

CHAPTER 10

VERIFICATION OF THE IDENTITY AND AUTHORITY OF THE REQUESTER

I. GENERAL RULE

Prior to making any **permitted** disclosures of Protected Health Information (PHI) (See Chapter 6, Uses and Disclosures of Protected Health Information), 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 appropriate authority to receive the PHI. In addition, it should be ascertained whether there is an approved restriction on disclosure, or an approved confidential communication, that would impact the disclosure.

If there is any doubt about the identity or the authority of a person or entity that is to receive PHI, then the PHI should not be disclosed and the DMH Privacy Officer should be contacted for assistance.

II. SPECIFIC REQUIREMENTS

DMH is required to verify the identity and authority of a person or entity requesting access to PHI when the identity and authority are not known. DMH is not required to verify the identity or authority of a person or entity when disclosing PHI in an emergency treatment situation and/or to persons involved in the care and treatment of the individual. (See Chapter 6, Use and Disclosure of Protected Health Information and the charts in Appendix C of the routine disclosures made by DMH. The authority for each routine disclosure is listed in the charts.)

DMH Workforce Members should use common sense when verifying identity and authority. A DMH Workforce Member may rely, if reasonable under the circumstances, on documents, statements or representations that on their face meet the applicable requirements. For example, parental relationship can be established with response to questions and verification of names; the production of a birth certificate is not required unless there is a reason to question the response.

Note: Authority can change and, thus, it needs to be checked periodically. For example, a person's Personal Representative (guardian) could change.

A. Identification of a Person

The identification of a person can be verified by one of the following methods: (1) the presentation of a photo identification; (2) the provision of information that only that person would know; (3) recognition by a DMH Workforce Member who knows the person; and/or (4) comparison of the person's signature with a copy of the person's signature existing in a DMH file.

If a request is not made in person (e.g., by telephone, fax, mail), it may be necessary to follow-up with the requester to obtain the necessary information for verification. However, the manner in which a request is made may provide some information for verification purposes. For example, caller ID (for requests made by telephone) or the fax number imprinted on the original request (for requests made by Fax) could be useful if the numbers are known (e.g., known telephone numbers of a guardian).

B. Individual Accessing His/Her Own PHI

Identification needs to be verified in accordance with Section II.A. Generally, an individual has the authority to access his/her own records unless he/she has a Personal Representative (PR). Therefore, before providing access it should be determined, by reviewing DMH records and/or asking questions of the individual and/or others, if the individual has a PR. For more details see Chapter 11, The Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH.

C. Personal Representative (PR)

For the purpose of accessing an individual's PHI, a PR is a person or entity that is authorized to make health care decisions on behalf of the individual. (See Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH, Section II.A.) Thus, one of the key factors to verify regarding a PR is his/her authority to make health care decisions on behalf of the individual whose PHI the PR wants to access.

- 1. Guardian.** A guardian's authority to access the PHI of his/her ward can be verified by requesting a copy of the guardian's court appointment. A guardian has the authority to access PHI unless the court appointment limits the guardian's authority only to handling the ward's property. The guardian's identity should be verified in accordance with Section II.A.

2. **Treatment Monitor/Rogers Guardian.** A treatment monitor's/Roger's guardian's authority to access PHI can be verified by obtaining a copy of his/her court appointment. The monitor's identity should be verified in accordance with Section II.A.
3. **Health Care Agent.** A health care agent's authority to access the PHI of another individual can be verified by requesting (1) a copy of the health care proxy signed by the individual and (2) documentation of the individual's incapacity. The health care agent's identity should be verified in accordance with Section II.A.

Note: The above applies to a health care proxy executed in accordance with M.G. L. c.201D. A health care agent who has been delegated authority under a health care proxy executed under another state's statute may not have the same authority as a health care agent under a M.G.L. c.201D proxy. The Legal Office should be consulted if a health care proxy is executed under the authority of another state.

