

CHAPTER 17

RECOVERY FROM ADDICTIONS PROGRAM

RESTRICTIONS ON DISCLOSURES AND USE OF PATIENT IDENTIFYING INFORMATION

I. INTRODUCTION¹

While the DMH Privacy Handbook establishes procedures to ensure compliance with HIPAA, another set of federal regulations protects the confidentiality of substance use disorder information. These regulations, 42 CFR Part 2 (“Part 2 Regulations”), which are generally more restrictive than other state and federal privacy regulations, must be followed when patient identifying information (PII) is created, disclosed or used by the Recovery from Addictions Program (“RAP”).² Except as specifically discussed below, all other Chapters of this Handbook also apply to the use and disclosure PII.

Please be advised that for purposes of this Chapter the terms “use” and “disclosure” are not used in the same way as in the previous Chapters. “Use” is not defined in the Part 2 Regulations. When it is used, it is generally in relation to use for the initiation or substantiation of criminal charges or for conducting a criminal investigation. It does not, as in HIPAA, refer to internal use of information by Workforce Members. RAP Workforce Members may share information about a patient with other RAP Workforce Members when necessary. Workforce Members in using information must follow the Minimum Necessary Rule set forth in [Chapter 9, The Minimum Necessary Rule](#), of this Handbook. As for sharing information with other DMH Workforce Members, see [Section VI,A.](#) below.

“Disclosure” is defined in the Part 2 Regulations. It means “to communicate any information identifying a patient as being or having been diagnosed with a substance use disorder, having or having had a substance use disorder, or being or having been referred for treatment of a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person.” This is a more narrowly defined definition than that used in HIPAA.

¹ See Glossary to this Handbook for definitions of all capitalized terms

² The RAP provides inpatient substance use disorder treatment to adults who are subject to an involuntary order of civil commitment under M.G.L. c. 123, § 35. If a minor is committed to the RAP in error, the Privacy Officer and DMH Legal should be consulted to review the patient’s status and additional requirements of the Part 2 Regulations that would apply to minors.

II. GENERAL APPLICABILITY

Restrictions on Disclosure. The restrictions on disclosure in this Chapter apply to any information obtained or created by the RAP for the purpose of substance use disorder diagnosis, treatment or referral for treatment that would identify an individual as a RAP patient either directly, by reference to other publicly available information, or through verification of such identification by another person.

Restriction on Use. The restrictions on use in this Chapter apply to use of any information obtained or created by the RAP for the purpose of substance use disorder diagnosis, treatment or referral for treatment. The restrictions on use prohibit the use of such information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient.

- A. Effect.** This Chapter prohibits the disclosure and use of patient records unless certain circumstances exist under which disclosure is permitted. If any circumstance exists where disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. The Part 2 Regulations do not require disclosure under any circumstances. However, there are some situations where disclosures are permitted under Part 2 Regulations and are required to be made under state law. These are more fully described in [Section VI.](#), below.
- B. Continuing Prohibition Against Disclosure Irrespective of Status as Patient.** The prohibitions of this Chapter apply to records concerning any current or former patient of the RAP.
- C. Patient Access and Restrictions on Use.**
 - 1. Patient Access Not Prohibited.** This Chapter does not prohibit the RAP from giving a current or former patient access to his or her own records, including, without limitation, the opportunity to inspect and copy any records that the RAP maintains about the patient. DMH, under certain circumstances, may limit the right of patients and/or PRs to access information contained in the record. See [Chapter 11, Right of Individuals or Personal Representatives to Access Protected Health Information Maintained by DMH.](#)
- D. Incapacitated and Deceased Patients.**
 - 1. Incapacitated Patients.**
 - a. Adjudication of Incapacity.** In the case of a patient who has been adjudicated as lacking the capacity to manage his or her

own affairs, any authorization which is required under the Part 2 Regulations may be given by the patient's PR.

- b. No Adjudication of Incapacity.** In the case of a patient, other than one who has been adjudicated as lacking the capacity to manage his or her own affairs, that for any period suffers from a medical condition that prevents knowing or effective action on his/her own behalf, the RAP Medical Director may exercise the right of the patient to consent to a disclosure under the Part 2 Regulations for the sole purpose of obtaining payment for services from a third-party payer.

