

CHAPTER 14

RIGHT TO REQUEST CONFIDENTIAL COMMUNICATIONS

I. GENERAL RULE

An individual or his/her Personal Representative (PR), if any, has the right to request that DMH send all or some communications to an alternative location or by alternative means (e.g., envelopes without DMH return address, information in a closed envelope rather than a post card, e-mail, etc.). DMH must accommodate all reasonable requests for confidential communications. However, an agreement by DMH to confidential communications does not preclude DMH from contacting an individual at any address or means available if necessary for the care and treatment of the individual. A request can be made at any time.

II. SPECIFIC REQUIREMENTS

A. Persons Who Can Make a Request

The individual who is the subject of the PHI being communicated must make a request for confidential communications. However, if an individual has a PR, only the PR may make such requests. If however, the individual is a minor and the minor legally consented to the underlying treatment to which the PHI relates (e.g., a mature minor under 104 CMR 25.04, or emergency services under MGL c.112, §12E and 12F), then the minor rather than the PR has the right to request confidential communications regarding such PHI.

B. All Reasonable Requests Must Be Accommodated

DMH must accommodate all reasonable requests for confidential communications. "A reasonable request" is one that can be accomplished with no, or with only minor, administrative difficulties. The reason for a request is not to be considered in determining if the request is reasonable. For this reason, DMH cannot require an individual or PR to provide an explanation for a request.

C. Limitations

DMH reserves the right to contact any individual or PR at any address or by any means available if DMH determines that it is necessary for health or safety reasons.

III. DMH PROCEDURES FOR PROCESSING REQUESTS FOR CONFIDENTIAL COMMUNICATIONS

A. Request Form

A request for confidential communications may be made verbally or in writing. A request must specify the desired alternative address or means of communication. If a request is made verbally, then for processing purposes only, the DMH Workforce Member who receives the request shall fill-out a DMH Communication Request Form (noting on there that the request was received verbally). A written request shall be submitted on the DMH Communication Request Form at the end of this Chapter. Copies of the DMH Communication Request Form shall be available at all Area and Site Offices, and at all Facilities and State-operated Programs. It will also be posted on DMH's Intranet and Internet web sites.

B. Where a Request Can Be Made or Filed

A request for confidential communications can be made or filed at any DMH Area or Site Office, Facility, or State-operated Program or with the DMH Privacy Officer. A request shall be forwarded immediately to the applicable reviewer set forth in Section III.C.1.

C. Review

1. Reviewers. The following DMH Workforce Members have the authority for granting or denying a request for confidential communications:

- a. **Request by Patient in DMH Facility.** If a patient in a DMH Facility, or his/her PR, makes the request, the decision shall be made by the Administrator-in-Charge of the Facility or designee.
- b. **Request by Individuals Applying for Services.** If the request is made by an individual (or his/her PR, if applicable) who has applied for but who has not yet been determined eligible for DMH continuing care services, the decision shall be made by the applicable Area Director or designee.
- c. **Request by DMH Client-Case Managed.** If a DMH client (or PR) who has a case manager makes the request, then the applicable Site Director or designee shall make the decision.

- d. **Request by a DMH Client- Not Case Managed.** If a request is made by a DMH client (or PR) who is not case managed, the applicable Area Director or designee shall make the decision.
 - e. **Request by Program Participant.** If the request is made by a non-DMH client (or PR) receiving care from a DMH-Operated Emergency Service Program, the decision shall be made by the DMH Program Director or designee.
2. **Review Standard.** If a request can be reasonably accommodated, it must be granted. A reviewer shall consider the following:
- a. The ability of DMH to use the alternative means requested (including the ability to document receipt of the communication(s) by the individual if necessary);
 - b. The additional costs and time involved, if any, in using the alternative means or address; and
 - c. The ability of DMH to ensure that communications are made by the alternative means or to the alternative address (the number of communications involved, the number of DMH Workforce Members that need to communicate with the individual or PR, etc.).

A reviewer may not ask why a request is being made. If the reason for the request is known, it may not be considered in determining if the request is reasonable. However, a reviewer may work with an individual or PR to clarify a request.

3. **Notice.** The reviewer must notify an individual or PR of his/her decision. It is preferred that the notification be done in writing, but it is not required. The Response to a Communication/Restriction Request letter at the end of this Chapter can be used for this purpose.

If the request is approved, the agreed upon alternative location and/or means of communication must be specified. Additionally, the individual or PR shall be informed that DMH reserves the right to contact any individual or PR at any address or by any means available if determined necessary for health or safety reasons. If a request is denied, the individual or PR must be told why.

D. Documentation and Required Actions if a Request is Granted

The request and the decision shall be noted (if verbal) or maintained (if in writing) in the individual's DMH file. The decision and request shall be maintained in accordance with the relevant DMH record disposal schedule, but in all events for six years from the date signed or if later, from the date last in effect.

If a request is granted, the alternative address and/or form of communication shall be highlighted appropriately in the file, on MHIS, if available, and in all other DMH Designated Record Sets that contain PHI about the individual, to ensure that the alternative address or means of communications is used.

E. Decision is Final

The decision of the applicable DMH Workforce Member (see Section III.C.1) to grant or not to grant a request for confidential communications is final. It is not subject to further review by DMH. The individual or PR may, however, file a privacy complaint. (See Chapter 16, Complaint Process.)

F. Revocation

An agreement by DMH to confidential communications may be revoked at any time by DMH if the request becomes unreasonable. DMH shall provide the individual or PR with written notice of the revocation and it shall be effective only after the notice of revocation is given.

IV. LEGAL REFERENCE AND ATTACHMENTS

HIPAA 42 CFR 164.522(b)

Communication Request Form

Response to a Communication/Restriction Request