



Alameda County Behavioral Health

Mental health & substance use services

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POLICY TITLE

Privacy, Security and Confidentiality Statement of Client Services, Records and Information

Policy No: 350-3-1

Date of Original Approval:
10/01/2018

Date(s) of Revision(s): 02/07/2019

PURPOSE

This policy addresses the need to ensure that all ACBH employees, volunteers, sub-contracted and contracted Behavioral Health prevention and treatment service programs operate in accordance with legal and ethical standards. Federal and State laws and regulations protect the confidentiality of client records maintained by all County, State and Federally funded contracted providers.

AUTHORITY

42 Code of Federal Regulations (CFR) Part 2 Confidentiality of Alcohol and Drug Client Records; CFR Part 438 Managed Care; California Code of Regulations (CCR) Title 22 Drug Medical (DMC) and the DMC Organized Delivery System (ODS) Special Terms and Conditions (STCs); CCR Title 9 Counselor Certification; Health Insurance Portability and Accountability Act (HIPAA); Title 42 USC Chapter 6A Sub-Chapter XVII Part B Block Grants Regarding MH & SU; Title 45 CFR Part 75 (Uniform Admin Requirements, Cost Principles & Audit Requirements for HHS) & 96 (Block Grants); Final Rule 61 FR 1492 Tobacco Regulations for MH& SU Block Grants; W&I 5328

SCOPE

All ACBH county-operated programs in addition to entities, individuals and programs providing Substance Use Prevention and/or Behavioral Health Care Treatment [Substance Use Disorder (SUD) or Mental Health (MH) Disorders] services under a contract or subcontract with ACBH.

POLICY

It is the legal and ethical responsibility of all ACBH employees, contracted providers, volunteers and subcontracted providers to use personal and confidential client, employee and County business information (referred collectively as “confidential

information”) in accordance with the law and ACBH policy, and to preserve and protect the privacy rights of the subject of the information as they perform their duties.

PROCEDURE

These laws and regulations must not be used as barriers to provide coordinated and integrated care. Provided that the appropriate releases and/or consents for personal information including but not limited to client treatment information are obtained, every effort should be made to share clinical information with relevant providers across the continuum of behavioral health care, and across systems of physical care.

Within the requirements of the laws and regulations governing confidentiality in the provision of health services, all providers within the system must cooperate with system-wide efforts to facilitate the sharing of pertinent clinical information for the purposes of improving the effectiveness, integration, and quality of health services.

ACBH requires a signed Confidentiality Statement in order to ensure that all employees and contracted and/or subcontracted providers are informed and prepared to safe-guard privacy and confidentiality. This Confidentiality Statement attests that the signer has read, understands and acknowledges their obligations concerning Personal Information (PI) and Protected Health Information (PHI) and the Managed Health Care entity obligations within Alameda County Behavioral Health Care Services (ACBH).

To demonstrate ACBH staff compliance and commitment to confidentiality, privacy and quality care, all employees, contracted providers, volunteers and subcontracted providers of Alameda County Behavioral Health Care Services (ACBH) will be asked to sign of the Confidentiality Statement upon hire. Thereafter the Confidentiality Statement will be updated annually with their signature and date of signing.

- Upon hire, Human Resources (HR) will include a copy of this Policy and the Confidentiality Statement as part of the on-boarding process. The Confidentiality Statement will be linked with ACBH for continuous annual monitoring.
- Annual monitoring to track compliance for contracted SUD Community Based Providers (CBOs) is conducted by the Network Office. The Network Office will review SUD provider personnel files to verify training and the signed and dated Confidentiality Statement.
- Contracted MH CBOs will receive e-training material and the Confidentiality Statement form. Information Systems (IS) ACBH will manage e-reports of the submitted Confidentiality Statement from all other CBOs

- ACBH staff will receive e-training materials and the Confidentiality Statement e-form. Upon completion of the training materials the signed and dated Confidentiality Statement the e-form will be submitted to staff supervisors.
- Access to client records will be blocked until evidence of training and the signed Confidentiality Statement has been signed and submitted for the record.