2. Deceased Patients.

- a. Vital Statistics.** The Part 2 Regulations do not restrict the disclosure of PII relating to the cause of death of a patient to persons authorized under state law to collect death or other vital statistics or to conduct an inquiry into the cause of death. (See Chapter 6, Uses And Disclosures Of Protected Health Information, [Section V.A.4.a.vi](#).)
- b. Consent by Personal Representative of Estate.** Any other disclosure of information identifying a deceased patient as having a substance use disorder is subject to the Part 2 Regulations. If a written authorization to the disclosure is required, that authorization can only be given by a court appointed Personal Representative of Estate, or other legally authorized (court authorized) person.³

III. CONFIDENTIALITY RESTRICTIONS

- A. General.** The patient records of the RAP may be disclosed or used only as permitted by this Chapter and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any federal, state, or local authority. Any disclosure made under this Chapter must be limited to that information which is necessary to carry out the purpose of the disclosure. See [Chapter 9](#), The Minimum Necessary Rule.
- B. Unconditional Compliance Required.** The restrictions on disclosure and use in this Chapter apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by this Chapter.

³ A Voluntary Administrator of Limited Assets of deceased individual is not sufficient.

C. Acknowledging the Presence of Patients; Responding to Requests.

1. The presence of a patient in the RAP may be acknowledged only if the patient's written authorization is obtained in accordance with [Section V](#) of this Chapter or if an authorizing court order is entered in accordance with [Section VI.I.](#) of this Chapter.⁴
2. If the RAP receives a request for disclosure of a patient's record that is not permitted under this Chapter, the RAP will not make the disclosure and must ensure that the request is denied in a way that does not reveal the patient has ever been diagnosed or treated for a substance use disorder.⁵

D. Restrictions on the Use of Identification Cards. DMH may not require any patient to carry on his or her person while away from the RAP premises any card or other object which would identify the individual as a patient of the RAP. This section does not prohibit DMH from requiring patients to use or carry cards or other identification objects within the premises of the RAP.

IV. NOTICE TO PATIENTS OF FEDERAL CONFIDENTIALITY REQUIREMENTS

A. Written Notice Required. At the time of admission or as soon thereafter as the patient is capable of rational communication, the RAP will:

1. Communicate to the patient that federal law and regulations protect the confidentiality of substance use disorder records; and
2. Provide the patient with a copy of the Recovery from Addictions Program [Notice of Privacy Practices](#) attached at the end of this Chapter.

B. Required Elements of Written Notice. The written notice of the federal law and regulations must include:

1. A general description of the limited circumstances under which the RAP may acknowledge that a patient is present at a facility or disclose outside the RAP information identifying the patient as having a substance use disorder.

⁴ Where HIPAA or state law is more restrictive (provides greater protections to the individual) DMH must follow the more restrictive law.

⁵ The Federal Regulations do not restrict a disclosure that an identified individual is not and never has been an individual of the RAP; however, unless permitted by this Handbook, DMH may not confirm that an individual either received or did not receive DMH services, since the fact that an individual is a DMH client is itself PHI.

2. A statement that violation of the federal law and regulations by the RAP is a crime and that suspected violations may be reported to appropriate authorities in accordance with the Part 2 Regulations, along with contact information for where reports can be made.
3. A statement that information related to a patient's commission of a crime on the premises of the RAP or against personnel of the RAP is not protected.
4. A statement that reports of suspected child abuse and neglect made under state law to appropriate state or local authorities are not protected.
5. A citation to the federal law and regulations.

C. Standardized Written Notice. The Recovery from Addictions Program [Notice of Privacy Practices](#) that is attached to this Chapter is the one that is currently in use and the only permissible confidentiality of substance treatment records notice to be used. The confidentiality of substance treatment records notice in current use may be revised or amended as long as it meets the requirements of a written notice under the Part 2 Regulations and is attached to this Chapter.

V. DISCLOSURES WITH AUTHORIZATION

A. Written Authorization. If a current or former patient authorizes the disclosure of his or her records, as set forth in this Section V, the RAP may disclose those records in accordance with the authorization, except that disclosures in connection with criminal justice referrals also must meet the requirements of [Section V.B](#) below. All authorized disclosure ***must be accompanied with*** a proper substance use disorder re-disclosure notice. (See the [Re-Disclosure Notice](#) attached at the end of this Chapter.)

