258 CMR 22.00: CONFIDENTIALITY OF CLIENT COMMUNICATIONS AND RECORDS

Section

22.01: Applicability of 258 CMR 22.00
22.02: Establishment and Retention of Clinical Treatment Records
22.03: Confidentiality of Client Communications and Records - General Rule
22.04: Limitations and Exceptions to Confidentiality
22.05: Client's Right to Prevent Disclosure of Communications in Certain Proceedings
22.06: Obligation to Inform Client of Confidentiality Rights and Limitations

22.01: Applicability of 258 CMR 22.00

For purposes of 258 CMR 22.00, the term "social worker" shall include, and the provisions of 258 CMR 22.00 shall apply to:

(1) Any social worker who holds a license issued by the Board pursuant to M.G.L. c. 112, § 131 and 258 CMR 9.03 through 258 CMR 9.07;

(2) Any social worker who provides social work services in his or her capacity as an employee of a unit of state, county or municipal government within the Commonwealth of Massachusetts and is exempt from licensure pursuant to M.G.L. c. 112, § 134 and 258 CMR 9.02(1);

(3) Any social work student, social work intern, social work trainee or other individual who is authorized to provide social work services pursuant to 258 CMR 9.02(2) or 258 CMR 9.02(3); and

(4) Any agent, employee, administrative or clinical supervisor, professional colleague or consultant of any individual who is covered by 258 CMR 22.01(1) through 258 CMR 22.01(3) above who obtains or receives information about a client or prospective client which is protected by 258 CMR 22.03.

22.02: Establishment and Retention of Clinical Treatment Records

(1) Establishment of Clinical Treatment Records. A social worker who provides clinical social work services shall establish and maintain a separate, legible, adequate and accurate written clinical treatment record for each client receiving such services. This clinical treatment record shall be maintained in accordance with accepted standards of professional social work practice, shall identify the client to whom it pertains, and shall contain:

(a) A description of the client's prior history of services, if any;
(b) A description of the client's present reasons for seeking clinical social work services;
(c) An assessment or diagnosis of the client's mental, emotional or behavioral condition, disorder or addiction;
(d) Documentation of any changes or revisions in the assessment or diagnosis of the client's mental, emotional or behavioral condition, disorder or diagnosis which occur during the provision of clinical social work services by that social worker;
(e) A treatment plan which sets forth the treatment goals and objectives established by the client and the social worker, describes the nature of the clinical social work services provided and identifies the treatment modalities used;
(f) Documentation of any changes or revisions in the treatment plan which occur during the provision of clinical social work services to that client by that social worker;
(g) A description of the frequency and duration of the services provided;
(h) Progress notes containing the social worker's assessment of the client's progress in treatment;
(i) Recommendations and/or plans for further treatment or services for the client, where appropriate;
(j) Documentation of any fees charged, payments obtained, and other relevant billing and/or insurance information;
(k) Documentation that the client has been informed of his or her confidentiality rights, as required by 258 CMR 22.05;
(l) Copies of all client authorizations for release of information or records; and

22.02: continued

(m) Any other information reasonably necessary to permit proper assessment and treatment of the client in the future.

(2) Length of Record Retention. Except as otherwise provided by law, a client's clinical treatment record shall be maintained for a period of not less than seven years from the date of the last client encounter or professional consultation with the client. In the event that the client is a minor, the client's clinical treatment record shall be maintained for at least seven years from the date of the last client encounter or professional consultation with the client, or at least three years after the client attains the age of majority, as defined in M.G.L. c. 4, § 7, whichever is longer.

(3) Client Access to Clinical Treatment Records.

(a) Except as provided in 258 CMR 22.02(3)(b), a social worker shall, upon written request by a client or prospective client or an authorized legal representative of that client or prospective client, permit that client or prospective client or his or her authorized legal representative to inspect his or her clinical treatment record. Upon such a written request, the social worker shall also permit that client, or prospective client or his or her authorized legal representative to obtain a copy of that clinical treatment record. Unless otherwise prohibited by law, the social worker may charge a reasonable fee, not to exceed the actual cost of reproducing the cost of such record, for this service.

