

CHAPTER 5

DESIGNATED RECORD SETS

I. GENERAL RULE

An individual, or his/her Personal Representative (PR), if any, has the right (subject to certain limitations) to access the individual's Protected Health Information (PHI) and to request amendments to it. The rights to access and request amendments are limited to PHI that is contained in a Designated Record Set (DRS) maintained by or for DMH. However, not all PHI maintained in a DRS is subject to access or amendment. DMH is required to identify its DRSs, and to provide a mechanism by which allowable access to and amendment of a DRS can be accomplished. (See Chapters 11 and 13.) The purpose of this Chapter is to define "Designated Record Set" or "DRS" and to identifying DMH's DRSs.

II. SPECIFIC REQUIREMENTS

A. Definitions

1. **Designated Record Set** means a group of records that is maintained by or for DMH, that is:
 - a. the medical records about individuals; or
 - b. the billing records about individuals; or
 - c. used, in whole or in part, by or for DMH to make decisions about individuals.
2. **Record** means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.

B. Excluded From Designated Record Set.

1. **Forensic Evaluations and Forensic Evaluator's Case Records.** Reports of forensic evaluations conducted pursuant to M.G.L. c. 123, §§15, 16, 17 or 18, and the case file of the Forensic Evaluator used to prepare such reports, unless such reports have been released to another record by the court.
2. **Employment Records.** Employment records held by DMH in its role as employer shall not be considered a DRS. [Note: an individual, or

PR, may have the right to access this information through a provision of law other than this Privacy Handbook.]

3. Records not used to make decisions about individuals. The following are examples of DMH records that are not used to make decisions about individuals. Consequently, these records, themselves, do not constitute a DMH DRS. [Note: if a copy of all or part of one of these records is inserted into a DMH DRS, such as a medical or case management record, that copy is part of the DRS into which it has been inserted. An individual or PR will have the right to access such information in the DRS, but will not have the right to amend such information.]

- a. Quality improvement records/utilization review records.
- b. Critical incident reports.
- c. Investigation records (Although investigation records are not considered to be a DRS, certain individuals have the right to access such records (not to amend) in accordance with 104 CMR 32.08.)
- d. Peer review records/minutes.
- e. Data collected and maintained for research when not treatment related.
- f. Records of restraint and seclusion maintained by DMH Central Office pursuant to M.G.L. c. 123 §21.
- g. Human Rights Officers' files.
- h. Legal Office case files.
- i. Administrative files.
- j. Firearm identification card/License to carry files.

C. Records of a Business Associate.

Business Associate records that meet the definition of a DRS and that are created or maintained for services rendered on behalf of DMH are DMH DRSs. Such records are subject to access and amendment. If the Business Associate is a Covered Entity, the Business Associate will be responsible for providing access and for appropriately amending the PHI contained in the DRS(s) that they maintain. If the Business Associate is not a Covered

Entity, DMH will be responsible for processing requests for access and amendment to the DRS(s) that the Business Associate maintains.

D. Copies of Records Obtained from Other Sources.

PHI received from a non-DMH Workforce Member that is included in a DMH DRS will be considered part of the DMH DRSs for purposes of access, but not for amendment. However, if information contained in such record(s) has been incorporated into other parts of the DMH DRSs, and the individual believes such information to be in error, the individual may request that such other parts of the DMH DRS be amended. Additionally, if the originator of the PHI no longer is available to act on the request, an individual may have the right to amend the PHI. See Chapter 13, [Right to Request an Amendment of Protected Health Information](#).

E. Raw Data

Raw data as defined in Section III.A.1.f. is part of a DRS for access purpose only and not for the right of amendment.

F. Copies of PHI Maintained in Secondary Records

If a record is a secondary record, meaning that it only contains copies of documents or PHI that is maintained in a DRS, that record, in itself, does not become a DRS.

III. DMH'S DESIGNATED RECORD SETS AND ADMINISTRATIVE REQUIREMENTS REGARDING THOSE SETS

DMH maintains many DRSs. Facility medical records and case management records constitute the primary DRSs for an individual receiving services from DMH. However, there are separate billing records, as well as other records which contain PHI and that are used, in whole or in part, to make decisions about the individual and, consequently, are DRSs for the individual.

A. DMH's Designated Record Sets (DRSs)

The records itemized below by DMH location constitute DMH's DRSs. Each DRS consists of the applicable paper record and a printed copy of the electronic version of the record, if any.

