

# 107 CMR: MASSACHUSETTS REHABILITATION COMMISSION

## 107 CMR 2.00: ACCESS TO CLIENT AND APPLICANT RECORDS

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### 2.01: Scope and Purpose

107 CMR 2.00 governs policies and procedures relating to the access to clients' and applicants' records at the Massachusetts Rehabilitation Commission. 107 CMR 2.00 is designed to protect the confidentiality of individuals records as well as to provide guidelines for the proper access by qualified parties to those records.

### 2.02: General Provisions

- (1) All records and information concerning clients and applicants of the Commission shall be for the use of the Commission in the discharge of its duties. Records and information concerning clients and applicants of the Commission shall not be open to the public, notwithstanding the provisions of the Massachusetts Freedom of Information Act, (M.G.L. c. 4, § 7, paragraph 26; M.G.L. c. 66, § 10) or any other provision of law.
- (2) The Commission may publish information concerning applicants and clients of the Commission in aggregate statistical or such other form that does not disclose the identity of the persons involved and could not reasonably be used to identify them.

### 2.03: Records Access by Non-Applicant and Non-Client Parties

- (1) Upon receipt of the written consent of a client or applicant, records and information concerning that individual may be provided to: persons or departments, divisions or subdivisions of the Commonwealth directly concerned in the vocational rehabilitation of the client or applicant; parties to interagency agreements; other persons or organizations directly concerned with the vocational rehabilitation of the client or applicant; an attorney, lay advocate or other person who has been duly authorized by the client or applicant to act on his or her behalf.
- (2) In the event of a medical or psychiatric emergency affecting a client or applicant, the Commission may release records and information concerning that individual to treating physicians without prior written consent, so long as he/she is notified of the release of information upon termination of the emergency.
- (3) If a client or applicant poses an immediate threat to his or her own safety or the safety of others, the Commission may release to law enforcement personnel and involved individuals, including but not limited to therapists, family members, and persons at risk, records and information concerning that individual without prior written consent, so long as the individual is notified of the release of information

upon termination of the possible danger.

2.03: continued

(4) In response to official investigations in connection with law enforcement concerning crime, fraud, or abuse, the Commission shall release records and information concerning a client or applicant to duly authorized officials, except where expressly prohibited by federal or state law or regulations.

2.04: Written Consent Procedure

(1) Upon application for vocational rehabilitation services, each individual shall be informed about the Commission's need to collect personal information and the policies governing its use, including: the identification of the authority under which the information is collected; an explanation of the purposes for which the Commission intends to use or release the information; and an explanation of whether the provision of such information or consent to its release is mandatory or voluntary and the effects of not providing or consenting to such release; a list of those persons or organizations from whom the Commission may seek personal information.

(2) Each individual shall also be informed that certain persons and organizations may seek access to the individual's record pursuant to 107 CMR 2.03.

(3) The written consent shall be reviewed annually.

2.05: Records Request Procedures for Parties Other than Clients or Applicants

(1) All requests for records or information by parties other than clients or applicants shall be made in writing to the appropriate area office director or designee.

(2) All requests shall specify the nature of the information being requested and the purpose or purposes for which such information is to be used.

(3) Upon receipt of a request for records by another party, the area office director or designee shall determine whether or not the individual seeking or receiving services has provided informed written consent to disclose the records to the requesting party.

(a) If consent has not been obtained, the request shall be denied with an explanation, until such time as consent is obtained.

(b) If such consent has been obtained, within 20 days after receipt of the request, the requested information or records shall be provided to the requesting party; or

(c) In each such case, the area office director shall comply with the requirements concerning audit trails specified in 107 CMR 2.14 *et seq.*

(4) Only such information or records as are necessary in order to provide rehabilitation services to specific clients or applicants may be provided hereunder unless a subpoena has been issued in compliance with 107 CMR 2.11 and 2.12.

2.06: Records Access by Clients and Applicants

An individual or an individual's representative seeking or receiving services shall be granted access to all or part of that individual's records. However, if in the opinion of the area office director the records contain medical, psychological or other information which the director believes may be harmful to the requesting individual, it shall be provided through the individual's representative, a physician or a licensed or certified psychologist as well as the Commission's consultant.

2.07: Records Request Procedure for Clients and Applicants

(1) An individual seeking or receiving services whom is seeking access to his/her own records shall request access from the appropriate area office director or designee. Such requests shall specify in writing the parts of the record for which access is requested and the reason or reasons for which access is requested. An authorized representative seeking to obtain copies of records on behalf of a client or applicant must follow the same procedures.

2.07: continued

- (2) Within ten days of receipt of a records access request by a client or applicant, or his representative, the requesting party shall be notified in writing that:
- (a) The request has been granted. In each such case, the notice shall indicate the date, time, place and, as appropriate, the conditions under which access will be provided. Such access shall be provided within 20 days of the receipt of the request; or
  - (b) The request has been denied. In each such case, the notice shall specify the reason or reasons for the denial and shall inform the requesting party of his right to appeal the decision pursuant to 107 CMR 2.10; or
  - (c) The request has been granted in part and denied in part. In such cases the notice shall specify the part or parts of the record to which access has been granted, the date, time, place and, as appropriate, the circumstances under which access will be provided. The notice shall also specify the reason or reasons for denial of that portion of the request which has been denied and shall inform the requesting party of his right to appeal the denial pursuant to 107 CMR 2.10.
- (3) If access to the record is provided to a client or applicant or authorized representative pursuant to this chapter, the client, applicant or authorized representative shall be permitted to review the record at a designated office of the Commission; and make written notes during such review; and purchase photocopies of documents contained in such record.

