

**Department of Mental Health
Routine Disclosures of PHI**

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
See Chapter 17 regarding disclosures of Patient Identifying Information in compliance with 42 CFR Part 2.)

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Chart # 1 – DMH Service Authorization - Eligibility

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Authorization for services for community clients – requesting information from third parties	Other (non-DMH) health care providers; schools and others. Family or friends Employer; others	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization	

Chart # 2 – Services and Treatment – Planning, Provision (Disclosures for treatment are authorized by: M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)1; 104 CMR 28.09(4)(d)1; and 45 CFR § 164.506, together.

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Application for benefits/entitlements other than health care insurance payors	Benefits/entitlements agency (including Social Security Administration, DCF, MRC, DTA, etc. for non-payor benefits and entitlements)	Yes – Authorization by individual or LAR ³ , if any	As authorized/needed. Name, date of birth, Social Security number, and/or other required information.	

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VERIFICATION

Prior to making any permitted disclosure of Protected Health Information (PHI), DMH must (1) verify the identity of the party to whom the PHI is to be disclosed and (2) confirm that the party has the proper authority to receive the PHI. See Chapter 10, Verification of the Identity and Authority of the Requester. *If there is any doubt about the identity of the receiver and/or the authority to disclose the PHI, the PHI should not be disclosed and the DMH Privacy Officer or Legal Office should be contacted for assistance.*

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DMH Community service providers: Ongoing communications (to and from) DMH contracted vendors regarding clients being served by a vendor	DMH contracted vendors (See Special Requirements)	No – Treatment; Health Care Operations/Coordination of Care Also, all DMH contacted vendors are Business Associates of DMH	Information as needed.	If not health care providers, need to confirm the vendor is a Business Associate (BA) of DMH. Note: ACCS, PACT, Respite, Clubhouse, MRC and most kids program vendors are BAs of DMH.
Employment facilitation (including both job applications and on-the-job situations)	Employer	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Enrollment in services for community clients	DMH Community Service providers and other health care providers.	No – Treatment	Information as needed.	
	Family or friends	Yes - Authorization or verbal consent by individual or LAR ³ , if any	As specified in the authorization or consent.	
	Employer; others	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	

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Family and friends visiting or inquiring about a DMH inpatient or residential client or accompanying a client to a community appointment	Family or friends	Yes - Authorization or verbal consent by individual or LAR ³ , if any	A client's/patient's presence and/or status in a program or facility may only be disclosed with a client's/patient's explicit consent. Visitors may only be allowed access to a patient upon approval by the patient. Clinical information may be conveyed to the family member or friend only with the client/patient's explicit consent.	
Financial Services: Facilitate the application for and provision of financial services to patients/clients	Financial services providers (e.g., banks, credit card providers, loan providers, collection agencies)	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Funeral arrangements for clients/patients During life	Funeral Director	Yes - Authorization by individual or LAR ³ , if any.	As specified in the authorization.	
Funeral arrangements for clients/patients In the case of a deceased individual	Funeral Directors	No – Permitted by law M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)6; 104 CMR 28.09(4)(d)6; 45 CFR §164.512(g)(2)	Information as needed. Identifying information, family and obituary information, and other information needed to arrange burial	

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Housing: Facilitate obtaining, maintaining, and paying for client/patient housing	Housing providers, utility companies, and companies or persons who provide goods or services to residences	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Licenses application: Facilitate obtaining and maintaining licenses (e.g., driver's license; professional license)	License agency (including Registry of Motor Vehicles, Board of Registration etc.)	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization. Name, date of birth, Social Security number, and/or other required information.	
Medication coordination	Communication between a Client's residential program and day program. (See Special Requirements)	No – Treatment; Health Care Operations/Coordination of Care	Information as needed. Copy of approved medication form as specified in regulation. (See 104 CMR 28.06(11).)	Disclosures are limited to DMH operated or contracted programs.
Non-DMH community resources and social supports- referral to	Other community service providers (Non-DMH contracted vendors) Service providers; employers; Veterans Administration	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Non-DMH volunteer activities facilitation (both volunteer applications and on the volunteer job situations)	Volunteer coordinator for volunteer site	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	

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Parole/Probation: Facilitate parole/probation application and facilitate parole/probation monitoring	Parole Board or Probation Officers	No – If required by a court order. Yes – If no court order. Authorization by individual or LAR ³ , if any.	As specified in the court order, if any, or authorization.	Inquire if parole/probation has authorization from client.
Pharmacy and prescribed (reimbursable) medical goods/supplies: Facilitate ordering and obtaining medications and medical goods	Pharmacies and medical goods providers (need prescriptions for)	No – Treatment	Information as needed.	
Service planning (community) and treatment (hospital) planning	DMH Community Service providers and other health care providers.	No – Treatment; Health Care Operations/Coordination of Care	Information as needed.	
	Family and friends	Yes - Authorization or verbal consent by individual or LAR ³ , if any	As specified in the authorization or consent.	
	Employers; others	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Service provision: Referral to, provision of outpatient and inpatient health care providers	Health care providers	No – Treatment	Information as needed.	

