

ORGANIZATION POLICY

POLICY TITLE: ONSLOW MEMORIAL HOSPITAL DISCLOSURE OF PROTECTED HEALTH INFORMATION TO AVERT SERIOUS RISK TO HEALTH OR SAFETY

POLICY NUMBER: 1310

PURPOSE AND APPLICABLE LAW: The purpose of this Policy is to establish the OMH's disclosure of patient information to avert serious risk to health or safety.

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
 - i. That identifies the individual; or
 - ii. 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 that is:

1. Transmitted by electronic media (e.g., internet, intranet, extranet, facsimile dial up lines);
2. Maintained in any medium of electronic media (e.g., computer hard drives, removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card); or
3. Transmitted or maintained in any other form or medium.

PROCEDURE:

OMH may use or disclose protected health information if OMH, in good faith:

- Believes the use or disclosure:

- Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
- Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- Believes the use or disclosure is necessary for law enforcement authorities to identify or apprehend an individual:
 - Because of a statement by an individual admitting participation in a violent crime that OMH reasonably believes may have caused serious physical harm to the victim; or
 - Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

NOTE: Because situations that may potentially allow disclosure under this Procedure also could potentially involve other sections of the Privacy Rule, OMH should also refer to OMH's Procedures for those sections, namely:

- *Disclosures about Victims of Abuse, Neglect or Domestic Violence;*
- *Disclosures of Patient Information for Law Enforcement Purposes.*

1. General.

- a. This procedure does not create a duty to disclose, but rather allows disclosure when required, permitted by or otherwise consistent with standards of ethical duties and applicable laws (for example, if there is a legal duty to warn third parties).
 - i. If state law prohibits the contemplated disclosure, OMH cannot disclose under this Procedure.
- b. Use or disclosure under this Procedure may be made on OMH's own initiative, without the Patient's authorization or opportunity to agree or object.
- c. Use or disclosure under this Procedure must comply with OMH's procedure The "Minimum Necessary" Standard.
- d. Use or disclosure under this Procedure need not comply with an individual's authorization to restrict uses or disclosures of protected health information.

2. Permitted disclosures. OMH may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, in either of the following two circumstances:
- a. **Aversion of serious** and **imminent threats**. When OMH, in good faith, believes that the use or disclosure:
 - i. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - ii. Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
 - b. **For law enforcement to identify or apprehend someone**. When OMH, in good faith, believes that the use or disclosure is necessary for law enforcement authorities to identify or apprehend an individual:
 - i. Because of a written or oral statement by an individual admitting participation in a violent crime that OMH reasonably believes may have caused serious physical harm to the victim; HOWEVER
 1. ***Use or disclosure not permitted.*** OMH may NOT use or disclose protected health information when the information is learned by OMH:
 - a. In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure, or counseling or therapy; or
 - b. Through a request by the individual to initiate or to be referred for the treatment, counseling or therapy.
 2. ***Limit on information that may be disclosed.*** A use or disclosure under these circumstances shall contain only the following:
 - a. The statement made by the individual admitting participation in the violent crime; and
 - b. The following protected health information:
 - i. name and address,
 - ii. date and place of birth,
 - iii. social security number,

- iv. ABO blood type and rh factor,
- v. type of injury,
- vi. date and time of treatment,
- vii. date and time of death (if applicable), and
- viii. a description of distinguishing characteristics (such as height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos).

or

- ii. where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

3. Documentation. OMH shall document in the patient's record, as soon as reasonably practicable after any use or disclosure under this Procedure, as much of the following information as reasonably possible and applicable under the circumstances:

- a. Date and time of the use or disclosure;
- b. Description of the information used or disclosed;
- c. Name, title and government affiliation of the person(s):
 - i. Representing that the use or disclosure is necessary under this Procedure;
 - ii. Requesting use or disclosure under this Procedure; and
 - iii. Receiving the information used or disclosed under this Procedure;
- d. The factual basis for the belief that use or disclosure is necessary under this Procedure, including:
 - i. The representations made by third party that caused OMH to believe that the use or disclosure was necessary;
 - ii. OMH's basis for believing that the person making the representations had knowledge about the situation; and
 - iii. OMH's basis for believing that the person making the request and/or receiving the information had the authority to request and/or receive it.

This documentation must be kept in the patient's record for six years, in accordance with the policy and procedure Accounting of Disclosures.

EFFECTIVE DATE: June 2005

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