THE BASICS

Information:

- a. *Personal Information (PI)* that identifies or describes an individual and the disclosure of which would constitute an unwarranted invasion of personal privacy. Examples of confidential employee and ACBH Business information include but are not limited to:
 - Home address and telephone number
 - Medical information;
 - Birth date;
 - Citizenship;
 - Social Security Number;
 - Spouse/Partner/Relative's Names;
 - Income Tax Withholding data;
 - Performance Evaluations; and,
 - Proprietary/Trade Secret Information.
- b. *Protected Health Information (PHI)* includes; but are not limited to:
 - Medical and Psychiatric Records (paper printouts, photos, videotapes, diagnostic and therapeutic reports, x-rays, scans, laboratory and pathology samples)
 - Client business Records (such as bills, for service or insurance information whether stored externally or on site, electronically stored or transmitted client information)
 - Visual Observation of the Client and/or Client receiving medical care or accessing SU or MH services (verbal information provided by or about a client)
 - Peer Review/Risk Management Information and Activities
 - Other Information the disclosure of which would constitute an unwarranted invasion of privacy.

Laws and Regulations

- a. 42 CFR Part 2 – Confidentiality of Alcohol and Drug Client Records

Covers all records relating to the identity, diagnosis, and/or treatment of any client in a SUD program that is conducted, regulated, and/or assisted in anyway by any federal agency. As a component of the ACBH network and when applicable, MH must abide by 42 CFR Part 2 Confidentiality of Alcohol and Drug Client Records.

- For a summary of 42 CFR Part 2, please see:
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A1.0.1.1.2>
- Subpart A includes an introduction to the statute (e.g., purpose, criminal penalty, reports of violations, etc.).
- Subpart B covers general provisions (e.g., definitions, confidentiality restrictions and minor clients, etc.).
- Subpart C covers disclosures allowed with the clients' consent (e.g., prohibition on re-disclosure, disclosures permitted with written consent, disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs, etc.).
- Subpart D covers disclosures that do not require client consent (e.g., medical emergencies, research, evaluation and audit activities).
- Subpart E includes information on court orders around disclosure (e.g., legal effects of order, confidential communication, etc.).

b. HIPAA-Health Insurance Portability and Accountability Act

Provides data privacy and security provisions for safeguarding medical information from unauthorized use or viewing. A summary of the HIPAA privacy rule can be found here: <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>. For more general information on HIPAA, please see: <https://www.hhs.gov/hipaa/for-professionals/index.html>. For more specific information concerning covered entities, business associates, consumer information and health information technology, please see: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>

c. 42 CFR Part 438 – Managed Care Organizations (MCOs)

Alameda County's Behavioral Health Care Services (ACBH) participation in the Drug Medi-Cal Organized Delivery System (DMC ODS) Waiver, the administrative entity that becomes a managed care plan, is responsible for

overseeing the SUD system. As a component of becoming a managed care entity, ACBH and its SUD/MH network must abide by the 42 Code of Federal Regulation (CFR) Part 438 managed care requirements as they are applicable. In general, one of the primary aims of 42 CFR Part 438 is to achieve delivery system and payment reforms by focusing on the following priorities: 1) Network adequacy and access to care standards (e.g., timeliness of services, distance standards) 2) Client / Consumer protections and 3) Quality of Care.

https://www.dhcs.ca.gov/provgovpart/Documents/DMC-ODS_Waiver/DMC-ODS_ExhibitA_AttachmentI_Boilerplate.pdf

d. CCR Title 22 Drug Medi-Cal and the DMC ODS Special Terms and Conditions

CCR Title 22 specifics a framework for the expectations and requirements of services delivered through the Drug Medi-Cal (DMC) system. With implementation of the DMC ODS Waiver, the Special Terms and Conditions (STCs) of the DMC ODS specify the new requirements and expectations of the DMC system. Where there is conflict between Title 22 and the DMC ODS STCs, the DMC ODS STCs override Title 22.

However, Title 22 remains as the regulatory requirements in all other areas that are not in conflict with and not addressed by the DMC ODS STCs. <https://www.dhcs.ca.gov/provgovpart/Documents/Medi-Cal2020STCsAmended060718.pdf>

- o CCR Title 9 Counselor Certification provides minimum requirements on the level of credentials counseling staff secure prior to conducting services. The minimum standards are designed to ensure a baseline quality and effectiveness of treatment services, and an understanding of confidentiality and privileged communication. For more specific information concerning SUD Counselor requirements: <http://www.dhcs.ca.gov/provgovpart/Pages/CounselorCertification.aspx>
- o Peer Support Services provided by Alameda County Behavioral Health Care Services (BHCS) are part of a continuum of client care under DMC-ODS. The Peer Support Specialist (PSS) minimum training standards, supervision and oversight are designed to ensure a baseline quality and effectiveness of treatment services, and an understanding of confidentiality and privileged communication. Peer Support Services DMC ODS Waiver (DHCS IN 17-008 DMC ODS Waiver)

https://www.dhcs.ca.gov/formsandpubs/Documents/MHSUDS%20IN_17-008.pdf

e. Title 42 CFR, Part 438.214 Provider Credentialing for MH Plans and DMC ODS Pilot Counties

