

CHAPTER 17

RECOVERY FROM ADDICTIONS PROGRAM

RESTRICTIONS ON USE AND DISCLOSURE OF PATIENT IDENTIFYING INFORMATION

I. INTRODUCTION

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 information¹ (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 PII and its use and disclosure.

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 defined in the Part 2 Regulations. Use means, with respect to records, the sharing, employment, application, utilization, examination, or analysis of the information contained in such records that occurs either within an entity that maintains such information or in the course of civil, criminal, administrative, or legislative proceedings as described at 42 U.S.C. 290dd-2(c) (Legal Proceedings). 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. The DMH Privacy Officer, or designee, should be consulted for all uses and related to Legal Proceedings.

“Disclose” is defined in the Part 2 Regulations. Disclosure 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

¹ See Glossary to this Handbook for definitions of 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.

defined definition than that used in HIPAA.

II. GENERAL APPLICABILITY

Restrictions on Use and Disclosure. The restrictions on use and 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. The restrictions prohibit the use and disclosure of such information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient. The restrictions on use and disclosure in this Chapter apply to persons having direct administrative control over RAP with regard to information that is subject to the Part 2 Regulations communicated to them by the RAP.

- A. **Effect.** This Chapter prohibits the use and disclosure of patient records unless certain circumstances exist under which disclosure is permitted. If any circumstance exists where use or disclosure is permitted, that circumstance acts to remove the prohibition on use and disclosure but it does not compel disclosure. The Part 2 Regulations do not require use or disclosure under any circumstances other than when disclosure is required by the U.S. Secretary of Health and Human Services to investigate or determine a person's compliance with the Part 2 Regulations. However, there are some situations where uses and 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 Use and 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 and Disclosure.**
 - 1. **Patient Access Not Prohibited.** This Chapter does not prohibit the RAP from giving a current or former patient access to their 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 their 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 their 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 authorize 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 use and 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. **Authorization by Personal Representative of Estate.** Any other use and disclosure of information identifying a deceased patient as having a substance use disorder is subject to Part 2 Regulations. If a written authorization for the use and 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 used or disclosed only as permitted by this Chapter and may not otherwise be used or disclosed in any civil, criminal, administrative, or legislative proceedings conducted by any federal, state, or local authority. Any use or disclosure made under this Chapter must be limited to that information which is necessary to carry out the purpose of the use or disclosure. See [Chapter 9](#), The Minimum Necessary Rule.

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

- B. Unconditional Compliance Required.** The restrictions on use and disclosure 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 use or disclosure which is not permitted by this Chapter.
- 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 their person while away from the RAP premises any card or other object that 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.
- E. Right to Request Restriction.**
1. The RAP must permit a patient to request a restriction of uses or disclosures of records about the patient to carry out treatment, payment, or health care operations, including when the patient has signed written authorization for such disclosures.
 2. The RAP is not required to agree to a restriction, except if:
 - a. The disclosure is to health plan;
 - b. The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law;

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.

- and
- c. The record pertains solely to a health care item or service for which the patient, or person other than the health plan on behalf of the patient, has paid the RAP in full.
3. A restriction agreed to by the RAP under Section III.E.1., above, is not effective to prevent uses or disclosures required by law or permitted by the Part 2 Regulations for purposes other than treatment, payment, and health care operations.
 4. The RAP may terminate a restriction if:
 - a. The patient requests or agrees to termination, as provided Chapter 15, Right to Request Restrictions on the Use and/or Disclosure of Protected Health Information, of this Handbook; or
 - b. The RAP informs the patient that it is terminating its agreement to a restriction, except that such termination is:
 - i. Not effective for records restricted under Section III.E.2., above; and
 - ii. Only effective with respect to records created or received after the RAP has so informed the patient.
 5. Except as modified by this Section III.E., all other provisions of Chapter 15, Right to Request Restrictions on the Use and/or Disclosure of Protected Health Information, of this Handbook apply.

