

## ORGANIZATION POLICY

POLICY TITLE: USE AND DISCLOSURE OF PATIENT INFORMATION  
"AS REQUIRED BY LAW"

POLICY NUMBER: 1316

**I. DEFINITIONS:** Certain terms having specific definitions are used in this Policy, and these terms and definitions are as follows:

A. Individually identifiable health information means information that is a subset of health information, including demographic information collected from an individual, and:

1. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and
2. Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
  - a. That identifies the individual; or
  - b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

B. Protected health information means individually identifiable health information:

1. Except as provided in paragraph (ii) of this definition, that is:
  - a. Transmitted by electronic media;
  - b. Maintained in any medium described of *electronic media* at § 162.103; or
  - c. Transmitted or maintained in any other form or medium.
2. Protected health information excludes individually identifiable information in:
  - a. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
  - b. Records described at 20 U.S.C 1232g(a)(4)(B)(iv).

**II. PURPOSE AND APPLICABLE LAW:** The purpose of this Policy is to establish OMH's use and disclosure of patient information "as required by law."

OMH takes seriously its legal obligations to federal, state, local and territorial or tribal authorities.

It is OMH's policy that protected health information may be used and disclosed as required by law, except additional requirements must be met prior to the release of such information if such disclosure relates to one of the following:

- (1) Victims of abuse, neglect or domestic violence; or
- (2) Law enforcement purposes (including court orders and grand jury subpoenas).

For legally mandated disclosures relating to these topics, OMH must also meet the requirements described in the corresponding procedures, Disclosures about Victims of Abuse, Neglect or Domestic Violence or Disclosures of Patient Information for Law Enforcement Purposes.

OMH must limit its use or disclosure to the relevant requirements of such law.

### III. PROCEDURE:

#### A. Routine Uses and Disclosures

In order to clarify certain legal duties of OMH, OMH has identified the current laws that mandate that OMH make certain routine disclosures of protected health information. A list of State and federal laws (statutes and regulations) that require OMH to make *routine* uses and disclosures of Patient Information is attached to this procedure (see Routine Disclosures Required by Law). OMH employees may consult this list to determine if a disclosure is one that OMH is routinely legally mandated to make, and, if it is, employees may disclose the information as required.

#### B. Requests to Disclose Protected Health Information

Requests for release of protected health information that an individual or entity claims is "required by law" should be directed to the Privacy Officer.

The Privacy Officer must first determine whether the disclosure is actually mandated (versus merely permitted). If the use or disclosure is mandated, the Privacy Officer may disclose protected health information in accordance with this procedure. If the use or disclosure is merely permitted, the Privacy Officer is not permitted to make the use or disclosure under this procedure. In such case, the Privacy Officer should determine if the use or disclosure is permitted under another procedure. If the use or disclosure is not permitted under any other procedure, OMH may NOT disclose the protected health information without first obtaining an Authorization to Disclose Health Information.

*Required by law* means a mandate of law, enforceable in a court of law, that would compel OMH to make a use or disclosure of protected health information. Examples of mandates that would be deemed “required by law” include:

- Statutes or regulations that require use or disclosure of protected health information;
- Court orders and court-ordered warrants;
- Subpoenas or summons issued by a court, grand jury or administrative body.

Once the Privacy Officer confirms that the request is required by law, the Privacy Officer, *or employee directed by the Privacy Officer* may disclose the protected health information without having to obtain an authorization and without providing the patient with an opportunity to agree or object to the disclosure, provided that the disclosure is made in accordance with this policy and procedure and the Privacy Officer, or employee:

- Verifies the authority of the requestor;
- Verifies the identity of the requestor in accordance with the procedure governing Verification of Identity for Individuals Requesting protected health information; and
- Documents the disclosure in accordance with the procedure governing Accounting for Disclosures and maintains this documentation in the patient’s record for six years.

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