1. Facilities and Community Mental Health Centers. DMH's DRSs in Facilities and Community Mental Health Centers include:

- a. **Medical Records.** A Medical Record generally includes the types of information outlined in this subsection. (Note: the following is a description of the types of information that may be contained in a Medical Record. How a Medical Record is organized and the name of forms, assessments, etc. varies from facility to facility.) In addition, the medical record of a DMH Facility must comply with the requirements of 104 CMR 27.17(2).
- i. Admission data and patient information (e.g., referral form, patient rights and responsibility forms, DMH Notice of Privacy Practices Acknowledgment, emergency contact information, MHIS face sheet, etc.);
 - ii. Medication and treatment information (e.g., medication administration record);
 - iii. Diagnostic tests (e.g., lab reports, EKGs reports, MRI reports, etc.);
 - iv. Medical information (e.g., physical examination(s));
 - v. Assessments (e.g., Multidisciplinary admission assessment, HIV risk assessment, substance use assessment, psychiatric assessment, occupational therapy assessment, etc.);
 - vi. Treatment plans and periodic reviews/CERF;
 - vii. Fiscal evaluation reviews and financial data (e.g., application(s) for benefits filed for or by the patient);
 - viii. Progress/encounter notes;
 - ix. Consults/Case Conferences (e.g., testing; psychopharmacology consults; forensic consults, emergency alerts, etc.);
 - x. M.D. orders;
 - xi. Seclusion and restraint information;
 - xii. AWA information;
 - xiii. Discharge information (e.g., discharge summary, referrals, transfer summary);
 - xiv. Legal information (e.g., guardianship documentation, commitment orders, record of transfer, informed consents, health care proxies, advance directives, 3-Day Notice/retraction, current legal status, etc.);
 - xv. Correspondence;
 - xvi. Reports of treatment for accidents, injuries or severe illnesses while the patient is in the care of the Facility or Mental health Center;
 - xvii. Requests for and Authorizations to disclosure of information from such individual patient record/
- b. **Billing Records.** Billing Records generally include all claims that have been filed, account receivables, all correspondence sent or

received regarding claims or account receivables, appeals concerning claims and appeals concerning reduction of charges.

- c. **Contract Records.** Contract Records for DRS purposes include only contract information (Request for Response, contract, payment vouchers, etc.) that relates to specific individuals. Individual specific contract information would include slot purchases documentation and invoicing documents/payment vouchers that reference individuals by name or in a manner that would not qualify as being de-identified. See Chapter 6, Uses and Disclosures of Protected Health Information.
- d. **Client Funds Records.** Client Fund Records are records of funds received, held and/or disbursed on behalf of individuals (e.g., Representative Payee accounts).
- e. **Pharmacy or Medication Records.** Pharmacy or Medication Records are records of medications prescribed and/or administered to an individual that are not otherwise contained within the Medical Record.
- f. **Raw Data.** Raw data means unprocessed and unanalyzed information such as x-rays, laboratory tests, psychological tests and psychotherapy notes. Raw data constitutes a separate DRS to the extent that such data is maintained, contains information that is not included within the Medical Record, and is used by or for the Facility or Community Mental Health Center in the process of making decisions about an individual.

2. Area Offices. DMH's DRSs in Area Offices include:

- a. **Eligibility Records.** Eligibility Records are a DRS only to the extent that such records contain PHI that is not contained within the Case Management Record. Generally an Eligibility Record includes: the types of information:
 - i. DMH applications,
 - ii. authorizations for eligibility determination and releases of information;
 - iii. data collected from service providers and others used by DMH to determine eligibility, including:
 - psycho-social assessments
 - diagnostic assessments
 - admission and discharge reports
 - treatment plans

- neuropsychology, neurology, psychology and other testing reports
 - documentation of consultation received from DMH and/or other clinicians
 - education records
 - other relevant materials;
 - xi. correspondence related to eligibility determination;
 - xii. notes documenting activities and communications related to eligibility determination; and
 - xiii. information related to appeals of eligibility.
- b. **Billing Records.** Billing Records generally include all claims that have been filed, account receivables, all correspondence sent or received regarding claims or account receivables, appeals concerning claims and appeals concerning reduction of charges.
- c. **Contract Records.** Contract Records for DRS purposes include only contract information (Request for Response, contract, payment vouchers, etc.) that relates to specific individuals. Individual specific contract information would include slot purchases documentation and invoicing documents/payment vouchers that reference individuals by name or in a manner that would not qualify as being de-identified. See Chapter 6, *Uses and Disclosures of Protected Health Information*.
- d. **Housing Data.** Housing Data is data that contains PHI and is used to: (i) make decisions about housing assistance for individuals, (ii.) inventory housing needs, and/or (iii.) allocate housing resources, constitute a DRS.
- e. **Homeless Data.** Homeless Data includes Homeless Outreach Teams' records and shelter lists.
- f. **Eligibility and Individual Service Plan (ISP) Appeal Records.** To the extent that the Area Office maintains eligibility and ISP files that contain PHI, that also are not contained within the Eligibility or Case Management Records and that are used to make decisions about individuals, such records constitute a DRS. An Eligibility or Individual Service Plan Appeal Record generally includes the appeal, information received in support of the appeal, the appeal decision and all correspondence regarding the appeal.
- g. **Service Coordination Records.** Service Coordination Records are records used by the Area to make decisions about individuals that include PHI that is not held within another DRS. Examples of Service Coordination Records include records relating to interstate

compact transfers, Chapter 688 planning records, and child and adolescent service planning records.

