



## Access and Amendment of Medical Records Policy

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DocuSigned by:

Dr. Georgina Yoshioka

Georgina Yoshioka, DSW, MBA, LCSW, Director

**Policy**

It is the policy of the Department of Behavioral Health (DBH) to act in accordance with Federal and State laws that grant client access to review, copy and/or amend their protected health information (PHI). DBH will follow all applicable state and federal regulations when granting access to PHI, in accordance with California Welfare and Institutions (WIC) §5328, Code of Federal Regulations (CFR) 42 §2.23, and Health Information Portability and Accountability Act (HIPAA) Privacy Rule, including but not limited to §164.524 and §164.522.

**Purpose**

To provide the DBH workforce advisement on the requirements of granting access to and amendment of a client's medical records in adherence with all relevant laws and regulations, including laws related to the request for a decedent's medical records, minor consent rights, and disclosure of PHI in the event of a domestic violence protective order.

**Definition(s)**

**DBH Client:** San Bernardino County residents and/or Medi-Cal beneficiaries receiving services provided by DBH programs or a DBH contracted agency.

**Designated record set:** A group of records maintained by or for DBH that consist of the medical and billing records of a DBH client. *Record* is any item, collection, or grouping of information that includes PHI and is maintained, collected, used, and/or disseminated by or on behalf of DBH.

**Domestic Violence:** A pattern of abusive behavior by a current or former partner or spouse used to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, and/or psychological.

**Electronic Protected Health Information (ePHI):** Protected health information (PHI) that is produced, saved, transferred or received in an electronic form.

**Ex Parte Order:** A temporary order issued by the court involving an emergency motion to protect an individual from immediate harm.

**Licensed Practitioner of the Healing Arts (LPHA):** A psychiatrist, psychologist, licensed social worker, or licensed marriage/family therapist; an LPHA is authorized to approve or deny access to and/or amendment of DBH client medical records.

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## Access and Amendment of Medical Records Policy, Continued

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### Definitions, continued

**Personal Representative:** A personal representative is someone who has legal authority to make health care decisions on behalf of another person, such as an adult, emancipated minor, or incompetent adult patient. They can also help the person exercise their rights related to protected health information (PHI).

**Registered Health Information Administrator (RHIA):** An individual possessing comprehensive knowledge of DBH medical, administrative, ethical and legal requirements and standards related to healthcare delivery and the privacy of protected DBH client information (DBH Medical Records Supervisor/Custodian of Records and DBH HIM Coordinator).

**Registered Health Information Technician (RHIT):** A certified professional who verifies the accuracy and completeness of and maintains electronic health records for DBH clients (DBH Medical Records Supervisor/Custodian of Records and DBH HIM Coordinator).

**Restraining Order:** A temporary court order issued to prohibit an individual from carrying out a particular action, including approaching or contacting a specific person.

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### Right to Access Medical Records

DBH adult and minor client's 12 years of age or older have the right to access their medical records included in the designated record set for inspection and/or to obtain copies upon written request.

In lieu of giving the client access to view or a copy of the entire medical record, an LPHA may choose to prepare a summary of the medical record if the following conditions apply:

- Client must agree to summary, and
- LPHA must align summary with client's goal/purpose.

Additionally, the following persons/agencies have the right to request access to inspect and/or copy medical records:

- Adult/Minor client who has the right to consent to treatment.
  - Parent or guardian of a minor client (except when the minor has the right to consent to treatment; see Medical Records Access for Minor Clients section).
  - Guardian or conservator of an adult client.
  - A person authorized under a health care directive.
  - Client's legal representative.
  - Law Enforcement Officials (under circumstances specified in the Notice of Privacy Practices).
  - National Security Agency (when authorized by law).
  - A court if request is pursuant to a subpoena with client consent or a court order signed by a judge.
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## Access and Amendment of Medical Records Policy, Continued

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### Right to Access Medical Records, continued

- A deceased client's executor or administrator of estate, or beneficiary with supporting documentation.
  - Disaster relief entities, such as the Federal Emergency Management Agency (FEMA), American Red Cross, etc. (per Health and Human Services (HSS) client information can be shared when *necessary* to prevent or lessen a serious and imminent threat to the health and safety of a person or the public in accordance with applicable State, Federal, and County laws and regulations HIPAA Minimum Necessary Rule must be considered when disclosing PHI).
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### Right to Request Restriction of Access to Medical Records

DBH clients have the right to request restriction on the use and disclosure of their medical records, this includes restricting disclosure for treatment, payment, health care operations (TPO), or to notify family members or others about the individual's condition, location, or death. However, covered entities are not required to agree to these requests, and if they do, they must comply with the agreed restrictions, except in medical emergencies.