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Transfer: Facility to facility (Including interstate compact transfers)	Facility	No – Treatment	Information as needed. Entire record if needed by the other facility.	
Transfer: Interstate transfer of psychiatric inpatient	Interstate compact coordinator of receiving state and/or receiving out of state facility.	No – Treatment; Operations	Information as needed. Entire record if needed by the other state.	
Treatment and assessments, routine	Health care providers	No - Treatment	Information as needed.	
	Family and friends	Yes - Authorization or verbal consent by individual or LAR ³ , if any	As specified in the authorization or consent.	
	Employers; others	Yes - Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Treatment and discharge planning	Medical or psychiatric facility caring for the patient	No -Treatment	Information as needed. As needed by a licensed health care provider of the facility.	
Treatment, emergency: Provide patient care in a life-threatening emergency situation	Emergency health care providers	No - Treatment	Information as needed. Information which is relevant to the treatment of the emergency situation.	
Treatment, emergency: Psychiatric hospitalization / evaluation	Hospitals or emergency service programs	No - Treatment	Information as needed.	

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Chart # 3 – Forensic Transition Team Services

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Forensic Transition Team: Assessment and service planning for mental health services in transition to/from places of detention	Places of detention (prison, jail, courts, and DYS facilities) Disclosing to administrators.	Yes – Written Authorization by individual or LAR ³ , if any	As specified in the authorization.	
Forensic Transition Team: Assessment and service planning for mental health services in transition to/from places of detention	Bridgewater State Hospital Licensed health care providers within detention facilities. Disclosing to Providers.	No – Treatment M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)1; 104 CMR 28.09(4)(d)1; 45 CFR § 164.502(a)(1)(ii)	Information as needed.	

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Chart # 4 - Payment and Billing - (Disclosures for payment are authorized by: M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)1; 104 CMR 28.09(4)(d)1; and 45 CFR § 164.506, together.)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Allow contracted licensed clinicians to bill for services for contract offset	Vendors' billing office or agents	No – Payment	Information as needed. Patient/client demographic, facility, diagnosis, physician, insurance, services (types and dates), charges and any other information needed by the payor for payment.	Reference Comp/Psych contracts
Application for and maintenance of payor benefits	Division of Medical Assistance (MassHealth); CMS; other health insurance providers	No – Payment	Information as needed.	
Billing Patient/Client/LAR³ for services	Patient/client; Legally Authorized Representative; guarantor of payment; or other Fee Payer as defined in 104 CMR 34.04(3)	No - Payment See also G.L. c.123, §32; 104 CMR 30.04; DMH Policy 98-1	Information as needed. Name, facility, admission date, services and charges, as needed.	
Billing third party payors for services provided	MassHealth; CMS; other health insurance providers	No – Payment	Information as needed. Patient/client demographic, facility, diagnosis, physician, insurance, services (types and dates), charges and any other information needed by payor for payment.	Use payor required forms: UB92 (OTP, Medicare, Medicaid); HCFA 1500 (OTP, Medicare B); Claim 9 (Medicaid); or other required forms.

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Collect outstanding balances	Attorney General, Office of the Comptroller, and/or collection agencies (See Special Requirements)	No – Payment G.L. c.123, §32 (authorization to bill, Attorney General provides legal representation of DMH.)	Information as needed. Name, other identifying information, facility, admission date, services (types and dates) and charges	Information that can be disclosed to collection agencies is limited to: (A) Name and address; (B) Date of birth; (C) Social security number; (D) Payment history; (E) Account number; and (F) Name and address of the health care provider and/or health plan.
Determination of coverage for services	MassHealth; CMS; other health insurance providers	No – Payment	Information as needed. Name, other identifying information, and other information, as needed.	
DMH Community service providers: Ongoing communications (to and from) DMH contracted vendors regarding clients being served by a vendor	DMH contracted vendors	No – Payment Also, all DMH contacted vendors are Business Associates of DMH	Information as needed.	
Pharmacy and prescribed (reimbursable) medical goods/supplies reimbursement	Pharmacies and medical goods providers (need prescriptions for)	No - Payment	Information as needed.	