(b) A social worker may decline to permit a client or prospective client to inspect or obtain a copy of his or her clinical treatment record if the social worker, in the reasonable exercise of his or her professional judgement, believes that allowing that client or prospective client to inspect or copy their clinical treatment record would adversely affect the physical or mental well-being of that client or prospective client. If a social worker declines to provide a copy of a client's clinical treatment record to that client pursuant to this section, the social worker shall provide that client with a treatment summary, as defined in 258 CMR 8.05, in lieu of the full clinical treatment record. If the client or prospective client still requests a copy of the full clinical treatment record, the social worker shall provide a copy of the full clinical treatment record to either an attorney designated by the client or a psychotherapist, as defined in M.G.L. c. 112, § 12CC, designated by that client.

22.03: Confidentiality of Client Communications and Records - General Rule

(1) Types of Client Communications Protected. The following types of client communications, information or records are confidential:

(a) Any communication between a social worker and a client or prospective client which occurs during a client encounter or other professional consultation between that social worker and that client or prospective client;

(b) Any information which is acquired from, or revealed by, a client or prospective client during the course of any client encounter or other professional consultation between a social worker and that client or prospective client;

(c) Any communication between a social worker and a third party which pertains to a client or prospective client of that social worker, and which occurs during the course of, or in connection with, the social worker's performance of professional services or professional consultations for that client or prospective client;

(d) Any information acquired from, or revealed by, a third party which pertains to a client or prospective client of a social worker and which is acquired or revealed by that third party during the course of, or in connection with, the social worker's performance of professional services or professional consultations for that client or prospective client;

(e) Any communication or information about whether or not a particular individual is a client or prospective client of a social worker or has received professional services or professional consultations from a social worker;

(f) Any communication or information about the circumstances under which a particular client or prospective client of a social worker became a client of that social worker or received professional services or professional consultations from that social worker; or

(g) Any written entry, notation, record, document, correspondence or other writing contained in any clinical treatment record established or maintained pursuant to 258 CMR 22.02 which contains any of the types of communications or information identified in 258 CMR 22.03(1)(a) through 258 CMR 22.03(1)(f).

22.03: continued

(2) General Rule. No social worker, as defined in 258 CMR 22.01, shall disclose any of the types of client communications, information or records protected by 258 CMR 22.03(1) without the prior written consent of that client, or the prior written consent of someone legally authorized to give such consent on behalf of an incompetent or minor client as set forth in 258 CMR 22.03(3), unless:

(a) Disclosure of the client communications, information or records without the prior written consent of the client would be authorized under 258 CMR 22.04 or 22.05; or

(b) Disclosure of the client communications, information or records in question has been ordered by a court of competent jurisdiction.

(3) Consent Required for Disclosure Where Client is Incompetent or a Minor.

(a) Mentally Incompetent Client. Where the disclosure of client communications, information or records without the prior written consent of the client is not authorized by any provision of 258 CMR 22.04 or 22.05, and the client or prospective client to whom the communication, information or record pertains is not mentally competent to give legally valid consent to such disclosure, disclosure of such client communications, information or records shall not be made without the prior written consent of a guardian appointed by a court of competent jurisdiction to act on behalf of that client or prospective client.

(b) Minor Clients.

1. Except as provided in 258 CMR 22.03(3)(b)2. or 22.04(10)(b), disclosure of client communications, information or records pertaining to a minor client or prospective minor client may be made if prior written consent is obtained from a parent or legal guardian of that minor client or prospective minor client.

2. A client or prospective client who is a minor may give consent to disclosure of client communications, information or records pertaining to him or her if:

a. He or she is married, widowed or divorced;

b. He or she is the parent of a child, in which case he or she may also give consent to disclosure of client communications, information or records on behalf of that child;

c. He or she is a member of any of the armed forces of the United States;

d. He or she is living separate and apart from his or her parent(s) or legal guardian, and is managing his or her own financial affairs;

e. He or she reasonably believes that he or she is suffering from, or has come into contact with, a disease defined as dangerous to the public health pursuant to M.G.L. c. 111, § 6 and the communications, information or records to be disclosed pertain to the diagnosis or treatment of that disease; or

f. He or she has been determined to be a "mature minor" by a court of competent jurisdiction.

In such event, disclosure of such client communications, information or records shall not be made without the written consent of that minor client.

(4) Consent Required for Disclosure in Case of Marital or Family Therapy. Except as provided in 258 CMR 22.04 or 22.05, any client communication, information or record which is protected by 258 CMR 22.03(1) and which is made to, acquired by, created by, or revealed to, a social worker during the performance of marital or family therapy services by that social worker, or during a professional consultation with that social worker in contemplation of obtaining such marital or family therapy services, shall not be disclosed without the prior written consent of each and every adult participant in such therapy or consultation.