1. **Required Elements.** An authorization for a disclosure under this Chapter must include:
 - a. The name of the patient whose information is being disclosed.
 - b. The specific name of the program permitted to make the disclosure; that is, the DMH Recovery from Addictions Program.
 - c. How much and what kind of information is to be disclosed.
 - d. The names(s) of the Individual(s) or the name(s) of the entity(ies) to whom the disclosure is to be made.⁶

⁶ The Part 2 Regulations allow for general designation disclosures to an entity that facilitates the exchange of health information or is a research institution; however, MA law requires a specific designation to authorize drug use disorder information. (See MGL c. 111E, § 18(a).) Also note, the Part 2 Regulations require that an individual must be provided, upon request, an accounting of all general designation.

- e. The purpose of the disclosure.
- f. A statement that the authorization is subject to revocation at any time except to the extent that DMH has already acted in reliance on it.
- g. The date, event, or condition upon which the authorization will expire if not revoked before. This date, event, or condition must ensure that the authorization will last no longer than reasonably necessary to serve the purpose for which it is given.
- h. The signature of the patient or PR, as applicable.
- i. The date on which the authorization is signed.

2. DMH Forms. The DMH Form Authorizations for Release of Information may be used for authorization to release RAP information; however, the requirements for completing an authorization form for release of RAP information are more stringent, as follows:

Authorization Form Requirements: HIPAA vs. Part 2

| <u>Element</u> | <u>HIPAA*</u> | <u>Part 2**</u> |
|----------------------------|--|---|
| Identity of recipient(s) | Identifying a “class of persons” is sufficient. | More stringent. Must be identified by name of individual or entity. Identifying a class of persons is not sufficient. |
| Description of information | Information being disclosed must be identified in a “specific and meaningful fashion.” | How much and what kind of information being disclosed must be identified. Note: When completing form under “Other” specify how much and what kind of information. |
| Expiration date | Expiration date must relate to the patient or the purpose of the disclosure. | Expiration date cannot be longer than necessary to serve the purpose of the disclosure. |

| <u>Element</u> | <u>HIPAA*</u> | <u>Part 2**</u> |
|----------------|---|---|
| Disclosures | Form must inform the patient that: (a) he/she has a right to revoke; (b) treatment/eligibility cannot depend on authorization; and (c) <i>information may be re-disclosed and will be no longer protected.</i> | Form must inform the patient that it is subject to revocation at any time. See Sections V.A.3. below regarding prohibition of re-disclosure. |

3. **Authorization and Prohibition on Re-Disclosure Process.** Except as specifically noted in [Sections V.A.2.](#) above, [Chapter 8](#) of the Handbook applies to authorizations for disclosure of PII. ***In addition***, the DMH Substance Use Disorder [Re-Disclosure Notice](#) that is attached at the end of this Chapter ***must be attached*** to the copy of the DMH Authorization form and both must accompany any PII that is disclosed to a third party.

B. Disclosures to Elements of the Criminal Justice System Which Have Referred Patients.

1. **Authorization.** The RAP may disclose information about a patient to those individuals within the criminal justice system which have made participation in the RAP a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:
 - i. The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or post trial release, probation or parole officers responsible for supervision of the patient); and
 - ii. The patient has signed a written authorization meeting the requirements of [Section V.A.](#) above, except the authorization would be modified to comply with the duration and revocation requirements of [Sections V.B.2.](#) and [3.](#) below.
2. **Duration of Authorization.** The written authorization must state the period during which it remains in effect. This period must be reasonable, taking into account:
 - i. The anticipated length of the treatment;

- ii. The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and
- iii. Such other factors as the RAP, the patient, and the individual(s) within the criminal justice system who will receive the disclosure consider pertinent.

3. Revocation of Authorization. The written authorization must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which authorization becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which authorization was given.

VI. DISCLOSURES NOT REQUIRING AN AUTHORIZATION

The Part 2 Regulations prohibit the disclosure of records or other information concerning any patient in the RAP without the proper authorization of the patient, or the patient's PR, if applicable, except in the below specified circumstances.

- A. Internal Program Communication.** RAP Workforce Members may use information to communicate with other Workforce Members within the RAP, or any DMH Workforce Members having a direct administrative responsibility regarding the RAP and who have a need for the information in connection with their duties.
- B. Qualified Service Organizations.** The restrictions on disclosure do not apply to communications between the RAP and a Qualified Service Organization of information needed by the Qualified Service Organization to provide services to the RAP.
- C. RAP Felony Reporting.** The RAP is required to report the commission of a felony committed by or upon any person on the premises of the RAP or by or upon any person in the care of the RAP but not on the premises. The report must be made no later than one week from the date of the commission of such crime, to the district attorney of the district within which the crime was committed. The RAP may disclose the circumstances of the incident, including the suspect's name, address, and last known whereabouts. If the felony was committed on the premises and the individual suspected of the crime is a RAP patient, the RAP may disclose the individual's status as a RAP patient. In all other circumstances, the report may not contain information that would identify any patient as having a substance use disorder.