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Revenue refunds processing	MMARS system	No – Payment Use of MMARS - Required by law. M.G.L. c.7A, §7	Information as needed.	
Service provision: Reimbursement for outpatient and inpatient health care providers	Health care providers	No – Payment	Information as needed.	
Utilization Review	CMS	No – Payment	Information as needed.	

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Chart # 5 - DMH Operations - (Disclosures for operations are authorized by: M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)1; 104 CMR 28.09(4)(d)1; and 45 CFR § 164.506, together.)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Accreditation activities	Joint Commission on Accreditation of Healthcare Operations; other accrediting bodies	No – Health Care Operations	Information as needed. May view patient records, may view and receive reports containing PHI to the extent necessary to ensure that applicable standards are being met.	Need to confirm the vendor is a Business Associate (BA) of DMH.
DMH Community service providers: Ongoing communications (to and from) DMH contracted vendors regarding clients being served by a vendor	DMH contracted vendors	No – Health Care Operations	Information as needed.	If not health care providers, need to confirm the vendor is a Business Associate (BA) of DMH. Note: ACCS, PACT, Respite, Clubhouse, MRC and most children/youth program vendors are BAs of DMH.
Quality assurance	Individuals authorized by DMH to monitor quality of services to clients	No – Health Care Operations	Information as needed. May view and/or receive copies as requested	Need to confirm the vendor is a Business Associate (BA) of DMH.

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Chart # 6 – Oversight of DMH¹ (Disclosures required by law, that are not preempted by M.G.L. c. 123, § 36, are authorized by 104 CMR 27.16(9)(e); 104 CMR 28.09(4)(e) and 45 CFR §164.512(a).)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Audit of DMH	State Auditor	No – Required by law M.G.L. c. 11, §12 (DMH Records); Executive Order 195 (vendor records)	A specified by statute and notice of audit letter.	Consult with Legal Office.
HIPAA compliance investigation/audit of DMH	U.S. Secretary of Health and Human Services	No – Required by Law 45 CFR 164.502(2)(ii)	As specified by the Secretary or designee	
Investigation (Use) by DMH: Conduct investigation or fact finding	Witnesses	No – Required by Law 104 CMR 32.06 See also M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)3; 104 CMR 28.09(4)(d)3; 45 CFR 164.512(d)(4)	Client/patient identity information and information about the incident or condition under investigation, but limited to the minimum amount of disclosure of PHI required to conduct the investigation or fact finding.	

¹ Use and disclosure must comply with and is limited to the relevant requirements of specified law.

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Investigation (Use) by DMH: Make mandatory reports and/or coordinate investigation with other agencies, if applicable	Other investigative agencies	No – Required by Law 104 CMR 32.04(6); 104 CMR 32.08; 104 CMR 32.09 See also M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)3; 104 CMR 28.09(4)(d)3; 45 CFR 164.512(d)(4)	See Chart #4: Mandatory Reports and Investigations for specific information to be disclosed to other agencies. Client/patient identity information and information about the incident or condition under investigation, but limited to the minimum amount of disclosure of PHI required to coordinate the investigation with other agencies.	
Investigation (Use) by DMH: Notify parties of the outcome of an investigation; provide redacted copy of investigation report	Parties to a DMH complaint	No – Required by Law 104 CMR 32.08(2); written request required for Investigation Reports See also M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)3; 104 CMR 28.09(4)(d)3; 45 CFR 164.512(d)(4)	Decision letter should not contain PHI (patient names; initials; medical information), names of private individuals or evaluative information. Investigation Report redacted to remove non-public information	Refer requests for Investigation Reports to the Office of Investigations

¹ When the authority is a document, a copy of the authorizing document must be in the DMH records for the disclosure to occur.

² Disclosures may be verbal or written unless limited by the authority to disclose.

³ When a client has a LAR with authority to make disclosure decisions, only the LAR can make the decision. The client cannot. See LAR in Chart # 7, Court Proceedings, Legal & Fiduciary Representation, Client Advocacy, for additional information. The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.

VERIFICATION

Prior to making any permitted disclosure of Protected Health Information (PHI), DMH must (1) verify the identity of the party to whom the PHI is to be disclosed and (2) confirm that the party has the proper authority to receive the PHI. See Chapter 10, Verification of the Identity and Authority of the Requester. *If there is any doubt about the identity of the receiver and/or the authority to disclose the PHI, the PHI should not be disclosed and the DMH Privacy Officer or Legal Office should be contacted for assistance.*

**Department of Mental Health
Routine Disclosures of PHI**

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
See Chapter 17 regarding disclosures of Patient Identifying Information in compliance with 42 CFR Part 2.)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Investigation (Use) by DMH: Request by witness or other person for portion of investigation file where s/he is mentioned	Individuals (other than parties to complaint) mentioned in a complaint file (i.e. witness)	No – Required by Law 104 CMR 32.08(2)(b)1; written request required See also M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)3; 104 CMR 28.09(4)(d)3; 45 CFR 164.512(d)(4)	Limited to portion of investigation record where person is mentioned; redacted to remove other non-public information, as applicable	Refer requests to the Office of Investigations
Survey of DMH	CMS (DPH acting as agent for CMS)	No – Required by Law 42 CFR 488 See also 104 CMR 27.16(9)(f); 104 CMR 28.09(4)(f); 45 CFR 164.512(d)	As specified in Conditions of Participation (See 42 CFR Subchapter G and applicable section(s) of State Operations Manuals.)	