22.04: Limitations and Exceptions to Client Confidentiality

(1) Disclosure to Colleagues or Employees Providing Services to Client. A social worker may disclose client communications, information or records to his or her employee or agent, an administrative or clinical supervisor, or a professional colleague who is licensed under the applicable laws of the Commonwealth of Massachusetts or any other jurisdiction, without the written consent of the client if:

(a) The client has been informed in advance of the nature of the disclosure to be made, the purpose for which it will be made, and the provisions of 258 CMR 22.04(1);

(b) The client has not objected to such disclosure;

22.04: continued

(c) The individual to whom the communications, information or records are disclosed is responsible for ensuring the adequacy and/or continuity of professional services for that client;
(d) The disclosure of such communications, information or records is reasonably necessary to ensure the adequacy and/or continuity of professional services to that client;
(e) The extent of the disclosure is limited to that which is reasonably necessary to ensure the adequacy and/or continuity of professional services for that client; and
(f) The individual to whom the communications, information or records are disclosed is required to keep such information confidential to the extent required by 258 CMR 22.00 or any other applicable state or federal laws or regulations.

(2) Disclosure Necessary to Prevent Harm to Client.
(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(2)(b) and 22.04(2)(c), if:
1. The client's behavior creates a clear and present danger of harm to the client himself or herself;
2. The client has explicitly refused to voluntarily accept further appropriate treatment or services;
3. Disclosure of the communications, information or records is reasonably necessary to protect the safety of the client; and
4. The disclosure of client communications, information or records is limited to that authorized by 258 CMR 22.04(2)(b) and 22.04(2)(c).
(b) In any situation where disclosure of client communications, information or records without the written consent of the client is authorized by 258 CMR 22.04(2)(a), if the social worker has a reasonable basis to believe that the client can be committed involuntarily to a hospital or other health care facility for appropriate treatment or services pursuant to M.G.L. c. 123, § 12, that social worker shall take all appropriate actions which are within the lawful scope of practice for his or her licensure level, as set forth in 258 CMR 12.00, to initiate proceedings for involuntary hospitalization of that client. In so doing, the social worker may disclose any and all client communications, information or records reasonably necessary to carry out his or her obligations under 258 CMR 22.04(2)(b).
(c) In any situation where disclosure of client communications, information or records without the written consent of the client is authorized by 258 CMR 22.04(2)(a), and whether or not the social worker has a reasonable basis to believe that the client can be committed involuntarily to a hospital or other health care facility for appropriate treatment or services pursuant to M.G.L. c. 123, § 12, the social worker may disclose client communications, information or records to members of the client's family or other individuals if, in the reasonable exercise of his or her professional judgment, the social worker believes that disclosure of the particular communications, information or records in question would assist in protecting the safety of the client.

(3) Disclosure Necessary to Prevent Client From Harming Others.
(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(3)(b) and 22.04(3)(c), if:
1. The client has communicated to the social worker an explicit threat to kill or inflict serious bodily injury upon a reasonably identified or identifiable victim or victims, and the client has the apparent intent and ability to carry out that threat; or
2. The client has a history of physical violence which is known to the social worker and the social worker has a reasonable basis to believe that there is a clear and present danger that the client will attempt to kill or inflict serious bodily injury upon a reasonably identified or identifiable victim or victims.
(b) In any situation described in 258 CMR 22.04(3)(a), the social worker shall take one or more of the following actions:
1. The social worker shall make reasonable efforts to communicate the threat of death or serious bodily injury made by the client to the identified or identifiable victim or victims;

22.04: continued

2. The social worker shall make reasonable efforts to notify an appropriate law enforcement agency, either in the city or town in which the client resides, or the cities or towns in which the identified or identifiable victims reside;

3. The social worker shall make reasonable efforts to arrange for voluntary hospitalization of the client at a hospital or other health care facility for appropriate treatment or services; or

4. The social worker shall take all appropriate steps which are within the lawful scope of practice for his or her level of licensure, as set forth in 258 CMR 12.00, to initiate proceedings for involuntary hospitalization of the client.

Nothing in 258 CMR 22.03(3)(b) shall require a social worker to take any actions which, in the reasonable exercise of sound professional judgment, would endanger the health or safety of the social worker or increase the danger to any potential victim or victims.