- D. Child Abuse and Neglect.** The RAP is required to report incidents of suspected child abuse and neglect to the Department of Children and Families. The patient's medical records; however, may only be released pursuant a valid court order or an authorization. (See [Section VI.I.](#) regarding court orders or [Section V.A.](#) regarding authorization.)
- E. Disclosures Without PII.** The Part 2 Regulations do not prohibit the reporting of information to state or local authorities that does not identify the patient as having a substance use disorder and which is subject to other mandated reporting laws (such as reports of suspected elder abuse or abuse of a disabled person, reports of an unauthorized absence) or is otherwise permitted by DMH policy (such as Commissioner's Directive #14 regarding the right of an employee who has been physically assaulted to file a criminal complaint.)⁷ (See Chapter 6, [Uses And Disclosures Of Protected Health Information](#), [Section V.A.5](#) regarding disclosures that are required by law and [Section V.A.12.b.](#) regarding Workforce Members who are victims of crimes.)
- F. Medical Emergencies Posing an Immediate Threat to Health and Requiring Immediate Medical Intervention.** Disclosures may be made to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained. Immediately following disclosure, the RAP must document the disclosure in the patient's records, including: 1) the name of the medical personnel to whom disclosure was made and their affiliation with any health care facility; 2) the name of the individual making the disclosure; 3) the date and time of the disclosure; and 4) the nature of the emergency.
- G. Research.** PII may be used for research purposes without an authorization only in very limited circumstances.⁸ Workforce Members and others who want to conduct research that requires access to PII held by DMH must consult with the DMH IRB to determine if the research is permissible and if so, the protocols that must be followed to access the PII. Research requires a patient's informed consent in most situations. Informed consent includes consent to use and/or disclose a patient's PII, as set forth in the consent form. The DMH IRB may waive the informed consent requirement as part of its approval of a research protocol.^{9&10}

⁷ The Part 2 Regulations permit acknowledgement of the presence of an identified individual in a facility if the facility is not publicly identified as only a substance use diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the individual is or ever was admitted to the RAP.

⁸ See 42 CFR § 2.52.

⁹ The DMH IRB approval letter must document that it determined that the alteration or waiver of informed consent satisfies certain criteria as set forth at 45 CFR 164.512, 104 CMR 31, and DMH IRB Operating Procedures.

¹⁰ The effect of concurrent coverage with other federal and state regulations regarding protecting research subjects against compulsory disclosure of their identity may further limit disclosures under [Section VI.G.](#)

- H. **Audit and Evaluation.** Audits and evaluations by approved persons/entities do not require a patient's authorization pursuant to the Part 2 Regulations; provided, however, there are conditions that must be agreed to by the persons performing these activities, as well as, additional requirements under state privacy laws. Workforce Members must consult with the DMH Privacy Officer prior to making any disclosures regarding RAP patients in relation to audits, evaluations or other oversight activities.
- I. **Court Order.** Disclosures may be made where a court order has been issued in accordance with procedures specified by the Part 2 Regulations. A subpoena, search warrant, or arrest warrant, even when signed by a judge, is not sufficient, standing alone, to require or even to permit the RAP to disclose information.

Workforce Members must consult with the DMH Privacy Officer prior to making any disclosures regarding RAP patients in response to a court order.

1. Court Orders Related to Patient Records¹¹

a. General Rules.

- i. **Notice.** Before a court can issue an authorizing court order, DMH and any patient whose records are sought must be given adequate notice of the request for the court order and an opportunity to make an oral or written statement to the court. Before issuing the order, the court must determine the applicable “*criteria*” are met for the disclosure. (See [Section VI.I.1.b.](#) below.)

- ii. **Content of the Court Order.** A court order authorizing disclosure of PII must:

- a. Limit disclosure to the information essential to fulfill the objective of the order;
- b. Restrict disclosure to those persons who need the information and in criminal matters limit use to the crime or suspected crime specified in the application; and
- c. Include such other measures as are necessary to limit disclosure.