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**Department of Mental Health
Routine Disclosures of PHI**

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Chart # 7 - Court Proceedings, Legal & Fiduciary Representation, Client Advocacy

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Administer deceased patient's/client's estate	Nearest relative; Probate Court, if DMH files for voluntary administration	No – Required by law M.G.L. c.123, § 27 (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	Name, address, facility, date of death, known heirs, estate value and any other information required by the Probate Court.	See also Personal Representative of Estate in this Chart 7, below.
Commitment hearings initiated by DMH	Court	No – Permitted by Law M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)2; 104 CMR 28.09(4)(d)2; 45 CFR §164.512(j) M.G.L. c.123, §§ 7(a), 12(e), 15(e),16(b), and 18(c) Commonwealth v. Lamb, 365 Mass. 265 (1974)	Information as needed. Petitions, affidavits, and related documents; testimony required by Court.	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements. See M.G.L. c.233 § 20B; M.G.L. c. 112, §129A; M.G.L. c. 112, §135A; and M.G.L. c. 112, §135B.

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² Disclosures may be verbal or written unless limited by the authority to disclose.

³ When a client has a LAR with authority to make disclosure decisions, only the LAR can make the decision. The client cannot. See LAR in Chart # 7, Court Proceedings, Legal & Fiduciary Representation, Client Advocacy, for additional information. The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Court Order Response *Subpoena alone - No disclosure (See Special Requirements)	As specified in Court Order	No – Required by law Court Order that meets the DMH standard for a “Proper Judicial Order” and, if applicable, 42 CFR Part 2. (See Special Requirements.)	The minimal amount of PHI specified in the court order.	A “proper judicial order” is an order signed by a judge of a court (not an administrative tribunal) or the clerk or assistant clerk of a court acting upon the instruction of a judge. *A subpoena is not a proper judicial order. Individual or LAR ³ should be notified that PHI is being released pursuant to a Court Order; however, order should be honored even when notification cannot take place. PHI may be disclosed in response to a subpoena only when the Individual or LAR ³ , if applicable, provides an authorization. In these circumstances, the authorization rather than the subpoena control the amount of PHI to be disclosed. An Order for the disclosure of 42 CFR Part 2 information must be issued as required by 42 CFR Part 2. Consult the Legal Department.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Defense of litigation	Attorney General	<p>No – Required / Permitted by law</p> <p>M.G.L. c. 12, § 3 (Required to represent DMH)</p> <p>M.G.L. c. 12, § 3E (Permitted to represent DMH officer or employee)</p> <p>For litigation related to covered functions, use/disclosure is permitted as Health Care Operations. 45 CFR 164.506</p> <p>See also M.G. L. c. 258 (Claims and Indemnity Procedures)</p>	Information relevant to litigation	Refer to Legal Central Office

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**Department of Mental Health
Routine Disclosures of PHI**

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Filing for guardianship and hearing	Court, patient's attorney; guardian/monitor, if any; next of kin (see applicable laws); and as required by laws and/or the Court	No – Required/permitted by law M.G.L. c.190B § 5-304 M.G.L. c.123, § 25 – (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative) M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)2; 104 CMR 28.09(4)(d)2; 45 CFR §164.512(j) Commonwealth v. Lamb, 365 Mass. 265 (1974)	Petitions, affidavits, medical certificates and related documents; testimony at hearings; notices as required by law	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements. See M.G.L. c.190B § 5-306A(e). See M.G.L. c.233 § 20B; M.G.L. c. 112, §129A; M.G.L. c. 112, §135A;and M.G.L. c. 112, §135B.
Forensic patients: Commitment hearings and §8B treatment order hearings	District Attorney	No – Required by law Sharris v. Commonwealth, 480 Mass. 586 (1918) See also, MA Crim. Pro. Rule 32: Filing and service of papers. Authority to petition in criminal matters – M.G.L. c.123, §§7&8, 8B, 15(e),16(b), 16(c) and 18(a)	Notice of filing of petition	Sharris requires continued notice to DA in criminal commitments converted to civil commitments, so long as DA remains involved in criminal proceedings.

