

NOTICE OF PRIVACY PRACTICES

SMOC Behavioral Healthcare (SBH) Notice of HIPAA and Other Privacy Practices

This notice describes how your health information is protected. Please review it carefully. Your privacy is protected by various state and federal laws that are summarized below. Your information is protected by Federal Law 42 CFR part 2, MA State Law and HIPAA laws.

We are required to create a record of the care you receive at SBH. This helps us provide you with quality care and is in compliance with legal and insurance regulations. This notice will tell you about the ways in which we use and disclose your information, about our obligations related to that information, and about your rights. We are required by law to make sure that medical information that identifies you is kept private, to give you this notice about our privacy practices with respect to your records and to follow the terms of the notice. If you want more information you may contact our Compliance Officer directly at 508-8792250. You may request a copy of this notice at any time.

How We May Use and Disclose Information About You:

For Treatment: We use information about you to provide you with treatment and consult with other staff in the clinic to ensure that we are providing quality care, including talking with SBH supervisors, providers and directors about your treatment. We may talk with other providers in emergency situations, and with your written permission to others. If you are suicidal or homicidal we will take measures to keep you and others safe and are permitted to contact family members if in our opinion this would assist in the protection and safety of you/others.

For Payment: We may use and provide information about you for insurance and payment services.

For Health Care Operations: Our regulators are allowed to review our charts and client information to be sure we are complying with regulations and licensing requirements.

Appointment Reminders: We may notify you to remind you about appointments and you can specify how you would like to be contacted.

Electronic Communications: We will not use electronic communications after you become a client until you sign a release allowing us to leave messages on cell phones or use texting.

When Someone Else Makes Decisions about Your Care: If someone has power of attorney or is your legal guardian they can exercise your rights and make choices about your health information.

As Required by Law: We will disclose information about you when required to do so by law. This usually involves the reporting of abuse or neglect of a child, disabled person or elderly person. It can also involve situations where a person is homicidal or suicidal and needs additional supports to stay safe. More requirements are listed below.

Lawsuits and Disputes: We may disclose information about you in response to a court order,

providing 42 CFR part 2 requirements have been addressed and met, or if you give permission. If you sue us or commit a crime against the clinic or staff we can also disclose information about your care. In custody disputes there is rarely protection allowed to clients and information usually must be released.

Coroners, Medical Examiners and Funeral Directors: We have to release information when a person dies to these professionals if requested, or in cases the court deems necessary.

Accounting of Disclosures: We keep a record of who has requested your information and you may request to see the list except those for treatment, payment and disclosures you requested.

Copies of Your Record: People often need their records sent to other providers or organizations. We will do this at no cost after you sign a release. If you want a copy of your record you can usually get a copy within 30 days and will be charged a reasonable fee based on our costs only.

Right to Amend: You have a right to submit a correction or addition to your record though we may deny your request to do so. You do not have the right to change information we did not generate (records from other providers) or to delete information we have created.

Privacy About Your Involvement in Treatment: Your participation in treatment here is not public information. We will not acknowledge that you are a client here unless you give us permission, or when the circumstances mentioned above apply (such as abuse, neglect, custody and dangerousness to self or others, or in a medical emergency.)

Releases of Information: People often want us to communicate with professionals outside of the clinic or with family members. To make this possible we will ask you to sign a Release of Information that delineates the reasons for the release, the time frame for releasing information as well as what information we are seeking or releasing. If you change your mind about us releasing information you can let us know in writing at any time.

Medical Emergency: We may disclose relevant information to emergency medical personnel in the event of a medical emergency that you might experience while in our clinic.

Right to Make a Complaint: You have a right to make a complaint if you feel your privacy rights have been violated without retaliation on our part. Please talk with the Associate Clinic Director to state your concerns, or with the Division Director of SMOC Behavioral Healthcare. You may also contact the Massachusetts Department of Health, Bureau of Substance Abuse Services, through their helpline at 800-327-5050 or complaint line at 617-624-5171 or, write @mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/ or United States Health and Human Services, 200 Independence Ave, SW, Washington DC 20201, 1-887-696-6775.

Procedures pertaining to Confidentiality and Client Records

SMOC and SMOC Behavioral Healthcare (SBH) is committed to protecting the rights to confidentiality of its clients and patients. Staff at all times will conduct their discussions of clients in a manner which protects their confidentiality. Discussions among agency staff regarding clients will be governed by the principle that only those who have a clinical or operational need to know client information will be so involved.

