

Understanding Data Privacy

Rules and Resources for Obtaining
Mental Health Care Information

A

ADULTS



National Alliance on Mental Illness

MINNESOTA

Phone: 1-651-645-2948
Toll Free: 1-888-NAMI-HELPS
www.namihelps.org



NAMI Minnesota champions justice, dignity, and respect for all people affected by mental illnesses. Through education, support, and advocacy we strive to eliminate the pervasive stigma of mental illnesses, effect positive changes in the mental health system, and increase the public and professional understanding of mental illnesses.

UNDERSTANDING DATA PRIVACY

Rules and Resources for Obtaining Mental Health Care Information

INTRODUCTION	1
FAMILY INVOLVEMENT LAW	2
Purpose of Family Involvement Law	2
Requesting Health Information About a Person with a Mental Illness	2
When a Provider Can Disclose Health Care Information	3
When a Provider Cannot Disclose Health Care Information	3
Other Ways to Access Health Care Information	3
Preparing for Disclosure of Health Care Information	4
HIPAA PRIVACY RULE	4
ADDITIONAL SOURCES OF INFORMATION	5
SAMPLE FORMS AND INSTRUCTIONS	6
Example of Caregiver Request Form for Mental Health Care Information About a Person with a Mental Illness	6
Form for Permission to Release Private Information from Health Records by (Name of Provider than Maintains the Information)	8
Instructions for the Provider that Maintains the Health Records	10

INTRODUCTION

When someone experiences a serious illness, they often turn to family members for help and support. Families offer practical help - such as housekeeping, making meals, or providing transportation - and provide advice, knowledge and encouragement. For many individuals and families whose serious illness is a mental illness, obtaining that support and advocating for a loved one can be extremely difficult.

Data practices laws are often cited as the reason that families have difficulty accessing information that is needed to support and advocate for their loved one. In particular, providers often mistakenly believe that HIPAA (Health Insurance Portability and Accountability Act) prevents them from speaking to families.

Especially when someone is first hospitalized, individuals may not be willing to sign a privacy release. Family members can request that hospital staff ask the individual again on another day if they would sign the form. Providers are also allowed to share information when the patient is in the same room with the family members and verbally agrees to information being shared. Even if they won't sign a release, families can share relevant information with providers. If families do share information, know that the provider may tell the individual who shared the information with them. Families must be proactive, but remember that to be an effective advocate one must be clear, succinct and calm.

Individuals are often unwilling to grant their family members full access to their medical records. Concerned that there was an "all or nothing" approach for individuals and families, NAMI Minnesota successfully advocated for a change in the Data Practices law that allows limited but important information to be released to families. The bill was called the "Family Involvement Law." The law created an alternative to signing a full privacy release.

This brochure explains how and when a caretaker may obtain limited health information about an individual. Mental health professionals are encouraged to suggest this alternative to individuals who are reluctant to sign a privacy release. Involving families can be very helpful since they may know the treatment history and current symptoms and may be responsible for transportation, follow-up and support after a hospitalization. Families are encouraged to distribute this brochure to mental health professionals so that they have information about this law. ■

FAMILY INVOLVEMENT LAW

Purpose of Family Involvement Law

Minnesota's Family Involvement Law expands access to mental health care information. The new law allows caretakers to access mental health care information that will help them to care and advocate for a person with a mental illness. This law was passed in 2006, Chapter 253. This section of the law was rewritten in 2007 and can now be found in Minnesota Statutes, section 144.294 subdivision 3 (Chapter 147).

Requesting Health Information About a Person with a Mental Illness

Any person, whom we will call a caregiver, can request mental health information about a person with a mental illness IF he or she:

- ▶ lives with the person with a mental illness
- ▶ cares for or helps obtain care for the person with a mental illness
- ▶ is *directly* involved with monitoring the well-being of the person with a mental illness

It is important to note that the caregiver's involvement must be verified by someone such as a mental health or health care provider, the individual's doctor, or anyone other than the caregiver putting in the request.

Definition of a provider:

- ▶ person who gives health care services
- ▶ home care provider
- ▶ health care facility
- ▶ physician's assistant
- ▶ unlicensed mental health practitioner

A provider may disclose a limited subset of information.

Types of information that may be disclosed:

- ▶ diagnosis
- ▶ admission to or discharge from treatment
- ▶ name and dosage of medications prescribed
- ▶ side effects of the medication
- ▶ consequences of the failure of the person with a mental illness to take prescribed medications
- ▶ summary of discharge plan

If the person with a mental illness signs a regular privacy release, the provider can release all the records. One exception to the type of information that may be released is psychotherapy notes. These notes are considered primarily for the personal use by the treating professional and are kept separately from the rest of the person's medical record. Some providers have a privacy release that states exactly what information can be provided.

When a Provider Can Disclose Health Care Information

A provider may release the limited information outlined above about a person with a mental illness to a caregiver when all of the following are true:

- ▶ The request for information is in writing.
- ▶ The person with a mental illness is informed in writing of the request, the name of the caregiver requesting the information, the caregiver's reason for the request, and the specific information being requested.
- ▶ The person with a mental illness agrees to the disclosure, does not object to disclosure, or is unable to consent or object because of his or her condition.
- ▶ The disclosure is necessary to assist in the care or monitoring of the person's treatment.