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² Disclosures may be verbal or written unless limited by the authority to disclose.

³ When a client has a LAR with authority to make disclosure decisions, only the LAR can make the decision. The client cannot. See LAR in Chart # 7, Court Proceedings, Legal & Fiduciary Representation, Client Advocacy, for additional information. The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.

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Prior to making any permitted disclosure of Protected Health Information (PHI), DMH must (1) verify the identity of the party to whom the PHI is to be disclosed and (2) confirm that the party has the proper authority to receive the PHI. See Chapter 10, Verification of the Identity and Authority of the Requester. *If there is any doubt about the identity of the receiver and/or the authority to disclose the PHI, the PHI should not be disclosed and the DMH Privacy Officer or Legal Office should be contacted for assistance.*

**Department of Mental Health
Routine Disclosures of PHI**

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Forensic patients: forensic evaluations	Court; place of detention for M.G.L. c.123, §18 evaluations	No – Required by law M.G.L. c.123, §§15, 16, 17 and 18. See M.G.L. c.123, §18(a) regarding place of detention.	As required by the evaluation order	
Investigation by law enforcement – of client	Law Enforcement Officials	Yes - Court order or authorization by individual or LAR ³ , if any	As specified in the authority	
Legal representation - of client	Attorney, Representing a Client/Patient	No – Required by law M.G.L. c.123, § 36 Court appointment, letter acknowledging representation of client signed by Client/LAR ³ /Attorney or an Authorization	Information as requested or authorized	If attorney represents a LAR ³ , documentation of LAR status required if not known (See LAR, below.)
Legal representation – not of client	Attorney (not representing individual or LAR ³)	Yes - Authorization by individual or LAR ³ or court order	As specified in the authorization or court order	

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³ When a client has a LAR with authority to make disclosure decisions, only the LAR can make the decision. The client cannot. See LAR in Chart # 7, Court Proceedings, Legal & Fiduciary Representation, Client Advocacy, for additional information. The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.

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Department of Mental Health Routine Disclosures of PHI

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
See Chapter 17 regarding disclosures of Patient Identifying Information in compliance with 42 CFR Part 2.)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Legally Authorized Representative (LAR) duties* (The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.)	Legally Authorized Representative – a person authorized under law to make health care decisions for an individual (See Special Requirements. Also see definition in Glossary.) (Not to be confused with Personal Representative of Estate and Representative Payee, defined below in this Chart.)	No – Required by law 45 CFR 164.504(g)(1) Document of appointment as LAR ³ **, except for parents; proof of relationship for parents; Access Request Form required.	As specified in the Access Request Form, with certain exceptions*	The authority of the LAR terminates upon the death of the individual. * Disclosure to LARs is more fully covered in the Chapter on Access in this Privacy Handbook. ** Appropriate documentation of the individual's incompetence must be in the record. For a Health Care Proxy Agent status to be activated. With limited exceptions, LAR is treated as Individual. (See 45 CFR 164.502(g))
Legislative/Governor's Office: Requests for services, interventions or inquiries regarding specific clients/patients	Legislator; Governor's office	Yes – Authorization of individual or LAR ³ required	As specified in the authorization	
Monitoring medication treatment	Court appointed medication monitor (Rogers monitor)	No – Required by law Court Order/appointment	Relevant documents and verbal information	

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Personal Representative of Estate In the case of a deceased individual, the court may appoint a Personal Representative of the deceased estate.	Personal Representative of Estate – Has access to PHI	No – Required by law Court order or decree appointing fiduciary	As requested, unless restricted by terms of Order of Decree	A fiduciary's authority is limited to the authority granted to such fiduciaries by law, and this authority can be further limited by the particular order or decree appointing the fiduciary. A Voluntary Administrator of Limited Assets of deceased Individual has no access to PHI.
Petition for (Roger's) Order to treat with antipsychotic medications or expansion of Guardianship to include treatment with antipsychotic medications	Court	No – Permitted by Law M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)2; 104 CMR 28.09(4)(d)2; 45 CFR §164.512 (j) M.G.L. c.123, § 8B Commonwealth v. Lamb, 365 Mass. 265 (1974)	Information as needed. Petitions, affidavits, and related documents; testimony required at hearings.	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements. See M.G.L. c.190B § 5-306A(e). See M.G.L. c.233 § 20B; M.G.L. c. 112, §129A; M.G.L. c. 112, §135A;and M.G.L. c. 112, §135B.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Protection and Advocacy	Disability Law Center (DLC)	Yes – If authorized by individual or LAR ³ No – If required by law – See Special Requirements. 42 USC §§ 10805 and 10806; (DLC - P&A) 42 CFR 51.41 (DLC - P&A)	As specified in authorization. Consult with DMH Legal Office, if needed, for clarification.	In some circumstances, advocates have rights to access without authorization. DLC – Written requests for records without client authorization should be reviewed by the Legal Central Office.
Representative Payee	Representative Payee	Yes - Authorization of individual or LAR ³ required	As specified in the authorization or by Social Security Administration.	A representative payee is a person or an organization appointed to receive the Social Security or SSI benefits for individuals who can't manage or direct the management of his or her benefits.
Tort investigation	EOHHS / Attorney General for legal consultation	No – Required / Permitted by law Presentment goes to Executive Officer – Secretary M.G. L. c. 258	Information relevant to tort claim	Refer to Legal Central Office