Written documentation, both formal and informal, is secured so as to ensure confidentiality. Rigorous procedures govern the access to records and release of the same. SBH adheres to HIPAA guidelines and to the statutes regulating confidentiality found in the Massachusetts General Laws (M.G.L.) and to the regulations of relevant, licensing and contracting federal and state agencies and laws including 42 CFR Part 2.

SBH's Procedures pertaining to Confidentiality and Client Records are intended to be in compliance with 105 CMR 164.000 Licensure of Substance Abuse Treatment 164.083 Client Records. We also adhere to federal laws 42 CFR Part 2 and 45 CRF Parts 160 and 164 (HIPAA)

Clients, guardians and parents of minors will be advised upon admission to a SBH program of their rights to confidentiality and of the aforementioned limitations. Written acknowledgment of having been so advised will be contained in the Consent to Treatment form completed at intake. Minors 12 years old and up, seeking substance use treatment, may do so without permission or knowledge of their parents under MA state law providing that two physicians agree that this is needed. Minors 16 and up may request mental health treatment without notifying their parents.

SBH's licensed counselors, nurses, psychiatrists, psychologists and social workers are required to adhere to applicable statutes protecting confidential communications with their clients (M.G.L. Chapter 112 Section 135 social work privilege, Chapter 233 Section 20B -psychotherapist privilege, including nurses), Chapter 112, Section 112 allied mental health providers. Accordingly, these professionals may not testify about communications with their clients, including in court, without the authorization of the client. The privilege protects the client, and the right to exercise it belongs to the client, not to the professional.

Exceptions to all privileged communications and confidentiality policies held by SBH include:

- A. Statutory requirements (MGL, Chapter 119 Section 51A) require all mandated reporters, which include all professional staff, to report to the Department of Children and Families, suspected cases of child abuse/neglect. Additional statutory requirements (MGL, Chapter 19A, Section 15) require mandated reporters to report suspected cases of elder abuse/neglect to the Executive Office of Elder Affairs. In addition, any disabled adult who is suspected to be a victim of abuse or neglect by a caretaker must be reported to the Mass. Disabled Persons Protection Commission General Laws (DPPC) (1-800-426-9009). These reporting laws include anyone whether or not they are actually a client of SMOC/BHS (e.g., may be a sibling, child or friend of a client).
- B. Situations in which the client is assessed by the professional staff to be at risk of serious harm to self through intentional action or because of inability, misperceptions of reality, altered consciousness related to mental illness or extreme intoxication.
- C. Situations in which a client is assessed by the professional staff to be at risk of serious harm to others. This is defined by law for social workers and psychologists as follows: MGL Chapter 123, Section 36B, Duty to Warn patient's potential victims: cause of action and MGL 112, 129A.

Information may be made available to a physician in an emergency if the client or guardian cannot give approval due to the nature of the emergency. The client must be advised of this action as soon as is practical.

Clinicians licensed to practice psychotherapy must take "reasonable precautions" (defined below) if the client:

- A. communicates to the clinician "an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim or victims and the client has the apparent intent and ability to carry out the threat," or
- B. has a history of physical violence which is known to the clinician and the clinician has a reasonable basis to believe that there is clear and present danger that the client will attempt to kill or inflict serious bodily injury against a reasonably identified victim or victim (M.G.L. Chapter 112 Section 135).

Licensed professionals are required by law (M.G.L., Chapter 112, Section 129A, and Chapter 123, Section 36B) to protect any reasonably identified potential victim(s). One or more of the following actions should be taken by the professional:

- A. Communicate a threat of death or serious bodily injury to any reasonably identified victim or victims: if the victim is a minor or has a legal guardian, the parent or guardian must also be notified;
- B. If the potential victim and/or parent/guardian cannot be reached by phone, notify an appropriate law enforcement agency in the vicinity where the client or any potential victim resides;
- C. Arrange for the client to be hospitalized voluntarily; and/or
- D. Take appropriate steps, within the legal scope of social work practice, to initiate proceedings for involuntary hospitalization.