42 CFR Part 438.214 requires MCO Plans to ensure that each of its network providers is qualified in accordance with current legal, professional, and technical standards, and is appropriately licensed, registered, waived, and/or certified (State Plan, Section 3, Supplement 3 to Attachment 3.1-A). These providers must be in good standing with the Medicaid/Medi-Cal programs. Any provider excluded from participation in Federal health care programs, including Medicare or Medicaid/Medi-Cal, may not participate in any Plan's provider network. For more information, refer to DHCS IN 18-019.

https://www.dhcs.ca.gov/services/MH/Documents/Information%20Notices/IN%2018-019%20PROVIDER%20CREDENTIALING%20AND%20RE-CREDENTIALING/MHSUDS_Information%20Notice_18-019_Final%20Rule_Credentialing.pdf

f. Welfare & Institutions 5328 (W&I 5328)

Information and records obtained in the course of providing services to either voluntary or involuntary recipients, including research projects, shall be confidential. Information and records shall be disclosed only in specified circumstances (see W&I 5328). Information obtained in the course of research may not be disclosed to unauthorized persons, published or otherwise made public that identifies any information regarding persons who have received services or identifies that person who received services. As a condition of doing research concerning persons who have received services prior informed consent of such persons, to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research is required. W&I 5328:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5328&highlight=true&lawCode=WIC&keyword=5328

CONTACT

<i>Policy & Procedure: Privacy, Security and Confidentiality Statement for Services, Records and Information</i>	# 350-3-1
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BHCS Office	Current as of	Email
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DISTRIBUTION

This policy will be distributed to the following:

- ACBH Staff
- ACBH County and Contract Providers
- Public

ISSUANCE AND REVISION HISTORY

Original Authors: Sharon Loveseth, LAADC; QA

Original Date of Approval:

Date of Revision: N/A

Revise Author	Reason for Revise	Date of Approval by (Name)
Sharon Loveseth	Monitoring and Technical Improvements	Rudy Arrieta, QM 02/07/2019

ATTACHMENTS

- Confidentiality Statement BHCS form

DEFINITIONS

Term	Definition
Employee/Staff	Includes all current employees, quasi-employees (volunteers), or internship employees who provide direct, indirect and administrative services.
Patient	Refers to clients, beneficiarys, consumers, persons served, and patients

Behavioral Health	Refers to both Mental Health Services and Substance Use Health Services
Managed Care	MCO is a health care delivery system organized to manage cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set of per member per month (capitation) payment for these services. https://www.medicaid.gov/medicaid/managed-care/index.html



Alameda County Behavioral Health

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CONFIDENTIALITY STATEMENT
ACBH Policy:
Privacy, Security and Confidentiality Statement of Patient
Services, Records and Information

Pursuant to Alameda County Behavioral Health (ACBH) referenced policy and procedures (see below), I agree not to divulge to any unauthorized persons any information obtained in the course of my employment, quasi-employment (volunteer work), or internship within Alameda County Behavioral Health (ACBH) Services system.

I understand and agree to comply with the ACBH policy “Privacy, Security and Confidentiality Statement of Patient Services, Records, and Information within ACBH System of Care”.

I understand that unauthorized release of confidential information may make me subject to a civil action under provisions of the Federal, State Regulations and the Welfare and Institutional Code. The Federal/ State Regulations and the Welfare and Institutional Code protect the confidentiality of patient records maintained for patients and/or clients that receive services through Federal, State and County funds. Violations of this Oath will be handled in a manner consistent with the County’s and/or CBO’s disciplinary process. I acknowledge that I have received, read and understand and shall abide by the ACBH policy referenced above.

Signature: _____

Date: _____

Print Name & Job Title: _____

PROCEDURES:

1. All current staff of Alameda County Health Care Services (BHCS) network of care system will be asked to review the policies and regulations associated to the Oath of Confidentiality BHCS and to then sign the Oath of Confidentiality.
2. Thereafter, all *new hires* will be asked to review the policies and regulations associated to the Oath and to then sign the Oath of Confidentiality.
3. Annually, the policies and regulations associated to the Oath of Confidentiality BHCS shall be reviewed and the Oath of Confidentiality CBO updated by the employee with their signature and date of signing.
4. The signed and dated copy(s) will, at a minimum, be maintained for five (5) years in the employee's personnel file.

Definition:

- Employee/Staff: Includes all current employees, quasi-employees (volunteers), or internship employees who provide direct, indirect and administrative services.