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**Department of Mental Health
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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Unclaimed patient personal property – Funds Intangible personal property (e.g., cash, checks, stocks, etc.)	Notice to: State Treasurer.	No – Required by law M.G.L. c.123, §26 M.G.L. c. 200A 104 CMR 34.07(8)	Name of patient, facility location, and description of unclaimed property.	
Unclaimed patient personal property – Other Property	Other personal property: Notice to: patient/client and to nearest relative or guardian or conservator or person with whom patient/client last resided. State Treasurer, if applicable.	No – Required by law M.G.L. c.123, §26 M.G.L. c. 200A 104 CMR 34.07(8) (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	Name of patient, facility location, and description of unclaimed property.	30 days notice of sale or disposition of abandoned personal property.

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**Department of Mental Health
Routine Disclosures of PHI**

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Chart # 8 - Mandatory Reports and Investigations² (Disclosures required by law, that are not preempted by M.G.L. c. 123, § 36, are authorized by 104 CMR 27.16(9)(e); 104 CMR 28.09(4)(e) and 45 CFR §164.512(a).)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Abuse of child: Mandated reporting of abuse and/or neglect against (Under age of 18)	Department of Children and Families	No – Required by Law M.G.L. c.119, §§ 21 and 51A Mandated Reporters: Any person paid to care for or work with a child in any public or private facility or home or program funded by the commonwealth; and designated health care professionals. See M.G.L. c.119, § 21. See also 45 CFR §164.512(b)(1)(ii)	Verbal report followed by written report with child's and parent/guardian/caregiver's names and addresses, and the nature and extent of the child's injuries, abuse, maltreatment, or neglect.	

² Use and disclosure must comply with and is limited to the relevant requirements of specified law.

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Abuse of child: DCF investigation of report of abuse or neglect (Under age of 18)	Department of Children and Families	No – Required by Law M.G.L. c.119, §§ 21 and 51B See also 45 CFR §164.512(b)(1)(ii)	Information which a mandated reported believes might aid DSS to determine whether a child has been abused or neglected.	Any person required to make a report pursuant to §51A who has information which he/she believes might aid DCF in determining whether a child has been abused or neglected shall, if requested by the DCF, disclose such information.

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**Department of Mental Health
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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Abuse or disabled person: Mandated reporting of abuse, neglect, patient death, or felony crime against (Ages 18 – 59, inclusive)	Disabled Persons Protection Commission (DPPC)	No – Required by Law M.G.L. c. 19C, §§ 1 and 10 Mandated reporters: Any person employed by a state agency within the executive office of health and human services and designated health care professionals. See M.G.L. c. 19C, § 1. See also 45 CFR §164.512(c)	Verbal/written report as outlined in 118 CMR 3.01-3.05; including: the allegedly abused person's name, address, telephone number, age, gender and disability; programs and services received by the allegedly abused person and any special requirements (e.g., sign language interpreter or wheelchair); brief description of the nature and extent of the alleged abuse including injuries received and actions taken in response to the alleged abuse; name or description of alleged abuser and relationship between alleged abuser and the alleged victim DPPC investigator may view and/or receive copies of records as requested.	If the client/patient does not have an LAR ³ , he or she promptly must be informed of the disclosure except where there is a professional judgment that informing the person would place the person at risk of serious harm. If the client/patient does have an LAR ³ , the LAR promptly must be informed of the disclosure except where there is a professional judgment that informing the LAR would not be in the client/patient's best interests. Such professional judgment determinations must be appropriately documented in the client/patient record.

¹ When the authority is a document, a copy of the authorizing document must be in the DMH records for the disclosure to occur.

² Disclosures may be verbal or written unless limited by the authority to disclose.

³ When a client has a LAR with authority to make disclosure decisions, only the LAR can make the decision. The client cannot. See LAR in Chart # 7, Court Proceedings, Legal & Fiduciary Representation, Client Advocacy, for additional information. The term Personal Representative (PR) may be used elsewhere in the Privacy Handbook.