4. **Parent.** A parent's authority to access the PHI of his/her minor child can be verified by establishing the requisite relationship to the minor (i.e., parent with the right to make medical decisions on behalf of the child). If there is any reason to question whether a parent has authority to make health care decisions on behalf of his/her child (e.g., parents are separated and do not share custody, or the child is in the custody of DSS or DYS), then fact finding should be done to determine who has the authority to make medical decisions on behalf of the minor. The parent's identity should be verified in accordance with Section II.A.
5. **Department of Social Services (DSS) or the Department of Youth Services (DYS).** If a child is in the care and custody of DSS pursuant to a court order under a Care and Protection, Termination of Parental Rights, or Child in Need of Services proceeding, DSS is the PR of the child and an Authorization from DSS would be required for PHI to be given to the child's parent(s). If a child has been placed voluntarily with DSS, the child's parent(s) is the child's PR and an Authorization from said parent(s) would be required for PHI to be given to DSS. DSS must be consulted to determine whether a child is in its care pursuant to a court order or a voluntary placement.

DYS must be consulted to determine who has authority (e.g., DYS or the parent(s)) to make medical decisions on behalf of a child in their care and who, therefore, is a child's PR.

Note: DSS may have authority to obtain PHI without an Authorization even when it is not a PR (e.g., to investigate reports of abuse). DYS always has the authority to receive PHI of all

**persons committed to their care under M.G.L. c. 119, §69A.
Release of PHI in these situations falls under Section II.E.
Requests by Public Officials.**

D. Attorney

The authority of an attorney to access the PHI of an individual whom he/she represents can be verified by obtaining (1) a copy of the attorney's court appointment; (2) a signed letter from the individual, acknowledging the attorney-client relationship, the individual's PR or the executor or administrator of the individual's estate, or (3) an Authorization. The attorney's identity should be verified in accordance with Section II.A.

The authority of a Protection and Advocacy Program attorney or legal advocate to access the PHI of an individual whom he/she does not represent in an attorney-client relationship can be verified by (1) a business card or letterhead showing the name of an approved Protection Advocacy Program and the attorney or advocate, or (2) a letter from such program acknowledging the affiliation of the attorney or advocate, and (3) representation that the purpose of the access falls within the Protection and Advocacy Program's right of access without Authorization for the investigation of patient abuse concerning an incompetent institutionalized person. Identification of the named attorney or advocate needs to be verified in accordance with Section II.A.

E. Public Officials

- 1. Verification of Authority.** The authority to make disclosures to public officials varies as indicated in Appendix C (DMH Routine Disclosures). Some disclosures require an authorization and others are required by law. A DMH Workforce Member should consult Appendix C to determine if a public official has the authority to access PHI. If the type of disclosure is not listed in Appendix C, the DMH Privacy Officer and/or Legal Office should be consulted. If the facts do not allow for consultation, a DMH Workforce Member may rely on the public official's written or oral statement of his/her legal authority to access the PHI if it is reasonable to do so.
- 2. Verification of Identity.** To verify the identity of a public official, or a person acting on behalf of a public official, DMH may rely upon any of the following:
 - a. The personal presentation of an agency identification badge, other official credentials, or other proof of government status;
 - b. A written request is on government letterhead; or

- c. A written statement from a public official's office, on government letterhead, stating that the person is acting under the official's authority or other evidence that establishes that the person is acting on behalf of the public official (e.g., a contract).

A DMH Workforce Member does not have to rely on the above and can ask for other proof of identity, if necessary. If there is any doubt as to the identity of a public official, the DMH Privacy Officer shall be notified.

F. Court Orders

A proper judicial court order generally provides sufficient authority to release PHI (104 CMR 27.17(6)(a) and 28.09(2)(a)). However, orders for production of psychiatric records of victims in criminal cases are subject to specific requirements for judicial review. The Legal Office should be consulted in such situations or if there is any question concerning the release of PHI pursuant to a court order.

Note: A subpoena requiring the production of records is not sufficient authority to release PHI. If a subpoena for PHI is received, the Legal Office should be notified.

G. Executor or Administrator

An executor or administrator's authority to access the PHI of a deceased individual can be verified by obtaining a copy of the executor's or administrator's court appointment. The executor's or administrator's identity should be verified in accordance with Section II.A.

III. DMH PROCEDURES FOR VERIFYING IDENTITY AND AUTHORITY

Prior to disclosing PHI a DMH Workforce Member must verify identity and authority of the individual or entity to which the information is to be disclosed in accordance with this Chapter. The DMH Workforce Member making a disclosure of PHI is responsible for documenting verification in the applicable Designated Record Set(s), using the mechanism for capturing disclosures for audit trail purposes, or directly on the applicable Authorization and/or written request for PHI.

IV. LEGAL REFERENCE

HIPAA 45 CFR 164.514(h)

104 CMR 27.17

104 CMR 28.09