DBH must agree to a client's request to restrict the use and disclosure of their PHI if following applies:

- The disclosure is for the purpose of carrying out treatment, payment or health care operations that is **not** otherwise required by law; and
- The PHI pertains solely to a health care item or service for which the individual, or person **other than** the health plan on behalf of the individual, has paid the covered entity out-of-pocket for services in full and has requested the health care provider not submit PHI regarding their visit.

**Note:** If a client is to request a restriction, notation of the request must be entered in myAvatar for DBH clinic/program staff awareness.

DBH may terminate a client's request to restrict the use and disclosure of their medical records to carry out TPO if the following applies:

- The individual agrees to or requests the termination in writing;
  - The individual orally agrees to the termination and the oral agreement is documented;
  - The covered entity notifies the individual that it is terminating the agreement for the following reasons listed below:
    - For authorized federal officials' lawful intelligence, counterintelligence, and other national security activities authorized by the National Security Act and;
    - Only effective with respect to PHI created or received after covered entity has informed the individual.
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## Access and Amendment of Medical Records Policy, Continued

### Right to Request Restriction of Access to Medical Records, continued

**Note:** In most cases, DBH is **not** required to restrict medical records request because uses and disclosures for TPO purposes are necessary for providing quality patient care and efficient payment processing (45 CFR 164.522(a)(1)(ii)).

### Information Blocking Final Rule

In accordance with the Cures Act, DBH prohibits any practice which interferes with access, exchange, or use of a client's e-PHI).

DBH ensures a client's right to access their paper and/or electronic records under existing HIPAA rules. The Information Blocking Final Rule (45 CFR 171.103) promotes client access to their PHI, while preventing any unnecessary restrictions by an authorized DBH staff member.

DBH staff are required to act in accordance with the prohibition of information blocking unless one of the following nine (9) exceptions applies (see Information blocking FAQ listed in references for further details):

- Preventing Harm Exception
- Privacy Exception
- Security Exception
- Infeasibility Exception
- Health IT Performance Exception
- Manner Exception
- Fees Exception
- Licensing Exception
- TEFCA Manner Exception

### HIPAA Privacy Rule Protections for Requests for Decedents Medical Records

Pursuant to the HIPAA Privacy Rule, a decedent's medical record is protected for a period of fifty (50) years following the date of death of the individual. The Privacy Rule protects a decedent's health information to the same extent of living individuals but does include a number of special disclosure provisions relevant to deceased individuals (i.e. law enforcement involvement, coroners, and medical examiner) [§164.512(f)(4)].

Medical records may only be disclosed to a decedent's legal beneficiary or personal representative, or in accordance with a valid subpoena or court order.

A person requesting a copy of a decedent's medical record will be asked to provide proof that the client is deceased and proof that the requestor is the personal representative legally authorized to access decedents records. [45 CFR §164.502(g)].

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## Access and Amendment of Medical Records Policy, Continued

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**Requests for  
Decedents  
Medical  
Records by  
Coroner**

DBH Medical Records Unit will address County Coroner and/or Medical Examiner inquiries regarding deceased clients in accordance with HIPAA Privacy Rule [§164.512(g)(1)], CA Welfare and Institutions Code 5328 and/or 42 CFR §2.15. DBH can release confirmation of a client's information (mental health) to confirm identity (for example) and "records" to the coroner (both mental health and SUD) with signed authorization by legally authorized personal representative. or court order signed by judge.

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**Requests for  
Decedents  
Medical  
Records by  
Subpoena**

A request for a decedent's medical records by subpoena must be accompanied by a court order or an authorization to release signed by a verified personal representative. Court ordered medical records shall only be delivered to the court, not to an attorney.

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**Medical  
Records  
Access for  
Minor Clients**

Upon receiving the request for release of a minor client's medical records, a health care provider will review the request to determine if records can be released. It is the health care provider's duty to ensure that the release of sensitive personal health information does not harm the minor client.

Inspection of medical records must be permitted within **five (5) working days** after receipt of the written request (see HSC 123110). Requested medical records must be transmitted within 15 days of the written request. Fees may be charged in accordance with the County's fee schedule (see "Fees" section of this policy). If access, including inspection or copies, requires an extension, DBH is allotted a 30-day extension from the date of receiving the initial request.

A provider can only share the minor's medical information with a third party when a signed release of authorization (ROI) is obtained. DBH staff are **not** permitted to release medical records to a parent or legal guardian *without* the minor's consent if it is known that the minor has been removed from parental custody or minor has provided primary consent for treatment without the involvement of the parent/guardian [See Consent for the Treatment of Minors Policy (CHD0316) and Consent for the Treatment of Minors for Parents Legal Guardians (CHD0316-1)].