VERIFICATION

Prior to making any permitted disclosure of Protected Health Information (PHI), DMH must (1) verify the identity of the party to whom the PHI is to be disclosed and (2) confirm that the party has the proper authority to receive the PHI. See Chapter 10, Verification of the Identity and Authority of the Requester. *If there is any doubt about the identity of the receiver and/or the authority to disclose the PHI, the PHI should not be disclosed and the DMH Privacy Officer or Legal Office should be contacted for assistance.*

**Department of Mental Health
Routine Disclosures of PHI**

(These Routine Disclosures of PHI do not apply to the Recovery from Addictions Program.
See Chapter 17 regarding disclosures of Patient Identifying Information in compliance with 42 CFR Part 2.)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Abuse of disabled person: DPPC investigation of abuse, neglect, patient death, or felony crime against (Ages 18 – 59, inclusive)	Disabled Persons Protection Commission (DPPC) or DMH acting on behalf of DPPC	No – Required by Law M.G.L. c. 19C, §§ 1 and 5 See also 45 CFR §164.512(c)	When requested by DPPC - Limited to what is in written request.	When requested by DPPC - Written request for records citing authority under M.G.L. c. 19C, § 5. Communications covered under the psychotherapist–client privilege must be redacted.
Abuse of elderly person: Mandated reporting of abuse against (60 years of age or over)	Executive Office of Elder Affairs, or agency designated by EOEA to receive such reports	No – Required by Law M.G.L. c.19A, § 15 Mandated reporters: Designated health care professionals and others (Any physician, physician assistant, medical intern, nurse, family counselor, social worker, licensed psychologist, registered physical therapist, registered occupational therapist, and osteopath.) See M.G.L. c.19A, § 15(a) See also 45 CFR §164.512(c)	Verbal report followed by written report with name, address, age, nature and extent of abuse, caretaker name, medical treatment received or immediately needed due to the abuse, and other information relevant to the abuse investigation.	If the client/patient does not have an LAR ³ , he/she promptly must be informed of the disclosures except where there is a professional judgement that informing the person would place the person at risk of serious harm. If the client/patient does have an LAR ³ , the LAR promptly must be informed of the disclosure except where there is a professional judgement that informing the LAR would not be in the client's patient's best interests. Such professional judgement determinations must be appropriately documented in the client/patient record.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Abuse of elderly person: EOEa assessment of abuse, neglect, patient death, or felony crime against (60 years of age or over)	See Special Requirements.	M.G.L. c.19A, § 18 (Assessment and evaluation of reports; investigations – by DA; arrangement for protective services)	Assessments include a visit to the residence of the elderly person who is the subject of the report and may include consultations with appropriate service agencies and individuals who have knowledge of the elderly person's situation including the person filing the report.	Consultations do not permit the disclosure of medical record information. Consult with the Office of Investigations and Legal Office if EOEa designates DMH to conduct assessment.

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**Department of Mental Health
Routine Disclosures of PHI**

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Chart # 9 – Other Required Reporting³ (Disclosures required by law, that are not preempted by M.G.L. c. 123, § 36, are authorized by 104 CMR 27.16(9)(e); 104 CMR 28.09(4)(e) and 45 CFR §164.512(a).)

Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
AWA Reporting: AWA status withdrawn	District Attorney of county where facility located; local and state police, next of kin; LAR ³ ; persons at risk (Not to be confused with reporting of missing persons in the community settings.)	No – Required by Law M.G.L. c.123, § 30 104 CMR 27.15 (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	Report that AWA status has been withdrawn (e.g., patient returned to facility or patient discharged)	
AWA Reporting: Patient is AWA	District Attorney of county where facility located; local and state police, next of kin; LAR ³ ; persons at risk (Not to be confused with reporting of missing persons in the community settings.)	No – Required by Law M.G.L. c.123, § 30 104 CMR 27.15 (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	Minimum necessary, but including patient's description, information that would assist in locating the patient, and information about risk or dangerousness. See 104 CMR 27.16	

³ Use and disclosure must comply with and is limited to the relevant requirements of specified law.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
BORIM Reporting: Major incidents and other required periodic reporting	Board of Registration in Medicine (BORIM)	No – Required by Law M.G.L. c.111, § 203 M.G.L. c.112, §§ 5 and 5I 243 CMR 3.00. et seq. (3.07(3)(g); 3.08; 3.11(4))	Report as directed by regulation. Refer requests for additional information to Legal Office. ⁴	
Communicable and other infectious disease reporting	Department of Public Health and/or local Board of Health	No – Permitted by Law M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)5; 104 CMR 28.09(4)(d)5; 45 CFR §164.512(b)(1)(i)	Personal identifiers and relevant medical information as required by DPH regulations	
Deaths, Medicolegal: reports to Medical Examiner, coroner	Medical Examiner	No – Permitted by Law M.G.L. c. 123, § 36; 104 CMR 27.16(9)(d)6; 104 CMR 28.09(4)(d)6; 45 CFR §164.512(g) See also M.G.L. c. 38, § 3 and M.G.L. c. 38, § 4.	All known facts concerning the time, place, manner, and circumstances of the cause of death.	Medical examiner should make written request for medical records.

