Key Questions to Pose Before You Disclose

# Mental/Behavioral Health Treatment Records

Legal Disclaimer:

CalOHII does not provide advisory opinions or legal advice to private individuals.

The Information Practices Act (IPA) Civil Code §§ 1798-1798.78 applies to state agencies.
Staff should check with their legal office regarding permissive uses and disclosures under the IPA.

**Note**: If you are an acute psychiatric hospital, inpatient psychiatric unit, government-operated hospital or clinic, or a health care provider serving involuntarily detained mental health patients, refer to the Patient Authorization Guidance - Lanterman-Petris-Short (LPS) Mental Health tool.

Please note that there may be other permitted or required disclosure under the law. Contact your attorney for advice.

## When is a patient authorization NOT required?

### Who must comply?

Providers of health care / mental health services – private acute care hospitals with no psychiatric unit (voluntary patients) and private psychotherapists. The following uses and disclosures are permitted:

* Board, commission, or administrative agency for adjudication
* Required by law
* Health oversight agencies
* Limited uses for internal training programs
* Probate court investigator
* Provider competency review
* Third party for encoding, encrypting, anonymizing data
* Coroner investigation
* Court order
* Elder and child abuse
* Emergency medical personnel
* Inmates: treatment, health, safety, good order facility
* Funeral directors
* Payment
* Payor billing
* Treatment
* Disability Rights California
* National Defense – Protect President
* Organ procurement agency
* Patient representative
* Public health reporting
* Quality assurance
* Search warrant
* Secretary of U.S. Department of Health and Human Services
* State or Federal disaster relief agency

### In all cases:

* Validate the identity and authority of the individual requesting the information
* Develop internal written procedures and train employees on the requirements
* Limit the disclosure to what is described in the authorization
* Account for the disclosure within the patients record as required by the HIPAA Privacy Rule
* Designate individual(s) to process disclosure requests

### What are important terms to know?

| **Term** | **Definition** |
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| Authorization | Release of Information (ROI) or authorization means permission granted in accordance with Confidentiality of Medical Information Act (CMIA), Civil Code § 56.11 or § 56.21 and HIPAA 45 CFR § 164.508 (c) for the disclosure of medical information. |
| Provider of Health Care | "Provider of Health Care" means any person licensed or certified pursuant to Division 2 (commencing with § 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with § 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with § 1200) of the Health and Safety Code. "Provider of Health Care" does not include insurance institutions as defined in subdivision (k) of § 791.02 of the Insurance Code. CMIA, Civil Code §§ 56-56.16 |
| Mental Health Records | California’s definition: patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental or personality disorder or disease not related to substance abuse treatment records. Note: Substance abuse treatment records have additional protections. Refer to the Patient Authorization Guidance – Substance Abuse Treatment tool. |
| Psychotherapy Notes | Personal counseling notes kept separate from the medical record. If they are requested, contact your legal counsel. |