If these conditions are met, the provider may give the caregiver the information in writing or verbally. If the caregiver has a pre-existing relationship with the provider, it is more likely that the information will be given verbally or for example, over the phone. If the person with a mental illness signs a regular privacy release, the provider can release all the records. Some providers have a privacy release that states exactly what information can be provided.

When a Provider Cannot Disclose Health Care Information

There are two situations where the provider cannot provide the limited information to a caregiver about a person's mental health. These occur if a provider reasonably determines that either:

- ▶ giving the information would be harmful to the physical or mental health of the person with a mental illness, OR
- ▶ giving the information is likely to cause the person with a mental illness to inflict self harm or to harm another.

Other Ways to Access Health Care Information

Information from health records can be released in two other ways:

- ▶ Health records can still be released to a family member or caregiver for a medical emergency when the provider cannot get the individual's consent because of his or her condition or in an emergency.
- ▶ Health records can be released to anyone if the person with a mental illness signs a release of information. Spouses, parents, children, or siblings of a person being evaluated for or diagnosed with a mental illness may request in writing that the provider ask the person with a mental illness to sign a release of information authorizing a specific individual to receive information about the person's current and proposed course of treatment.

Preparing for Disclosure of Health Care Information

Caregivers need to establish proof that they are a caretaker of the person with a mental illness by:

- ▶ keeping a document on hand showing you have the same address as the person with a mental illness
- ▶ having a signed note from a physician or mental health professional that states you are involved in the health care of the person with a mental illness and making sure this is in his or her medical records
- ▶ maintaining a folder of medical records that show you are a caregiver of the person with a mental illness

Caregivers can also maintain a file containing all or some of these things that can be shown to the provider that you are a caregiver of the person with a mental illness. It is also helpful to write out the list of information needed to assist in the health care of the person with a mental illness. Caregivers can fill out a form in advance to ensure they have requested everything needed from the provider to assist in the health care of the person with a mental illness. ■

HIPAA PRIVACY RULE

According to the U.S. Department of Health and Human Services, the HIPAA Privacy Rule at 45 CFR 164.510(b) recognizes “the integral role that family and friends play in a patient’s health care to allow these routine—and often critical—communications between health care providers and these persons. Where a patient is present and has the capacity to make health care decisions, health care providers may communicate with a patient’s family members, friends, or other persons the patient has involved in his or her health care or payment for care, so long as the patient does not object. The provider may ask the patient’s permission to share relevant information with family members or others, may tell the patient he or she plans to discuss the information and give them an opportunity to agree or object, or may infer from the circumstances, using professional judgment, that the patient does not object” (e.g., a patient invites a family member into the treatment room).

When a person is not present or is incapacitated, “a health care provider may share the patient’s information with family, friends or others involved in the patient’s care or payment for care, as long as the health care provider determines, based on professional judgment, that doing so is in the best interests of the patient. Note that, when someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care.”

Access to data is not unlimited. The Privacy Rule ensures that “in all cases, disclosures to family members, friends, or other persons involved in the patient’s care or payment for care are to be limited to only the protected health information directly relevant to the person’s involvement in the patient’s care or payment for care.”

If a person has capacity and objects to the provider sharing information, the statute holds that “the provider may only share information if doing so is consistent with applicable law and standards of ethical conduct, and the provider has a good faith belief that the patient poses a threat to the health or safety of the patient or others, and the family member is reasonably able to prevent or lessen that threat.* Otherwise, under HIPAA, the provider must respect the wishes of the adult patient who objects to the disclosure.”

HIPAA does not prohibit health care providers from listening to the confidential concerns of family or caregivers about the health and well-being of a person with a mental illness. Under CFR 164.524(a)(2)(v), “in the event that the patient later requests access to the health record, any information disclosed to the provider by another person who is not a health care provider that was given under promise of confidentiality may be withheld from the patient if the disclosure would be reasonably likely to reveal the source of the information. This exception to the patient’s right of access to protected health information gives family members the ability to disclose relevant safety information with health care providers without fear of disrupting the family’s relationship with the patient.” ■

*See 45 CFR 164.512(j)

ADDITIONAL SOURCES OF INFORMATION

For more information, contact NAMI Minnesota at 1-888-NAMI HELPS or visit our website at www.namihelps.org. NAMI Minnesota has developed a model form.

You can also contact the Information Policy Analysis Division of the Minnesota Department of Administration at:

201 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Phone: 651-296-6733 or 800-657-3721
Fax: 651-205-4219
email: info.ipad@state.mn.us
www.ipad.state.mn.us

You can also contact the Office for Civil Rights–HIPAA, at the U.S. Department of Health and Human Services at:

www.hhs.gov/ocr/hipaa/ ■

SAMPLE FORMS

Example of Caregiver Request Form for Mental Health Care Information About a Person with a Mental Illness

I, _____ am requesting the
NAME OF PERSON MAKING THE REQUEST FOR INFORMATION
following information from the health care records of

NAME OF PERSON

Information about diagnosis
Admission to treatment
Discharge from treatment
Summary of discharge plan
Name and dosage of the medication prescribed
Side effects of the medication, and
Consequences of failure to take the prescribed medication

I am not asking you to release the person's entire health record.
I am directly involved in the mental health care of this person.