(c) In carrying out his or her obligations under 258 CMR 22.04(3)(b), the social worker may disclose client communications, information or records only if, and only to the extent that, disclosure of the specific communications, information or records in question is reasonably necessary to protect the identified or identifiable victim or victims.

(4) Disclosure To Comply with Statutory Abuse Reporting Obligations.

(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(4)(b), if such disclosure is made for the purpose of:

1. Complying with his or her statutory obligation to report suspected abuse or neglect of a child pursuant to M.G.L. c. 119, § 51A;

2. Complying with his or her statutory obligation to report suspected abuse of an elderly person pursuant to M.G.L. c. 19A, § 15;

3. Complying with his or her statutory obligation to report suspected abuse, neglect or mistreatment of a long term care facility resident pursuant to M.G.L. c. 111, § 72G; or

4. Complying with his or her statutory obligation to report suspected abuse, neglect or mistreatment of a person receiving hospice or home health agency services pursuant to M.G.L. c. 111, § 72G.

(b) In any situation in which disclosure of client communications, information or records without the prior written consent of the client is authorized by 258 CMR 22.04(4)(a), the social worker shall disclose such communications, information or records only to the extent that disclosure is reasonably necessary to provide the information required by the applicable reporting statute or cooperate with a governmental investigation into that report.

(5) Disclosure in Connection with Elderly Protective Services Investigations.

(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(5)(b), if:

1. The communication, information or record in question was made, acquired by, or revealed to that social worker while the social worker was acting as an elder protective services worker for a designated elder protective services agency, as defined in M.G.L. c. 19A, § 14; and

2. The communication, information or record in question was made, acquired by, or revealed to that social worker while the social worker was conducting an elder protective services assessment pursuant to M.G.L. c. 19A, § 18.

(b) In any situation in which disclosure of client communications, information or records without the prior written consent of the client is authorized by 258 CMR 22.04(5)(a), the social worker shall disclose such communications, information or records only to the extent that disclosure is reasonably necessary to carry out his or her obligations under M.G.L. c. 19A, § 18 or is otherwise authorized by the applicable regulations of the Department of Elder Affairs.

(6) Disclosure in Connection with Disabled Persons Protective Services Investigations.

(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(6)(b), if the communication, information or record in question was made, acquired by, or revealed to, that social worker while the social worker was conducting an investigation of alleged abuse of a disabled person pursuant to M.G.L. c. 19C, § 4(b), 4(c), or (5).

22.04: continued

(b) In any situation in which disclosure of client communications, information or records without the prior written consent of the client is authorized by 258 CMR 22.04(6)(a), the social worker shall disclose such communications, information or records only to the extent that disclosure is reasonably necessary to carry out his or her obligations under M.G.L. c. 19C or is otherwise authorized by the applicable regulations of the Disabled Persons Protection Commission.

(7) Disclosure In Connection with Certain Child Custody or Protection Proceedings.

(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(7)(b), if:

1. The disclosure is made for the purpose of initiating, or giving testimony in connection with, probate court proceedings for placement of a child in foster care pursuant to M.G.L. c. 119, § 23(C);

2. The disclosure is made for the purpose of initiating, or giving testimony in connection with, juvenile court proceedings regarding protective custody and care for children pursuant to M.G.L. c. 119, § 24; or

3. The disclosure is made for the purpose of initiating, or giving testimony in connection with, court proceedings to dispense with parental consent to adoption pursuant to M.G.L. c. 210, § 3.

(b) In any situation in which disclosure of client communications, information or records without the prior written consent of the client is authorized by 258 CMR 22.04(7)(a), the social worker may disclose such client communications, information or records only if, and only to the extent that:

1. Disclosure of the communication, information or record in question is reasonably necessary to initiate, or give complete and accurate testimony in, the court proceeding; or

2. Disclosure of the communication, information or record in question has been ordered by a court of competent jurisdiction.

(8) Disclosure for Purposes of Collection of Payment for Services Rendered.

(a) A social worker may disclose client communications, information or records without the prior written consent of the client, to the extent authorized by 258 CMR 22.04(8)(b), if the disclosure is made solely for the purpose of collecting amounts owed to that social worker by that client for professional services rendered by that social worker or by the social worker's agents or employees.