¹¹ Court orders where Workforce Members, the RAP, or DMH are the subject of the legal action are not addressed in this Section.

b. Criteria.

i. Non-Criminal Matters. If a court order authorizing disclosure of PII is sought for noncriminal purposes, the court must find that:

- a. Other ways of obtaining the information are not available or would not be effective; and
- b. The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services.

ii. Criminal Matters. If a court order authorizing disclosure of PII is sought to criminally investigate or prosecute a patient, the court must find that:

- a. The crime must be extremely serious (e.g., an act causing or threatening to cause death or injury);
- b. The records requested must be reasonably likely to have information of substantial value to the investigation or prosecution;
- c. Other ways of obtaining the information are not available or would not be effective;
- d. The public interest and need for the disclosure outweighs the potential harm to the patient or the physician-patient relationship and the ability of the RAP to provide services to other individuals; and
- e. If the applicant for the court order is a law enforcement agency or official, DMH has been represented by counsel independent of the applicant.

2. Court Orders Related to Confidential Communications. A court may order disclosure of a patient's verbal communications made in the course of diagnosis, treatment or referral for treatment to the RAP only if:

- a. The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;
- b. The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime allegedly committed by the patient, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed

- robbery, assault with a deadly weapon, or child abuse and neglect; or
- c. The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

VII. DMH PROCEDURES FOR VERIFYING IDENTITY AND AUTHORITY

Prior to disclosing PII a Workforce Member must verify identity and authority of the individual or entity to which the information is to be disclosed in accordance with [Chapter 11 Verification of the Identity and Authority of the Requester](#). The Workforce Member making a disclosure of PII is responsible for documenting verification in the applicable Designated Record Set(s), using the mechanism for capturing disclosures for an accounting of the disclosure, or directly on the applicable Authorization and/or written request for PII.

VIII. LEGAL REFERENCE AND ATTACHMENTS

42 CFR Part 2
45 CFR § 164.508(c)
42 CFR § 2.31(a)
M.G.L. c.19, §10
M.G.L c.119, §§ 51A and 51B
M.G.L. c. 123, § 36
104 CMR 27.18(15)
See also, other Chapters referenced in this Chapter.

Recovery from Addictions Program Notice of Privacy Practices
Substance Use Disorder Re-Disclosure Notice



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH

RECOVERY FROM ADDICTIONS PROGRAM

NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU
MAY BE USED AND DISCLOSED AND
HOW YOU CAN GET ACCESS TO THIS INFORMATION.
PLEASE REVIEW IT CAREFULLY

Notice Effective Date: September 1, 2020

Privacy

The Department of Mental Health (DMH) Recovery from Addictions Program (RAP) is required by state and federal law to maintain the privacy and security of your protected health information (PHI). PHI includes any identifiable information about your physical or mental health, the health care you receive, and the payment for your health care. Information about care that you received from other providers may also be included in your PHI.

In addition to other federal and state laws, 42 CFR Part 2 protects the confidentiality of RAP patient records. As a general rule, DMH may not disclose information identifying you as a RAP patient, unless:

- 1) You, or your legally authorized representative, consents in writing;
- 2) The disclosure is permitted by court order;
- 3) The disclosure is made to medical personnel in a medical emergency; or
- 4) The disclosure is made to persons with direct administrative control over the RAP or to qualified personnel for audit or evaluation of the RAP or for research.

Federal law does not protect the confidentiality of any information about a crime committed by you either at the RAP or against any person who works for the RAP or about any threat to commit such a crime.

Federal law does not protect the confidentiality of any information about suspected child abuse or neglect from being reported under state law to state or local authorities. Federal law does not prohibit the reporting of other information to state or local authorities that does not identify you as having a substance use disorder and which is subject to a mandated reporting law.

Except for disclosures required or permitted by law, DMH will not disclose information identifying you as a RAP patient without an authorization to release information signed by you or your legally authorized representative.

DMH is required by law to provide you with this notice to tell you how it may use and disclose your PHI and to inform you of your privacy rights. DMH must follow the privacy practices as set forth in its most current Notice of Privacy Practices.

Changes to this Notice

DMH may change its privacy practices and the terms of this notice at any time. Changes will apply to PHI that DMH already has as well as PHI that DMH receives in the future. The most current privacy notice will be posted in DMH facilities and programs, on the DMH website (www.state.ma.us/dmh), and will be available on request. Every privacy notice will be dated.