All the above exceptions to confidentiality will be governed by releasing only information needed to address the direct and immediate situation. Consultation with the Associate Clinic Director or, if unavailable, the SBH Divisional Director should be requested whenever questions of confidentiality and privilege arise. Unless in extreme emergency, exceptions as referenced in the Privileged Communication section should be made only following such consultation and subsequent legal counsel.

Access to all client records adheres to all HIPAA guidelines and to the Commonwealth of Massachusetts statutes regulating the confidentiality of information as well as Federal Law 42CFR, part 2 (see also Medical Records: Maintenance and Photocopying and Medical Records: Confidentiality policies):

1. SBH will not acknowledge by telephone or otherwise that an individual is or has been a client of the agency unless written consent is obtained.
2. Staff Access: Access to client records and related information is limited to the persons listed below providing direct services or acting on behalf of SMOC. Additional limitations of access to information may apply in cases of HIV status (see Infectious Disease Policy) or other types of specific information as determined by the Director of Behavioral Healthcare or his/her designee.

- A. The SBH Division Director and other administrative staff for the purpose of carrying out their responsibilities.
- B. Any staff person who is delivering services to the client or who is supervising or monitoring such service provision.
- C. Professional staff that have delivered services to a client in the past and have been requested to respond to an authorized request for information on the client.
- D. Administrative support staff for the purpose of carrying out administrative or billing responsibilities.
- E. Interns for the purposes of providing direct services or of completing related administrative functions.
- F. Any attorney retained by SBH or acting on its behalf in matters relating to a specific client or group of clients.
- G. Consultants who have been engaged by SMOC to participate in activities that will enhance the quality of services provided may be approved for access to records by the SBH Divisional Director. Such activities may include clinical supervision or record reviews. Such consultants may be given time-limited access to records appropriate to their functions.
- H. Specifically identified members of the SMOC Board of Directors for the purpose of responsibly discharging their legal responsibilities on behalf of the agency.
- I. Those with contractual, regulatory, or statutory authority to review records may have access to client records, such as the Department of Public Health.

3. Staff removing a record from the file room must "Sign out" record prior to removal (as described above and note when returned as well.)

4. Access to client records by persons other than those identified above is permitted only when written authorization is given by the client or client's guardian/parent, if a minor.

5. Requests from persons within the agency: Information regarding a client may be available on a need-to-know basis to any authorized individual (as described above in Staff Access). Clients will be advised as such, upon intake, both verbally and in writing. Authorized personnel may gain access to a client record by request and signing out the record.

6. Requests from outside agencies/persons: No requests for information on a client will be honored unless accompanied by an authorization signed by the client if 18 or older, or the legal guardian or parent of a minor. A Release of Information should specify the nature of the specific information to be released, the purpose(s) for release of the information, a specific person and, if relevant, agency/institution to whom the information is to be released; the date or time frame by which the release expires and be signed by the person whose information is requested.

A record of such requests is kept for each person in their chart and a copy of the form is found at the end of this document in the Forms Addenda under Accounting for Disclosures of Medical

Records.

- A. The specific sections of the Release of Information form must be signed for the release of any information related to a client's substance use disorders, STDs and/or HIV/AIDS status.
- B. Requests for information are sent to Medical Records staff who shall determine whether the individual on whom the material was requested has been or is a client of SBH.
- C. Any written request for information should specify:
 - i. the name, address, title and organizational affiliation (if any) of the individual requesting the information.
 - ii. the specific information requested.
 - iii. the purpose of the request.
 - iv. an agreement not to disclose confidential information requested for any purpose or to any person not cited in the request.
 - v. client's written authorization to release the information with an original signature.
 - iv. expiration by either date or event.
- D. Requests for information are responded to by Medical Records according to procedure and the Release Form is placed in the client's file in the appropriate section.

7. Court Access: Client records will be made available to the Court upon judicial order. A subpoena is not a judicial order and is simply a demand for "appearance" and only requires that the named party "appear". The named party may only answer questions or produce materials for which the client has given written consent. When either a subpoena or a court order is received, the Clinical Director will contact the SBH Divisional Director to discuss whether "testimonial privilege" should prevail or whether an in-camera review (privately, in chambers with the judge) of the records should be requested. Legal counsel will be sought for consultation prior to presentation of records to court. In all cases, the client and if a minor, her/his parent/guardian will be advised by the Clinical Director, SBH Divisional Director or designee that such a judicial order has been received and must decide whether or not to invoke (in writing) "testimonial privilege".