2.08: Fees for Photocopying

- (1) Except as provided in 107 CMR 2.08(2), the Commission shall charge a fee of 10¢ per page for photocopying of records.
- (2) Any fee due under 107 CMR 2.08 shall be paid in advance of the receipt of photocopies by check or money order made payable to the Commonwealth of Massachusetts and delivered to the appropriate area office director, review officer, hearing officer or their designees.

2.09: Right to Appeal Records Access Denial

A client or applicant who wishes to challenge a denial of his request for access may appeal such denial to the Commissioner or his designee. Such appeal shall be filed in writing within 30 days of receipt of notification of denial and shall specify the part or parts of the record for which access was sought, the reason or reasons for which access was requested, and whether or not the client or applicant wishes to request an adjudicatory hearing.

2.10: Appeal Procedure

- (1) The Commissioner or his designee hearing an appeal filed pursuant to 107 CMR 2.09 shall, at the request of the client or applicant or his authorized representative, convene an adjudicatory hearing pursuant to M.G.L. c. 30A within 20 days of the filing of such an appeal and shall render a decision within 30 days of the conclusion of such a hearing. If the client or applicant does not request an adjudicatory hearing, the Commissioner or his designee shall render a decision within 20 days of the date of filing the appeal.
- (2) Within seven days of rendering his decision, the Commissioner or his designee shall send written notice to the client or applicant and to the Commission employee responsible for the initial determination regarding the nature of the decision and the reasons therefore. If the decision is adverse to the client or applicant, the notification shall include, in terms comprehensible to the client or applicant, an explanation of his right of further review by the Executive Office of Health and Human Services pursuant to 101 CMR 8.09. The notice shall inform the client or applicant that an appeal to the Executive Office of Health and Human Services must be filed in writing within 30 days of the client's or applicant's receipt of notification of a denial.

2.11: Client or Applicant Notification of Subpoena

No records of a client or applicant shall be made available in response to a demand for such data made by means of compulsory legal process unless the client or applicant whose records are the subject of such compulsory legal process has been notified of such demand so that he or she may seek to have the process dismissed or withdrawn.

2.12: Procedures for Accepting and Responding to Subpoenas

To fulfill the requirements of 107 CMR 2.11, the following procedures shall be observed by all Commission personnel:

- (1) Service of subpoena which names an individual state officer or employee will be accepted on behalf of the officer or employee by the area director, or designee; the subpoena must be served at least three business days prior to and not including the day in which the attendance of said officer or employee is demanded.
- (2) The area director or designee may notify the client or applicant of the subpoena for his/her records.
- (3) The area director or designee shall notify the legal office of the Commission of receipt of the subpoena. The legal office shall, as appropriate proceed to notify the individual and the deponent of the Commission's requirement that the individual consent to the release of her or his records or that a court order be obtained before the Commission can comply with the subpoena.

2.13: Proceedings in Court

If the subpoena has been properly served, the area director or the person named in the subpoena must appear in court or at the hearing with the records described in the subpoena. The person should explain to the judge that M.G.L. c. 66A, §§ 2(c) and (k) prohibit the release of client or applicant information without the consent of the client or applicant. If the judge rules that such information must be produced, the Commission employee should attempt to make arrangements to keep the case record while turning over only photocopies thereof or, if this is not acceptable to the judge, he should retain a photocopy of any document or documents removed from the case record.

2.14: Maintenance of Audit Trail

The Commission shall maintain an audit trail on each client or applicant record. The audit trail is the most feasibly precise record of persons and organizations having access to and uses made of client and applicant records.

2.15: Requirements for Audit Trail

The following requirements for maintenance of audit trails shall be observed:

- (1) Where such records are held, in whole or in part in computer or in electronically controlled or accessible files, the audit trail shall include a complete and accurate record of every disclosure of client or applicant records, including: the date of access; and the name of the individual or organization to whom access is granted; and the purpose of the access; and the authorization for granting access.
- (2) Where such records are held in manual files, the person granting access to records or information shall, to the maximum extent feasible, make a notation each time access to a record or information is granted. Such notation shall include the date of access; the name of the individual or organization to whom access is granted; the purpose of the access; and the authorization for granting access.
- (3) 107 CMR 2.15 shall not apply to use of or access to client or applicant records by employees of the Commission acting within the scope of their official duties.

2.16: Use of and Access to Audit Trail

The audit trail shall be deemed part of the records held by the Commission and shall be accessible in accordance with 107 CMR 2.00.

2.17: Security and Disposal of Client Records

The Commission shall maintain secure records storage facilities and a regular schedule for disposal of individual records after case closure. Individual's records shall be destroyed three years after case closure or the date of the last Commission activity. All individuals are notified of the destruction schedule.

REGULATORY AUTHORITY

107 CMR 2.00: M.G.L. c. 6, §§ 75 and 84 as amended by St. 1980, c. 513; M.G.L. c. 66A; 34 CFR 361.49.

NON-TEXT PAGE