h. **Forensic Transition Team (FTT) Case Records.** Are records maintained by Forensic Transition Teams. They generally include the following information:

- i. Releases;
- ii. Progress notes;
- iii. Psychosocial history;
- iv. Intake;
- v. Assessments;
- vi. Treatment Contract;
- vii. Termination Summary;
- viii. Progress notes (e.g., created by FTT, e-mail communications and/or MHIS notes);
- ix. Copy of MassHealth application;
- x. Copies of medical records from prior hospitalization;
- xi. Copies of medical records during present incarceration; and
- xii. Forensic evaluations, criminal history information, classification records (All CORI Information should be stored in a separate file).

3. **Site Offices.** DMH's DRSs in Site Offices include:

a. **Case Management Records.** Case Management Records generally include the following information:

- i. All information contained in the application for DMH eligibility;
- ii. All documents gathered and generated by the case manager in the processes of assessing client needs, generating the ISP, monitoring implementation of the ISP and modifying or annually reviewing the ISP, including all PSTPs;
- iii. Valid authorizations for release of information;
- iv. Progress notes describing all substantive contacts between the case manager and the client, LAR, if any, family member or service provider;
- v. All formal written correspondence between the case manager and the client, LAR, if any, family member, service provider, or PCC including PCC annual client update;
- vi. Progress reports and discharge summaries from other services, including medical and psychiatric inpatient stays; and
- vii. Legal documents, such as Rogers order, guardianship, etc.

- b. **Client Funds Records.** Client Fund Records are records of funds received, held and/or disbursed on behalf of individuals (including, without limitations, Representative Payee accounts).
- c. **Eligibility Records.** Eligibility Records are a DRS only to the extent that such records contain PHI that is not contained within the Case Management Record. Generally, an Eligibility Record includes: the types of information:
 - i. DMH applications,
 - ii. authorizations for eligibility determination and releases of information;
 - iii. data collected from service providers and others used by DMH to determine eligibility, including:
 - psycho-social assessments
 - diagnostic assessments
 - admission and discharge reports
 - treatment plans
 - neuropsychology, neurology, psychology and other testing reports
 - documentation of consultation received from DMH and/or other clinicians
 - education records
 - other relevant materials;
 - xi. correspondence related to eligibility determination;
 - xii. notes documenting activities and communications related to eligibility determination; and
 - xiii. information related to appeals of eligibility.
- d. **Other Individual's Records.** Other Individual's Records include child, adolescent or adult records that contain PHI and are used to make decisions about individuals are DRSs, but only to the extent that they contain PHI not held within another DRS. Other Individual's Records include, but are not limited to, records that are maintained for the following categories of individuals:
 - i. Individuals who have been determined eligible for Continuing Care Services, who are not case managed, but who are receiving a service from DMH.
 - ii. Individuals who have been determined eligible for Continuing Care Services, who are not case managed and who are waiting to receive a DMH service.
 - iii. Non-DMH eligible individuals who are receiving a DMH service.

4. State-Operated Direct Service Programs (such as: Transitional Housing, Residential and Clinics). DMH's DRSs in State-Operated Direct Service Programs include:

- a. **Individual Direct Service Records.** Individual Direct Service Records are records that are maintained by a Program about the individuals who are receiving services from the Program. Such records generally include the following information: referral, intake information, authorizations and consents, and information regarding the specific services provided to the individual (e.g., type, dates, etc.).
- b. **Client Funds Records.** Client Fund Records are records of funds received, held and/or disbursed on behalf of individuals (e.g., Representative Payee accounts).

5. Central Office. DMH's DRSs in its Central Office include:

- a. **Billing Records.** Billing Records generally include all claims that have been filed, account receivables, all correspondence sent or received regarding claims or account receivables, appeals concerning claims and appeals concerning reduction of charges.
- b. **Contract Records.** Contract Records for DRS purposes include only contract information (Request for Response, contract, payment vouchers, etc.) that relates to specific individuals. Individual specific contract information would include slot purchases documentation and invoicing documents/payment vouchers that reference individuals by name or in a manner that would not qualify as being de-identified. See Chapter 6, Uses and Disclosures of Protected Health Information.
- c. **Service Coordination Records.** Child, adolescent or adult records that contain PHI and are used to make decisions about individuals are a DRS, but only to the extent that they contain PHI not held within another DRS. These records for Central Office include, but are not limited to:
 - i. Child and Adolescent Services statewide program waiting lists, program census and clinical determinants for level of care status.
 - ii. Closed FTT records; but excluding court ordered evaluations, which are under the jurisdiction of the court, constitute a DRS and only to the extent that any records simply are not copies of PHI that are contained within another DRS.