8. Client or Authorized Representative Access: Clients over the age of 18 or a parent or legal guardian of client (hereinafter called Requester) may have access to the Medical Record when not contraindicated by specific legal or custodial issues and in accordance with the procedures outlined in this policy. The actual Medical Record is the property of SBH whereas the content is the property of the client. Only that information that has been generated by SBH may be released; documents obtained from other providers may be inspected but should not be released. Clients may ask for copies of any previously completed reports required for third party reimbursement.

- A. A Requester must complete an SBH **Release of Information Form** which is sent to Medical Records specifying which information is being requested. Staff will assist those clients who may have difficulty in completing this form.
- B. The Requester may be accompanied during the inspection by any adult person who the client has designated in writing. The appointment should be made as soon as possible after the request but not later than 20 business days.
- C. The Requester has the right of access only to information which is directly in reference to him/herself, a client for whom s/he is the legal guardian or a minor for whom s/he is the parent. Information identifying any other person who is not a professional provider of services to the client must be deleted (redacted) from the copy of the record to be reviewed but may not be removed or modified from the original record.
- D. The Requester may comment on any aspect of the record and may, if s/he chooses, insert his/her own statement which shall become a permanent part of the record. The Clinical Director, SBH Divisional Director or the Primary Clinician may respond in writing to such a statement and the Requester will be informed of that response.
- E. The Requester shall have the opportunity to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of her or his personal data or the denial of access. The record shall be corrected or amended when the Requester requests and there is no disagreement concerning the change to be made.
- F. The Requester may not remove, cross out or delete any information contained in the record. The Requester upon request shall also have access to a list of all users of his personal data.
- G. Active Clients:
 - i. Medical records staff will inform the current Primary Clinician of the request who, in collaboration with the client's other SBH clinicians will determine:
 - a. if the request is a therapy issue which ought to be handled in treatment;
 - b. if disclosure of the contents of the record poses serious harm to the client.
 - c. If either is determined, the Primary Clinician will schedule an appointment with the Requester (and client if so indicated) to discuss the request, inquire as to its purpose and review a copy of the chart's documentation together.
 - ii. If the Requester requests a copy of the record (regardless of whether or not s/he reviewed the chart with the clinician) and the Primary Clinician determines that there is no serious risk in disclosing information then:
 - a. the clinician indicates his/her approval to Medical records
 - b. Medical Records proceeds with photocopying the records (see Medical Records: Maintenance and Photocopying Policy)
 - c. Medical Records provides the clinician with the photocopied material so that s/he may review it in order to redact the material, if necessary

- iii. If a recommendation is made to deny access of the Requester to his/her entire record and to provide the Requester with only a summary of the record, the SBH Divisional Director will be informed of this recommendation and, in consultation with the Clinical Director, will make the final decision, document the decision and its rationale in writing and inform the Requester of this decision in writing. Both the Clinical Director's recommendation and the Director of Behavioral Healthcare's final decision will be returned to the client's file. The written decision will document the following:
 - a. a summary of the records review request.
 - b. detailed rationale for perceived injury to the client or lack thereof if review by the Requester is approved.
 - c. directions for process to communicate decision to the Requester and, if applicable, to review record with that person(s)
 - d. recognition that this decision is limited to this particular dated request and does not pertain to any future requests which must be independently reviewed.
- iv. if despite the recommendation for not allowing the Requester to inspect the entire record, the Requester still wants to review the entire record SBH must allow either the client's attorney or a psychotherapist designated by the client access to the record. For both clinical and risk management reasons the Requester should review the record together with a clinician.

H. Closed Cases:

- i. Medical records staff will inform the Primary Clinician or other SBH clinician (if still employed) who, will then follow the same procedure for Active Clients.
- ii. in the event that none of the client's previous clinicians are employed at SBH Medical Records will do an administrative discharge to be signed by the Clinical Director.

Maintenance of Client Records:

A. Admission Folders: all information will be secured in a locked file whether paper or electronic from the point of receipt throughout the Intake Process. Service applicants who are not accepted shall be shredded or, if requested, returned to the referring professional. The monitoring of this procedure is the responsibility of the Intake Administrator.