F. Substance Use Disorder Counseling Notes.

1. Substance use disorder (SUD) counseling notes means notes recorded (in any medium) by a RAP provider who is a SUD or mental health professional documenting or analyzing the contents of conversation during a private SUD counseling session or a group, joint, or family SUD counseling session and that are separated from the rest of the patient's SUD and medical record. SUD counseling notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
2. Authorization required: SUD counseling notes.
 - a. Notwithstanding any provision of this Chapter 17, the RAP must obtain authorization for any use or disclosure of SUD counseling notes, except:
 - i. To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the SUD counseling notes for treatment;
 2. Use or disclosure by the RAP for its own training programs in which students, trainees, or practitioners in SUD treatment or mental health learn under supervision to practice or improve their skills in group, joint, family, or individual SUD counseling; or
 3. Use or disclosure by the RAP to defend itself in a legal action or other proceeding brought by the patient;
- ii. A use or disclosure that is required by the Part 2 Regulations or permitted regarding deceased patients; for audit or evaluation with respect to the oversight of the originator of the SUD counseling notes; or pursuant to court orders and, if applicable, a subpoena. Workforce Members must consult with the DMH Privacy Officer, or designee, prior to making such disclosures.
3. A written authorization for a use or disclosure of SUD counseling notes may only be combined with another written authorization for a use or disclosure of SUD counseling notes.
 4. The RAP may not condition the provision to a patient of treatment or eligibility for benefits on the provision of a written authorization for a use or disclosure of SUD counseling notes.

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 required elements listed below are those that are unique to the RAP. Required elements that are listed in Chapter 4, Notice of Privacy Practices, as applicable to PHI are also applicable to RAP patients are not repeated here. **NOTE:** The effect and/or application of those elements may differ when applied to the RAP (PII and PHI) than when applied to non-RAP DMH facilities and programs (PHI only). The written notice of the federal law and regulations must include:

1. Header: The following statement must appear in the header or

otherwise. This statement is to be used instead of the header in Chapter 4

NOTICE OF PRIVACY PRACTICES OF RECOVERY FROM ADDICTIONS PROGRAM

This notice describes:

- How health information about you may be used and disclosed.
- Your rights with respect to your health information.
- How to file a complaint concerning a violation of the privacy or security of your health information, or of your rights concerning your information.

PLEASE REVIEW IT CAREFULLY

YOU HAVE A RIGHT TO A COPY OF THIS NOTICE (IN PAPER OR ELECTRONIC FORM) AND TO DISCUSS IT WITH DMH PRIVACY OFFICER AT E-mail: DMHPrivacyOfficer@MassMail.State.MA.US AND PHONE: 617-626-8160 IF YOU HAVE ANY QUESTIONS.

2. A description, including at least one example, of the types of uses and disclosures that require written authorization under the Part 2 Regulations, including for treatment, payment, and health care operations.
3. A statement that a patient may provide a single authorization for all future uses or disclosures for treatment, payment, and health care operations purposes.
4. A statement that records that are disclosed to a part 2 program, covered entity, or business associate pursuant to the patient's written authorization for treatment, payment, and health care operations may be further disclosed by that part 2 program, covered entity, or business associate, without the patient's written authorization, to the extent the HIPAA regulations permit such disclosure.
5. A statement of the patient's right to request restrictions of disclosures made with prior authorization for purposes of treatment, payment, and health care operations and a brief description of how the patient may exercise this right. (See Section III.E. of this Chapter 17.)

- 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 their 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.) In addition, a copy of the DMH Authorization form **must be attached** to the Re-Disclosure Notice and **both** must accompany any PII that is disclosed to a third party.

1. Required Elements. An authorization for a use of 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 use or disclosure; that is, the DMH Recovery from Addictions Program.
- c. A specific and meaningful description of the information to be used and/or 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

Special instructions when designating certain recipients. If the recipient is a covered entity or business associate to whom a record (or information contained in a record) is disclosed for purposes of treatment, payment, or health care operations, a written authorization must include the statement that the patient's record (or information contained in the record) may be redisclosed in accordance with the permissions contained in the HIPAA regulations, except for uses and disclosures for civil, criminal, administrative, and legislative proceedings against the patient.