- iii. Chapter 688 records concerning specific individuals, constitutes a DRS, but only to the extent that the records contain PHI or documents that are not contained within another DRS.
- iv. Interstate compact transfer records.
- v. Commissioner, or designee, best interests determinations.
- d. **Eligibility and Individual Service Plan (ISP) Appeal Records.** An Eligibility or Individual Service Plan Appeal Records generally includes the appeal, information received in support of the appeal, the appeal decision and all correspondence regarding the appeal. However, the Central Office records constitute a DRS only to the extent that such records contain PHI not within the Eligibility or Eligibility and Individual Service Plan (ISP) Appeal Records maintained by the Area Offices.

B. Administrative Requirements Regarding DRSs

1. Appointment of DRS Personnel

- a. **Designated Record Set Contact Person.** For each DRS located at a DMH location, the Administrator-in-Charge of the location shall appoint a Designated Record Set Contact Person. A person can be a Designated Record Set Contact Person for more than one DRS. An Administrator-in-Charge must provide a complete listing of the Designated Record Set Contact Persons (name, title, telephone number, and applicable DRS) to the DMH Privacy Officer and the DMH Privacy Officer shall be notified immediately of any changes to the list. Attachment D of this Privacy Handbook contains a list of all Designated Record Set Contact Persons. The Intranet web site versions of the Attachment D will be updated as needed. The DMH Privacy Officer is responsible for updating Attachment D. The Designated Record Set Contact Person is responsible for responding to internal and external inquiries regarding the DRS for which he/she is responsible. Additionally, the Designated Record Set Contact Person is responsible for processing requests for access, audit trails and amendments for the DRS for which he/she is responsible in accordance with this Handbook.
- b. **Records Coordinator.** At every DMH location that has a DRS, the Administrator-in-Charge shall appoint a Records Coordinator (who also may be a Designated Record Set Contact Person). The

DMH Privacy Officer must be notified of the appointment of the Records Coordinator (name, title, and telephone number) and of any change to the appointment. Attachment D of this Privacy Handbook contains a list of all Records Coordinators. The Intranet web site versions of the Attachment D will be updated as needed. The DMH Privacy Officer is responsible for updating Attachment D. The Records Coordinator is responsible for coordinating and responding to requests for access, audit trails and amendments that involve multiple DMH locations in accordance with this Handbook.

2. **Creation of a New DRS.** The Administrator-in-Charge, or designee, of each DMH location, is responsible for ensuring that the list of DMH DRSs applicable to that location is up to date and accurate. Before creating a paper or electronic data base or new systematic way for capturing data outside of the existing DRSs (e.g., waitlists, etc.), the DMH Privacy Officer shall be notified so that a determination can be made and documented as to whether the data base or information system constitutes a new DRS.

C. Response to Requests for Access to or Disclosure From a Designated Record Sets

1. If the request for access or release is for all or a part of a specific DRS (such as an individual's case management file or Facility medical record) or for all of the DRSs concerning an individual at a specific location (such as a Site office, or a Facility), the request can be handled at that location by the Designated Record Set Contact Persons or Records Coordinator, in accordance with Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH.
2. If the request for access or release is for all or part of DRSs located at more than one identified location (such as a specific Site office and a Facility), then the Records Coordinator of the location that first received the request shall communicate with the appropriate Records Coordinator(s) of the other DMH location(s), and shall coordinate the response in accordance with Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH.
3. If it is not clear what DRSs should be reviewed for PHI that an individual has asked to access (e.g., the individual has not indicated where he or she received DMH services), the request should be referred to the DMH Privacy Officer. The Privacy Officer will attempt to identify the proper DRSs and will coordinate the response with the

appropriate Record Coordinator(s) or Designated Record Set Contact Person(s)

D. Response to Requests to Amend PHI in Designated Record Sets

A request to amend PHI in a DRS shall be processed by the DMH Privacy Officer or by the DMH Records Coordinator, or their designees, who first receives the request. Nothing in this Chapter precludes the Administrator-in-Charge from processing a request to amend PHI that is received by his/her respective Area, Site, Facility or Program and/or from designating another to do so. The processing and response to a request to amend PHI must be done in accordance with Chapter 13, Right to Amend Protected Health Information.

IV. LEGAL REFERENCE

HIPAA 45 CFR 164.502

45 CFR 164.524

45 CFR 164.526

104 CMR 27.17(2)

104 CMR 32.08