When/if juvenile court has issued an order authorizing parent/guardian or personal representative to inspect or obtain copies, a court order shall be presented (HSC §123116).

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## Access and Amendment of Medical Records Policy, Continued

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### Disclosure of PHI-Domestic Violence/Order of Protection

The HIPAA Privacy Rule prevents disclosure of PHI regarding an individual whom the healthcare provider reasonably believes to be a victim of abuse, neglect, or domestic violence. In addition, California Family Code §6323.5 provides provisions that DBH staff must adhere to regarding protective orders, including ex parte orders, to ensure minor client records are not disclosed to parties subject to a restraining order.

DBH medical records ensures restraining order(s) are filed with the client's medical record and are handled appropriately. The following requirements apply to disclosure of PHI for clients with restraining order(s):

- DBH shall ensure the restrained party is not able to access records or information written or verbal including scheduling info by ensuring the medical record is flagged with alert/warning.
- Disclosure of client's address, appointment, time, or confirmation of receiving treatment is prohibited for all DBH staff.
- Prohibitions apply to all staff including reception, billing, clerical etc.

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### Disclosures

DBH is required to obtain written consent from the client/personal representative to disclose the client's medical record to a third party unless otherwise permitted by law [see Authorization to Release PHI Policy (COM0912) and Procedure (COM0912-1)].

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### Client Rights to Amend Medical Records

A client who believes any part of the medical record is incomplete or inaccurate has the right to request to have DBH amend the record.

**Note:** If the amendment contains any defamatory or otherwise unlawful language, DBH is not subject to liability in any criminal, administrative, or other proceeding.

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### DBH Rights

The medical records of a San Bernardino County DBH client are the legal property of DBH. DBH has the right to deny access to inspect, copy, and/or amend medical records if it interferes with the Cures Act, State and/or Federal regulations.

Denial of **access** to medical records may be due to the following reasons:

- Parent/guardian requests access of a minor's records and it may have a detrimental effect on DBH's treatment relationship with the client.

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## Access and Amendment of Medical Records Policy, Continued

### DBH Rights, continued

- Parent/guardian requests access of a minor's records and it may have an adverse effect on the minor's safety or psychological well-being.
- Parent/guardian requests access of a minor's records and that minor has the right to consent to treatment.
- Information was obtained from another person (other than a health care provider) under a promise of confidentiality and granting access would likely reveal the source's identity, which may result in detrimental effect on the client or harm the individual.
- Psychiatric client requests access and DBH believes disclosure may have adverse consequences for the client (including endangering the life or physical safety of the client or another individual).
- Psychotherapy notes may be denied if a licensed health care provider determines there is substantial risk of significant adverse or detrimental consequences to a client, psychotherapy notes are different from Mental Health records, they are notes taken by a mental health professional that are kept separate from the official chart or mental health record.
- SUD client requests access and DBH determines disclosure will harm the client, or
- Current authorization is considered invalid (defective).
- Medical record(s) contain PHI that is subject to the Privacy Act, 5 U.S.C. § 552a, and denial of access is required by law.

Denial to **amend** medical records may be due to the following reasons:

- Information in the medical record was not created by DBH.
- Information in the medical record is not part of the designated record set.
- It is determined that the medical record **is** accurate and complete, or
- Information is not available for inspection under 45 CFR §164.524.

### Grounds for Denial

DBH may deny a requestor access to PHI *without* providing an opportunity for review/appeal; however, **DBH must allow an opportunity for review of denial in certain circumstances:**

Denial Grounds	Circumstance
Unreviewable	<ul style="list-style-type: none"> <li>• Access request for PHI that was created or obtained over the course of research that includes treatment (access may be suspended for as long as the research is in progress <i>and</i> if the client agreed to the denial of access when consenting to participate in the research).</li> </ul>

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## Access and Amendment of Medical Records Policy, Continued

### Grounds for Denial, continued

	<ul style="list-style-type: none"> <li>Access request is from an inmate within a correctional institution, and it is determined that obtaining access will jeopardize the safety, security, custody, or rehabilitation of the individual or other inmates, or the safety of any officer, employee, or other person (legal counsel should be sought prior to granting or denying access to an inmate),</li> <li>Access request for PHI (documents, records, etc.) in the client's medical record that was acquired from a third-party non-DBH provider.</li> </ul>
Reviewable	<ul style="list-style-type: none"> <li>An LPHA has determined that access is reasonably likely to endanger the life or physical safety of the client.</li> <li>The PHI refers to another person or provider and the LPHA determines that access is reasonably likely to cause substantial harm to such other person, and</li> <li>Access request is made by a personal representative and the LPHA determines the provision of access to such representative is reasonably likely to cause substantial harm to the individual or another person (legal counsel should be consulted under this circumstance).</li> </ul>

**Note:** For further details regarding denial and/or approval of records, see Access and Amendment of Medical Records Procedure (COM0931-1).