How DMH MAY Use and Disclosure Your PHI

DMH may use your PHI within the DMH organization and disclose it outside of the organization without your authorization for the following purposes:

- 1. For Treatment** - DMH may use/disclose PHI to doctors, nurses, residents or students and other health care providers that are involved in delivering your health care and related services. Your PHI will be used to assist in developing your treatment and/or service plan and to conduct periodic reviews and assessments. PHI may be disclosed to other health care professionals and providers to obtain prescriptions, lab work, consultations, and other items needed for your care. PHI will be disclosed to health care providers for the purposes of referring you for services and then for coordinating and providing the services you receive.
- 2. For Payment** - DMH may use/disclose your PHI to bill and collect payment for your health care services. DMH may release portions of your PHI to the Medicaid or Medicare program or a third party payor to determine if they will make payment, to get prior approval, and to support any claim or bill.
- 3. For Health Care Operations** - DMH may use/disclose PHI to support activities such as program planning, management and administrative activities, quality assurance, receiving and responding to complaints, compliance programs (e.g., Medicare), audits, training and credentialing of health care professionals, and certification and accreditation (e.g., The Joint Commission).
- 4. Appointment Reminders** - DMH may use PHI to remind you of an appointment or follow up instructions or to provide you with information about treatment alternatives or other health related benefits and services that may be of interest to you.
- 5. Business Associates / Qualified Service Organizations (BA/QSO)** - DMH may use/disclose PHI to contractors, agents and other BA/QSO who need the information to assist DMH with obtaining payment or carrying out its business operations. If DMH discloses your PHI to a BA/QSO, DMH will have a written contract with that BA/QSO to ensure that it also protects your PHI.

6. Required by Law - DMH may use/disclose PHI as required by law, such as to report a felony committed on its premises; pursuant to a court order; to report child abuse or neglect, and other situations where DMH is required to make reports and/or disclose PHI pursuant to a statute or regulation.

7. Lawsuits and Disputes - If you bring a legal action or other proceeding against DMH or our employees or agents, we may use and disclose PHI to defend ourselves.

8. Other Purposes - DMH may use/disclose your:

- For guardianship or commitment proceedings when DMH is a party;
- For other judicial and administrative proceedings if certain criteria are met;
- To public health authorities that are to receive reports of abuse or neglect;
- For research purposes, following strict internal review;
- To avert a serious and imminent threat to health or safety;
- To persons involved in your care in an emergency situation if certain criteria are met;
- To correctional institutions if you are an inmate or you are detained by a law enforcement officer, we may disclose your PHI to the prison officers or law enforcement officers if necessary to provide you with health care, or to maintain safety, security and good order at the place where you are confined;
- To authorized public health officials for public health activities such as tracking diseases and reporting vital statistics;
- To government agencies authorized to conduct audits, investigations, and inspections of our facility. These government agencies monitor the operations of the health care system, government benefit programs such as Medicare and Medicaid, and compliance with government regulatory programs and civil rights laws;
- For workers' compensation claims;
- For certain specialized government functions if certain criteria are met; and
- In the unfortunate event of your death, we may disclose your PHI to coroners, medical examiners, funeral directors, and certain organ and tissue procurement organizations.

Uses/Disclosures Requiring Written Authorization

DMH is required to have a written authorization from you or your legally authorized personal representative for uses/disclosures beyond treatment, payment, and health care operations, unless an exception listed above applies. You may cancel an authorization at any time, if you do so in writing. A cancellation will stop future uses/disclosures except to the extent DMH has already acted based upon your authorization.

Authorization is required for most uses and disclosures of psychotherapy notes (these are the notes that certain professional behavioral health providers maintain that record

your appointments with them and are not stored in your medical record), certain substance use disorder information, HIV testing or test results, and certain genetic information even if disclosure is being made for treatment, payment, or health care operations purposes as described above.

Although the following types of uses/disclosures are not contemplated by DMH, we need to inform you that any use or disclosure of PHI for marketing that involves financial remuneration to DMH will require an authorization. Similarly, to sell PHI, DMH must obtain an authorization. DMH will not use or disclose your PHI for fundraising purposes.