- e. The purpose of the use or disclosure. The statement "at the request of the individual" is sufficient if the individual initiates the authorization. The statement, "for treatment, payment, and health care operations" is sufficient description of the purpose when a patient provides authorization once for all such future uses and disclosures for these purposes.

⁶ The Part 2 Regulations allow for general designation disclosures in some circumstances; however, MA law requires a specific designation to authorize drug use disorder information. (See MGL c. 111E, § 18(a).)

- 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. The statement “end of the treatment”, “none”, or similar language is sufficient if the authorization is for a use or disclosure for treatment, payment, or health care operations. 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.
- j. An authorization to use and disclose records for treatment, payment, or health care operations must include the following statements:
 - i. The potential for the records used or disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected by this part.
 - ii. The consequences to the patient of a refusal to sign the authorization.

2. DMH Forms. The RAP has three specialized Authorizations for Release of Information forms: the general Two Way form; the form for Substance Use Disorder Counseling Notes (see Section III.F., above); and the form for Records for Legal Proceedings (see Section VI.B., below). These forms are attached to this Chapter 17. These forms cannot be combined with other authorizations for any other purposes, except an authorization for Substance Use Disorder Counseling Notes may be combined with another authorization for Substance Use Disorder Counseling Notes. In all cases, the requirements for completing an authorization form for release of RAP information are more stringent regarding the element of identifying recipients of information, 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.

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 a 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 use and 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 persons 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 person(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 use and 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. Both groups are RAP Workforce Members.
- B. Pursuant to a Single Authorization.** When Records are received pursuant to a single authorization (consent) for all future uses and disclosures for treatment, payment, and health care operations, the RAP may use and disclose those Records for treatment, payment, and healthcare operators as permitted or required by this Handbook for PHI not subject to Part 2 Regulations, until such time as the patient revokes such authorization in writing, **except** such Records, or testimony relaying the content of such Records, shall not be used or disclosed in civil, criminal, administrative, and legislative proceeding against the patient unless based on written authorization, or a court order issued in compliance with Section VI.K. below. Patient authorization for these purposes cannot be combined with an authorization to use or disclose a Record for any other purpose. The RAP Authorization for Release of Records for Legal Proceedings form is attached to this Chapter 17
- C. Qualified Service Organizations.** The restrictions on use and 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 or on behalf of the RAP.
- D. 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 use and 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.

- E. 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.K.](#) regarding court orders or [Section V.A.](#) regarding authorization.)
- F. 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.)
- G. Medical Emergencies Posing an Immediate Threat to Health and Requiring Immediate Medical Intervention.** Use and disclosure 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 person making the disclosure; 3) the date and time of the disclosure; and 4) the nature of the emergency.
- H. Research.** PII may be used and disclosed 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

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.

protocol.^{9&10}

- I. **Audit and Evaluation.** Audits and evaluations by approved persons 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, or designee, prior to making any disclosures regarding RAP patients in relation to audits, evaluations or other oversight activities.

- J. **Disclosures for Public Health.**
RAP may use and disclose records for public health purposes without patient authorization as long as:
 - 1. The use and disclosure is made to a public health authority; and
 - 2. The content of the information disclosed has been de-identified and aggregated in accordance with the requirements of Section IX of Chapter 6 of this Handbook.

- K. **Court Order.** Uses and disclosures may be made where a court order has been issued in accordance with procedures specified by the Part 2 Regulations, **including** Records received under Section VI.B. above, or testimony relaying the content of such Records, shall not be used or disclosed in civil, criminal, administrative, or legislative proceedings against the patient unless based on written authorization, or a court order issued in compliance with Part 2 Regulations. If a court order is issued for these purposes it must be accompanied by a subpoena or other legal requirement compelling disclosure before the requested record is used or disclosed. 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 use or disclose information.

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

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.](#)

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.

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

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

- 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 a civil, criminal, administrative, or legislative 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.111E, §18(a)
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](#)

[Authorization for Release of Information Two Way](#)

[Authorization for Release of Records for Legal Proceedings](#)

[Authorization for Release of Substance Use Disorder Counseling Notes](#)