This information is necessary for me to assist in the care of the person
named above or monitoring his or her treatment because

I understand that you, as the provider, may give me the information I
request if the person named above agrees to my request, does not object
to my request, or is unable to consent or object to my request. You can
give this information to me verbally or in writing.

My contact information is:

Telephone: (Day) _____

(Evening) _____

Address: _____

I certify that I live with, provide care for, or am directly involved in monitoring

This information can be verified by _____

Signature _____

Date signed _____

I certify that I currently provide mental or health care to

NAME OF PERSON

NAME OF CAREGIVER REQUESTING INFORMATION

lives with, provides care for or is directly involved in monitoring the treatment of _____

SIGNATURE _____

DATE SIGNED _____

Form for Permission to Release Private Information from Health Records by (Name of Provider that Maintains the Information)

[NAME OF PROVIDER THAT MAINTAINS THE INFORMATION] is asking for your consent (permission) to let us release information about your diagnosis, admission or discharge from treatment, name and dosage of medication(s) prescribed, side effects of the medication(s), consequences of your failure to take prescribed medications, and summary of discharge plan from your health care records to [NAME OF FAMILY MEMBER OR CARETAKER REQUESTING THE INFORMATION]. *This is not a release of information to release all of your health care records.* This consent only covers the information listed above. You have the right to give us permission to release all of the information, some of the information or none of the information described on this form: Please check the items that you grant permission to be released to [NAME OF FAMILY MEMBER OR CARETAKER].

diagnosis

admission or discharge from treatment

name and dosage of medication(s) prescribed

side effects of the medication(s)

consequences of your failure to take prescribed medications

summary of discharge plan from your health care records

If you give us your consent, we can release the information [FOR SPECIFIED TIME PERIOD OR UNTIL EVENT OR CONDITION]; however, we can still release the information if you do not sign this form and fail to object to disclosure or are unable to consent or object. You have the right to stop your consent (revoke or take back your permission) any time before [THIS TIME PERIOD, EVENT, OR CONDITION]. If you want to stop your consent, you must write to [IDENTITY OF AND CONTACT INFORMATION FOR THE APPROPRIATE EMPLOYEE OF THE PROVIDER] and clearly say that you want to stop or take back all or part of your consent.

Important: If you have a question about anything on this form, please talk to [NAME OF APPROPRIATE PROVIDER EMPLOYEE AND HOW TO CONTACT THAT PERSON] before you sign it.

[A] I, _____, give my permission for [PROVIDER] to release information from my health records about diagnosis, admission to treatment, discharge from treatment, summary of discharge plan, name and dosage of medications, side effects of medications, and/or consequences of failure to take prescribed medications;

[B] I agree to let [PROVIDER] release this information to [FAMILY MEMBER OR CARETAKER];

[C] I understand that [PROVIDER] needs to release the information in these way(s) in order to assist [FAMILY MEMBER OR CARETAKER] in the care or monitoring of the my treatment;

[D] I understand that, if this information is released to these individuals, the results will be [].

[E] Signature of patient _____

Date signed _____

[F] Signature of parent or guardian _____

Date signed _____

[G] Signature of person explaining this form and the patient's rights

Date signed _____

Instructions for the Provider that Maintains the Health Records

- ▶ To adapt this model form to your specific needs, insert the appropriate language where indicated by the bracketed text on the form.
- ▶ Lettered instructions below correspond to the bracketed letters on the consent form.
- ▶ Use language and syntax that are clear, easy to understand and appropriate for the person with a mental illness.

Have the person with a mental illness print their name in the space provided. Enter the complete name and address of your entity as the provider. Include relevant program names, staff names, titles and phone numbers.

Describe *the caretaker who has asked to have information released*. Include phone numbers and addresses. *Be clear and specific*.

Describe specifically and completely why your entity needs to release the information to the individual(s) identified on the form.

Describe specifically and completely the consequences of releasing the information to the individual(s) identified on the form. Include all of the consequences that are known to the provider at the time the consent is signed if the consequences of the release differ according to the person's choices on the form; describe these differences clearly and completely.

Direct the person with a mental illness to sign the consent and enter the date of signature.

As a general rule, it is advisable to obtain a parent or guardian's signature when the client is under the age of 18 or has a legally appointed guardian; however, the specific requirements for obtaining consent to release information in these circumstances vary. For this reason, instructions for completing this portion of the form within your entity should be developed in consultation with your legal advisor.

Any person who discusses the request for consent with the person with a mental illness should sign the consent and enter the date of signature.

April 2014



National Alliance on Mental Illness

MINNESOTA

800 Transfer Road, Suite 31

St. Paul, MN 55114

Phone: 651-645-2948

Toll Free: 1-888-626-4435

Fax: 651-645-7379

E-mail: namihelps@namimn.org

Web: www.namihelps.org

