances, using professional judgment that the patient does not object. For example, in situations when the client invites a family member or friend into the treatment room or accompanies a client to their appointment and/or meeting with the clinician. However, it is necessary to obtain the authorization from the client for ongoing communications with a family member and/or friend when they are not present.

Sample script: “We believe it is helpful to include people in your care and treatment program, such as (the person accompanying the client, mother, spouse, or other interested individuals). These people may be able to provide support, coordinate care

on your behalf, provide insight to your condition, and help maintain your safety, if needed.”

4. Can a clinician communicate with a family member or friend involved in the client’s care if the client authorizes only specific types of information to be disclosed, but withhold authorization for other information?

Yes. However, staff will need to inform the outside party that they do not have authorization to disclose certain information and that the lack of authorization may preclude the staff members’ ability to transmit significant facts or concerns.

Sample Script: “While I’ve been authorized by John Doe to disclose certain information to you, I do not have authorization to disclose other information. The information that I cannot disclose may limit my ability to provide you with a full description of certain issues. It is unfortunate that this is the case, but I want to be sure that you are aware of this limitation.”

5. Must a client’s authorization to share PHI to family, friends, or caretakers be recorded on the Official Authorization Form in order for that consent to be valid?

No. Agreements or objections may be made either orally or in writing and must be documented in the client’s/patient’s chart.

REVEALING SOURCES OF PHI RECEIVED

6. Is it necessary to share sources of information with a client in circumstances in which such sharing could potentially be harmful to the care and well-being of the client?

No. There is no legal requirement to share sources of information with a client in circumstances in which such sharing would, in the opinion of the clinician, be harmful to the care and wellbeing of the client.

SHARING PHI WITH FAMILY OR FRIENDS TO PREVENT HARM TO CLIENT

7. In the event that a clinician believes that sharing information with family members, friends, or other individuals would prevent harm to the client or others, is it permissible for the clinician to disclose certain information without the client’s authorization?

Yes. However, the clinician may only share the relevant information if doing so is consistent with applicable laws, standards of ethical conduct, and the clinician has a

good faith belief that the patient poses a threat (level of harm) to the health or safety of the patient or others, and the family member is reasonably able to prevent or lessen that threat. [45 C.F.R. §164.512(j)]

The clinician, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the client or other potential victims.

8. If a clinician believes that a patient might hurt himself/herself or someone else, can LACDMH notify law enforcement authorities and the family?

Yes. A health care clinician's "duty to warn" generally is derived from and defined by standards of ethical conduct and State laws and court decisions such as Tarasoff v. Regents of the University of California. HIPAA permits a covered health care clinician to notify a patient's family members of a serious and imminent threat to the health or safety of the patient or others if those family members are in a position to lessen or avert the threat. Thus, to the extent that a clinician determines that there is a serious and imminent threat of a patient physically harming self or others, HIPAA would permit the clinician to warn the appropriate person(s) of the threat, consistent with his or her professional ethical obligations and State law requirements. See 45 CFR 164.512(j).

In cases where danger/harm is not imminent, HIPAA permits a clinician to communicate with family members or others involved in the patient's care, if the clinician determines the disclosure is in the best interest of the patient and relates to the person's involvement in the client's health care. Again, in these circumstances, disclosures of health information must be limited to the person's involvement with the patient's health care or payment for the care.

SHARING PHI WITH FAMILY OR FRIENDS WHEN CLIENT IS INCAPACITATED

9. When a client is incapacitated or cannot communicate meaningfully to either agree or object to the disclosure, may a clinician share the client's information with a family member, friend or individual involved in the client's care, if the clinician determines, based on professional judgment, that doing so is in the best interest of the patient?

Yes. Disclosures of information to family members, friends, or other persons involved in the patient's care must be limited to only the information directly relevant to the person's involvement in the patient's care or payment for care. In such incident, the clinician must document in the client's medical record the reason that the authorization could not be attained.

Definition of Incapacity: A client's current mental state which client is not able to understand and make choices or decisions for self even after the necessary information advice, and support have been given.

An exception is for psychotherapy notes, which receive special protections in the State of California.

CONCLUSION

In general, both the California Medical Information Act and the Health Insurance Portability and Accountability Act (HIPAA) permit disclosures of limited health information to a family member, domestic partner, a close personal friend, or any other person identified by the patient. Information that is shared with these individuals must be limited to the information directly relevant to the person's involvement with the client's care or payment related to the patient's health care or authorized by the client. Any information that is received on behalf of the client is permitted.

Disclosures must be limited to only the PHI directly relevant to the person's involvement with the patient's health care or an exception applies. The Welfare and Institutions Code Section 5328.1(a) states that if the patient is unable to authorize the release of information to a family member, etc., the hospital/facility/clinician must make a notation in the patient's medical record with the reason why authorization was not obtained.

Additional information pertaining to the sharing and disclosing of patient information by DMH staff can be found in the Department's policy manual; specifically, hyperlinked [DMH Policy No. 500.02 - Uses and Disclosures of Protected Health Information Not Requiring an Authorization](#), or at the website address:

http://lacdmh.lacounty.gov/ContractorsPolicies/Documents/500/500_02.pdf

Should you wish to contact us concerning the above interpretations, please email [Ginger Fong](mailto:Ginger.Fong), LACDMH HIPAA Privacy Administrator, at gfong@dmh.lacounty.gov, or contact her at 213-739-2375.

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