



**FAMILY
INVOLVEMENT
LAW**

FAMILY INVOLVEMENT LAW

When someone experiences a serious illness, he or she often relies on family members for support and advocacy. 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 Care Portability and Accountability Act) prevents them from speaking to families.



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 new law.

What is the Purpose of the 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).

Who Can Request 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, or
- cares for or helps obtain care for the person with a mental illness, or
- 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.

Who is a Provider?

The term provider includes any:

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

What Types of Information May be Disclosed?

A provider, under this new law, may disclose information about:

- 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. Some providers have a privacy release that states exactly what information can be provided.

When May the Provider Disclose Health Care Information?

A provider may release the limited information outlined above about a person with a mental illness to a caregiver when the:

- request for information is in writing;
- 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;
- 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 and;
- 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 Can't the Provider 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:

If a provider reasonably determines that:

- 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.

Are There 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.

What Can a Caretaker Do Ahead of Time to Prepare 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 Information

According to the U.S. Department of Health and Human Services, “the HIPAA Privacy Rule at 45 CFR 164.510(b) specifically permits covered entities to share information that is directly relevant to the involvement of a spouse, family members, friends, or other persons identified by a patient, in the patient’s care or payment for health care. If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make health care decisions, the covered entity may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object. The covered entity may also share relevant information with the family and these other persons if it can reasonably infer, based on professional judgment, that the patient does not object.

Even when the patient is not present or it is impracticable because of emergency circumstances or the patient’s incapacity for the covered entity to ask the patient about discussing her care or payment with a family member or other person, a covered entity may share this information with the person when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 CFR 164.510(b).

In addition, the Privacy Rule expressly permits a covered entity to use professional judgment and experience with common practice to make reasonable inferences about the patient’s best interests in allowing another person to act on behalf of the patient to pick up a filled prescription, medical supplies, X-rays, or other similar forms of protected health information.”

Where Can I Obtain More Information?

For more information, contact NAMI Minnesota at 1-888-NAMI HELPS or visit our website at www.namimn.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

<http://www.ipad.state.mn.us/index.html>

You can also contact the Office for Civil Rights – HIPAA, at the U.S. Department of Health and Human Services at: <http://www.hhs.gov/ocr/hipaa/>

EXAMPLE OF A REQUEST FORM FOR MENTAL HEALTH CARE INFORMATION ABOUT A PERSON WITH A MENTAL ILLNESS FOR WHICH THE PERSON PROVIDES CARE

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.



National Alliance on Mental Illness

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