⁴ BORIM can request licensee name, if not previously reported, and/or information pursuant to subpoena or summons. A court order is required to release medical record information not otherwise required by law.

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**Department of Mental Health
Routine Disclosures of PHI**

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Deaths, violent or unnatural causes at a DMH facility	District Attorney	No – Required by Law M.G.L. c.123, § 28	Name, address, cause of death	Report only if death is from violence or unnatural causes
Felony reports: Notify DA of felony crimes committed on premises, or committed by or upon patients	District Attorney of County where crime occurred	No – Required by Law M.G.L. c.19, § 10	Verbal or written report of information pertaining directly to alleged crime, including patient names and locations. Use form letters where available.	
Firearm identification card/license to carry	Police chiefs or designees, as designees of the Colonel of State Police	No – Required by Law M.G.L. c.140, § 129B(2) M.G.L. c.140, § 131(d) and (e)	Name of facility, date of admission and date of discharge for psychiatric inpatient admissions	Refer all inquiries to the firearms unit in the DMH Office of Investigations.
Forensic patients: Notification of DA and Court regarding intention to discharge or intention to lift court ordered building and grounds restriction	Court with criminal jurisdiction and District Attorney with criminal jurisdiction	No – Required by law M.G.L. c.123, § 16(e)	Intention to discharge or not seek recommitment, and current competence to stand trial, if applicable, or intention to lift or modify buildings and grounds restriction	
Forensic patients: Notification to court that patient is no longer incompetent	Court with criminal jurisdiction	No – Required by law M.G.L. c.123, § 17(a)	Notice that patient has been restored to competence	

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**Department of Mental Health
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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Notice of periodic review	If no LAR ³ then, to nearest relative (See Special Requirement)	No –Required by Law M.G.L. c.123, § 4 104 CMR 27.11(2) (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	As specified on form for this purpose.	Notices to nearest relative may not be given if patient knowingly objects.
Notice of transfer	Nearest relative (See Special Requirement)	No –Required by Law M.G.L. c.123, § 3 104 CMR 27.08(9)(c) (See M.G.L. c.190B § 5-304(a) for next of kin/nearest living relative)	As specified on DMH notice of transfer form.	Notices to nearest relative may not be given if patient knowingly objects.
Organ Donation Assessment	New England Organ Bank, Inc.	No - Required by law; Payment M.G.L. c.6A, § 16 104 CMR 27.16(9)(f) Required for Medicaid/Medicare participation.	As specified in Memorandum of Understanding between DMH and New England Organ Bank, Inc. that is attached to Commissioner's Directive #10.	Applies only to DMH operated facilities.

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Purpose of Disclosure	Disclosed to	Authority for Disclosure Does the client need to authorize? Yes/No ¹	Permitted Amount of Information to be Disclosed. ²	Special Requirements
Reports regarding Prisoners	Court; person in charge of place of detention	No – Required by law M.G.L. c.123, §18(a)	Affidavits, and related documents; testimony required by Court.	
Sex Offender: Registration	Mass. Sex Offender Registry Board	No - Required by law M.G.L. c. 6, § 178F M.G.L. c. 6, § 178F1/2	Limited to that which is necessary to verify an offender's registration data or a sex offender's whereabouts.	Applies only to DMH Homeless Shelters. Registration data: name, facility address, personal identifying information, height, weight, age, gender, eye color, hair color, social security number, aliases, and date and place of birth.
Sex Offender: Level of Designation	Mass. Sex Offender Registry Board	No - Required by law M.G.L. c. 6, § 178K(4) and (5)	Limited to that which is specified in written request.	
Warn/Protect: To take reasonable precautions to warn or protect persons known to be at risk from a client/patient.	Person known to be at risk; police, court, emergency service provider, or other individual deemed necessary in order to discharge duty to take reasonable precautions to warn/protect	No – Required by Law M.G.L. c.123, § 36B	Information sufficient to discharge duty to take reasonable precautions to warn/protect, including level of dangerousness and location of patient/client, if known	See also AWA reporting (104 CMR 27.15), if applicable

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