### Response Timeline

*Amendments* must be acted upon no later than **60 days** after receipt of the written request. If additional time is needed, DBH is allotted thirty (30) additional days after the 60-day original time limit.

*Summaries* must be provided within **ten (10) working days** from the written request. If additional time is needed, DBH is allotted thirty (30) days from the request to provide a summary.

**Note:** The requestor must be notified in if an extension is required.

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## Access and Amendment of Medical Records Policy, Continued

### Issuing Records

DBH must provide medical records in the method which the client requested (i.e., mail delivery, email/electronic, etc.). If preferred method is in-person pickup, the medical records are held by the DBH Medical Records Office for one (1) year from the date the request is approved and provided to the client upon verification of identity.

### Medical Record Fees

Medical Records must inform the requestor of the costs for copies after the request has been reviewed and costs have been determined. Fees may be charged for making copies in accordance with the County's fee schedule.

The following fees may apply to obtain a copy of medical record(s):

- A DBH client or Personal Representative is entitled to **one** free copy of requested records.
- A fee for a summary report provided by a DBH Psychiatrist is 0.25 per page.
- DBH must furnish one (1) free copy of the "relevant portion" of a client's record, **if** the client is requesting it to support an appeal regarding eligibility for a public beneficiary program [i.e., Medi-Cal, Social Security disability insurance benefits, and Supplemental Security Income (SSI)/State Supplementary Program (SSP) for Aged (65 or older), Blind, or Disabled, etc.].
- Clients are entitled to a **free copy** related to the decision making of the issuance of a Notice of Adverse Benefit Determination (**NOABD**).
- If the client is represented by a private attorney who is paying the costs of the appeal pending its outcome (i.e. not a non-profit legal service entity), the client is **not** eligible for the free copy.
- **Note:** "Relevant portion" of the medical record pertains to records regarding services rendered to the client during the time period beginning with the date of the client's initial application for public benefits up to and including the date that a final determination was made by the public benefits program with which the client's application is *pending*.

### Related Policy, Procedure, or Forms

#### DBH Standard Practice Manual:

- Consent for the Treatment of Minors Policy (CHD0316)
- Consent for the Treatment of Minors for Parents Legal Guardians (CHD0316-1)
- Consent for the Treatment of Minors Procedure (CHD0316-2)
- Medical Records Requiring Special Handling Policy (COM0908)
- Medical Records Requiring Special Handling Procedure (COM0908-1)
- Authorization to Release Protected Health Information Policy (COM0912)

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## Access and Amendment of Medical Records Policy, Continued

### Related Policy, Procedure, or Forms, continued

- Authorization to Release Protected Health Information Procedure (COM0912-1)
- Access and Amendment of Medical Records Procedure (COM0931-1)
- Requests for Medical Records of Deceased Client Policy (COM0950)

### References

- [California Evidence Code, Chapter 2, Article 4, Section 1560-1567](#)
- [California Code, Family Code - FAM Section 6323.5, 6322, 6323 - Restricting access to records and information regarding a minor child](#)
- [California Government Code Sections 27491.8 and 27498](#)
- [California Health and Safety Code, Division 106, Part 1, Chapter 1, Section 123100](#)
- [California Health and Safety Code – Personal Health Care Section 123110, 123111, and 123115](#)
- [California Probate Code Section 24 and 7660](#)
- [California Welfare and Institutions Code Sections 4514\(f\), 4515 and 5328\(f\)](#)
- [California Hospital Association. \(2024\). Consent Manual: A Reference for Consent and Related Health Care Law. Sacramento, California: California Hospital Association.](#)
- [Code of Federal Regulations, Title 42, Part 2, Confidentiality of Substance Use Disorder Patient Records](#)
- [Code of Federal Regulations, Title 45, Section 2.1, Title 45, Section 164.506, Section 164.508, Section 164.524, Section 164.526 \(HIPAA Privacy Rule\)](#)
- [Code of Federal Regulations, Title 45, Part 160 and Part 164 Subpart A and Part 164 Subpart E Section 171.103 - Information blocking.](#)
- [National Coordinator for Health Information Technology, ONC. \(2024\) Information Blocking Exceptions FAQ.](#)
- [The Privacy Act, 5 U.S.C., Section 552a](#)
- [U.S. Department of Health and Human Services, HIPAA Privacy Rule-Disclosures in Emergency Situations FAQ.](#)