B. Open Cases: All open program case records and clinical records are located in locked files at the clinic sites or stored in a secure electronic site. All are marked confidential. No records are to be left in offices or in any location in which they are visible to clients or other unauthorized persons. Records may not be removed from their storage site unless by court order or moved to a storage site for closed records. When a record is being used by clinical or administrative staff it

will be signed out, identifying the client's name, the clinician, name and the date.

C. Closed Cases: All closed records are stored in locked files in specific cabinets designated by the Office Manager and/or Medical Records Clerk. We are moving towards having all stored electronically. If the record is to be re-opened it is returned to active record maintenance

Transfer and Storage of Service Records DPH 164.085 pursuant to M.G.L. c. 111, § 70.

- A. All client records shall be marked confidential and kept in a secure, locked location, accessible only to authorized staff. Electronic records shall be secured through firewall and password protection and shall be accessible only to authorized staff.
- B. SBH shall maintain client DUI records in a secure place for seven years from the date of client's termination of services unless required by law to do so for a longer period.
- C. SBH shall maintain client medical records in a secure place for 20 years from the date of client's termination of services unless required by law to do so for a longer period.
- D. When closing a program, service or facility, the licensee shall ensure that all records not transferred to a new facility with the client be securely stored for the remainder of the required period mandated for each record. For all current clients of the licensee at the time of closure, the licensee shall also make every effort to provide a copy of the record to the client at the time of closure, if the record is not transferred with the client to a new treatment program. Public notice shall be given regarding the date of service termination and the site at which such records shall be securely stored. The licensee shall prepay the full cost of such storage and shall contract to ensure that the records are appropriately maintained for the entire period and that the records are destroyed at the end of the period in a manner that protects their confidential nature.

Destruction of closed service records require:

All records must be pre-approved for destruction by DPH/DMH

Photocopying/Faxing/Electronic Delivery of Records: Data from other agencies, institutions or health care providers which may be in the client's file cannot be given out (redisclosed) by SBH to other agencies, to clients or to their parents/guardians. A list of the sources of this information may, however, be provided to the requesting person (see Access and Confidentiality Policies).

- A. Only the specific material authorized on the Release of Information may be sent to the Requester providing the form is completely filled out and signed by the client.
- B. After making a copy of clinical material, or preparing to send by other means either the Medical Records Clerk or the Office Manager shall review the material to make certain that:
 - i. the primary clinician, if currently employed by SMOC, is informed that this request has been made;
 - ii. forms are signed and dated where indicated. If a signature is missing:
 - a. request a signature from the clinician responsible for completing the

- documentation, or if the clinician is no longer employed, type the clinician's name and date (the date when the form was completed) on the for
- iii. all personal identities (other than a SBH clinician or a provider involved in the client's treatment) are removed from the copy of the documentation using a black magic marker. This includes names and information pertaining to past and present family members, agencies, friends, associates, perpetrators and victims associated with the client;
 - iv. the photocopied material is reviewed and modified if necessary by the primary clinician or, in the event that s/he is no longer employed at SMOC by the Clinical Director or SBH Divisional Director or their designee.
- C. If the client, legal guardian or parent of a minor who is a client requests to receive a copy of a portion or the entire record the Requestor completes Part 2-A of the **Request to Review Contents of the Medical Record** according to procedure (see Medical Records: Access Policy)
- i. Medical Records determines the cost of photocopying the requested materials and notifies the Requester of this expense;
 - ii. if the Requester agrees to pay for the photocopying, the Medical Records Clerk photocopies the material.
 - iii. the Requester is informed when s/he can come in to pick-up the materials;
 - iv. the Requester pays the bill to the Receptionist, signs Part 2-B of the **Request to Review Contents of the Medical Record** (which indicates which documentation was copied and received) and receives the material.
 - v. The original **Request to Review Contents of the Medical Record** is placed in the client's chart and a copy is given to the client. (Sent with the material)
 - vi. The request is recorded in the release of information list
- D. If the Requester is unable to retrieve a copy of the documents, Medical Records will make arrangements to mail the material and:
- i. informs the Requester that the material will be sent by **registered mail** and the cost will be added to the bill;
 - ii. obtain the fee from the requesting party;
 - iii. complete Part 2-B of the **Request to Review Contents of the Medical Record** indicating which documentation was copied and mailed; and
 - iv. include the signed receipt as part of the medical record.