(b) In any situation in which disclosure of client communications, information or records without the prior written consent of the client is authorized by 258 CMR 22.04(8)(a), such disclosure shall be limited to:

1. A description of the nature of the services provided to the client for which amounts are owed;

2. The dates on which such services were provided; and

3. The amounts owed to the social worker by the client for such services and any other related financial information.

If the client in question has made substantive assertions about the competence of the social worker or the quality of the services provided, the social worker may also disclose any and all information which is reasonably necessary to refute such claims.

(9) Disclosure to Third Party Payors.

(a) A social worker may disclose client communications, information or records to an insurance company, nonprofit hospital service corporation, medical service corporation, or health maintenance organization, without the prior written consent of the client, if:

1. The communications, information or records being disclosed relate to the diagnosis, treatment or other services provided to a client for which insurance coverage, benefits or reimbursement has been claimed, even if the client is a minor or is incompetent;

2. The insurance policy or certificate under which the claim for coverage, benefits or reimbursement is made authorizes the corporation to access the records in question for this purpose; and

3. The communications, information or records being disclosed are limited to that reasonably necessary for:

22.04: continued

a. determining eligibility for, or entitlement to, such coverage, benefits or reimbursement;
b. administering or providing benefits for expenses arising from outpatient diagnosis and/or treatment of that client's mental, emotional or behavioral disorders, conditions or addictions; or
c. applying or implementing benefits coordination, benefits management, subrogation, workers' compensation, peer review or utilization review procedures in good faith.

(b) Whenever a client's clinical treatment record, or a portion of that record is made available to an insurance company, nonprofit hospital service organization or medical service organization pursuant to 258 CMR 22.04(9)(a), the social worker shall inform the client of the nature of the information contained in that clinical treatment record which is being or will be disclosed to the insurance company, nonprofit hospital service corporation, medical service corporation or health maintenance organization in question.

(10) Parental Access to Clinical Treatment Records of Minor Clients.

(a) Except as provided in 258 CMR 22.03(2)(b)2. or 22.04(10)(b), a social worker shall, upon the request of a parent or legal guardian of a minor client or prospective minor client, provide a copy of that minor client's clinical treatment record to that parent or legal guardian. The social worker may charge a reasonable fee, not to exceed the actual costs of reproducing that clinical treatment record, for this service.

(b) If a parent or legal guardian of a minor client or prospective minor client requests client communications, information or records pertaining to that minor client or prospective minor client which are protected by 258 CMR 22.03(1) from a social worker, and the minor client or prospective minor client expressly objects to disclosure of those communications, information or records to that parent or legal guardian, the social worker shall:

1. Provide the requesting parent or legal guardian with a treatment summary, as defined in 258 CMR 8.05, regarding the services provided to that minor client or prospective minor client, instead of the communications, information or records actually requested, unless the social worker determines, in the reasonable exercise of his or her professional judgment, that disclosure of even a treatment summary would result in identifiable physical or emotional harm to that minor client or prospective minor client.

2. If the social worker determines, in the reasonable exercise of his or her professional judgment, that disclosure of even a treatment summary, as defined in 258 CMR 8.05, to that parent or legal guardian would result in identifiable physical or emotional harm to that minor client or prospective minor client, the social worker may decline to provide any of the communications, information or records requested by that parent or legal guardian which pertain to that minor client or prospective minor client until he or she is ordered by a court of competent jurisdiction to do so.

22.05: Client's Right to Prevent Disclosure of Communications In Certain Proceedings

A social worker shall not disclose or testify about any client communications or information which relate to the diagnosis or treatment of the client's mental, emotional or behavioral disorder, condition or addiction in any judicial, legislative or administrative proceeding without the valid written consent of that client, unless such disclosure or testimony is required or authorized by M.G.L. c. 112, § 135B or is ordered by a court of competent jurisdiction.

22.06: Obligation to Inform Clients of Confidentiality Rights and Limitations

A social worker shall inform a client of the client's confidentiality rights and the limitations and exceptions to such rights, as set forth in 258 CMR 22.03 through 258 CMR 22.05, no later than the end of the first client encounter or professional consultation with that client, unless sound professional practice dictates otherwise. The social worker shall document the client's receipt of such information, in writing, in the client's clinical treatment record required by 258 CMR 22.02. Where the client is not informed of these confidentiality rights and the limitations and exceptions to those rights at the first client encounter or professional consultation, the social worker shall also document the reasons for the delay in the provision of such information in the client's clinical treatment record.

REGULATORY AUTHORITY

258 CMR 22.00: M.G.L. c. 13, § 84; c. 112, §§ 135A, 135B.