Your Rights Concerning Your PHI

You or your legally authorized personal representative has the right to:

- Request that DMH use a specific address or telephone number to contact you. DMH will try to accommodate all reasonable requests.
- Obtain, upon request, a paper copy of this notice or any revision of this notice, even if you agreed to receive it electronically.
- Inspect and request a copy of the PHI used to make decisions about your care. When records are kept electronically, you may request an electronic copy. Access to your records may be restricted in limited circumstances. If DMH denies your request, in whole or in part, you may request that the denial be reviewed. Fees may be charged for copying and mailing. Ordinarily, DMH will respond to your request within 30 days. If additional time is needed to respond, DMH will notify you within the 30 days to explain the reason(s) for the delay and indicate when you can expect a final answer to your request. **This request must be made in writing.**
- Request additions or corrections to your PHI. DMH is not required to agree to such a request. If it does not comply with your request, DMH will tell you why in writing within 60 days and notify you of your specific rights in that event. If additional time is needed to respond, DMH will notify you within the 60 days to explain the reason(s) for the delay and indicate when you can expect a final answer to your request. **This request must be made in writing.**
- Request an accounting of disclosures (up to the past six years) which will identify, in accordance with applicable laws, certain other persons or organizations to which DMH disclosed your PHI and why. An accounting will not include disclosures that were: (1) made to you or your personal representative; (2) authorized or approved by you; (3) made for treatment, payment, and health care operations; and (4) some that were required by law to be made. Ordinarily, DMH will respond to your request within 60 days. If additional time is needed to respond, DMH will notify you within the 60 days to explain the reason(s) for the delay and indicate when you can expect a final answer to your request. **This request must be made in writing.**
- Request that DMH restrict how it uses or discloses your PHI. DMH is not required to agree to such restriction, with the exception that if you, or someone on your behalf, pay for a service or health care item out-of-pocket in full, DMH will agree to not disclose PHI pertaining only to that

service or item to your health plan for the purpose of payment or health care operation, unless DMH is otherwise required by law to disclose that PHI. **This request must be made in writing.**

The above requests may be made at or submitted to any DMH facility or office.

Record Retention

Your individual records will be retained a minimum of 20 years from the last date you receive services from a DMH inpatient facility and/or from DMH operated community services. After that time, your records may be destroyed.

Breach of PHI

DMH will inform you if a breach of your unsecured PHI occurs.

Complaint

If you believe that your privacy or privacy rights have been violated, or you want to file a complaint, you may contact: DMH Privacy Officer, Department of Mental Health, 25 Staniford Street, Boston, MA 02114, E-mail: DMHPrivacyOfficer@MassMail.State.MA.US, Phone: 617-626-8160, Fax: 617-626-8242. A complaint must be made in writing.

You also may file a complaint with the Secretary of Health and Human Services, Office for Civil Rights, U.S. Department of Health and Human Services, JFK Federal Building, Room 1875, Boston, MA. 02203.

Violation of 42 CFR Part 2 is a crime. In addition to your right to file a complaint with DMH, suspected violations of this federal law may be filed with the United States Attorney for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, MA 02210 and with the Compliance Officer Region I, Division of Pharmacologic Therapies, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

(See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for federal statutes and 42 CFR Part 2 for federal regulations)

No one may retaliate against you for filing a complaint or for exercising your rights as described in this notice.

Privacy Contact Information

If you want to obtain further information about DMH's privacy practices, or if you want to exercise your rights, you may contact: DMH Privacy Officer, Department of Mental Health, 25 Staniford Street, Boston, MA 02114, E-mail: DMHPrivacyOfficer@MassMail.State.MA.US, Phone: 617-626-8160, Fax: 617-626-8131. A complaint must be made in writing.

You also may contact a DMH facility's medical records office (for that facility's records), a DMH program director (for that program's records), your site office (for case management records), or the human rights officer at your facility or program, for more information or assistance.

DMH Contact Information

If you want to obtain other information (non-privacy related) about DMH and its services you may contact: DMH Information, Department of Mental Health, 25 Staniford Street, Boston, MA 02114, E-mail: dmhinfo@state.ma.us, Phone: 800-221-0053, Fax: (617) 626-8131.

You also may contact your DMH program director, your site office, or the human rights officer at your facility or program, for more information or assistance.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH

SUBSTANCE USE DISORDER RE-DISCLOSURE NOTICE

From: Department of Mental Health
25 Staniford Street
Boston, Massachusetts 02114-2575

PROHIBITION ON RE-DISCLOSURE OF CONFIDENTIAL INFORMATION

42 CFR part 2 prohibits unauthorized disclosure of these records.