

CENTRAL STATE HOSPITAL
POLICY

SUBJECT: **CONFIDENTIALITY**

ANNUAL REVIEW MONTH: July

RESPONSIBLE FOR REVIEW: Director, Health Information Management

LAST REVISION DATE: November 2007

I. GENERAL

This policy is in compliance with the Department of Human Resources (DHR) Administrative Policy and Procedure Manual, Part XI.A.2 Confidentiality of and Access to Records, Part IV.H.2., Availability of Information to the Public, the Division of Mental Health, Developmental Disabilities and Addictive Diseases (DMHDDAD) Policy Memorandum 1.202 Confidentiality, and applicable state laws. When this policy is considered more stringent than any of the above, this policy will apply. All information pertaining to a client or contained in his/her medical record and copies of all or any portion of the record is confidential; however, this policy provides guidelines for the appropriate release of confidential information under certain circumstances.

II. CONFIDENTIAL INFORMATION

A. Confidential information is any communication or observation by a provider which is clearly intended not to be disclosed to a third party or to those outside the provider system. This includes the following categories of information whether written, computerized or verbal:

1. The fact that a person is or has been a client.
2. Information transmitted in confidence by the client to providers in the course of diagnosis, treatment or other services.
3. Information regarding a client transmitted in confidence by members of the client's family or by other persons to providers.
4. Any diagnosis, opinions, summaries or instructions issued by providers in the course of diagnosis, treatment or other services.

5. Personal data, the release of which could reasonably be expected to be detrimental to the best interest of the client.

B. Provider is any person who provides consultation, examination, care, custody, treatment, rehabilitation or support to clients of a facility and assures confidentiality. Providers include 1) members of a clerical staff who record, transmit or store confidential information; 2) volunteers, whether professional or not; 3) professional students; and 4) all other employees of the provider system having access to confidential client information.

III. **PRIVILEGED COMMUNICATION**

Privileged communication exists between the client and his/her attorney, psychiatrist, minister, priest or rabbi, and licensed applied psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor during the psychotherapeutic relationship. All information concerning Alcohol and Drug (A&D) clients is treated as privileged information. This privileged information can only be released by authorization of the client, legal guardian or by a court order preceded by show cause hearing. Also, information relating to HIV testing whether positive/negative, AIDS, and/or any related conditions is treated as privileged information

IV. **OWNERSHIP OF RECORDS AND RESPONSIBILITIES**

All client records are the property of the DHR/Division of MHDDAD and the hospital has a duty to protect and preserve these records. The computerized record keeping systems of the Division of MHDDAD and other computerized client data is not considered a third party, therefore are bound by this policy. Sharing of records between separate DHR Units is not considered "disclosure" when information is necessary for the legitimate performance of assigned duties.

ACCESS TO THE MEDICAL RECORD

Client Access:

The medical record of a client shall be made available upon request to the client/legal guardian or parent (if client is a minor). All requests shall be in writing stating the reason for the request. Active and former clients shall be directed to Health Information Management, Release of Information Section. In the case of active clients, examination of the record will be done in the presence of the attending physician/designee.

Facility Staff Access:

Access to the client's medical record is provided to facility staff responsible for the care of the client (those who have a need to know).

V. **OBTAINING VALID AUTHORIZATION FOR RELEASE OF INFORMATION**

Each client should be requested to authorize release of confidential information to those specified individuals and agencies which will need information for the purposes of either processing claims for third party payment, providing information to other healthcare providers, or carrying out other administrative or legal activities on behalf of the client. *Unless otherwise indicated by the client, these authorizations must be obtained within ninety (90) calendar days prior to the actual release of information. Blank, blanket, or incomplete consents are not valid.

VI. VALID AUTHORIZATIONS

- A. All divisions, departments and offices are expected to use form CSH-141 (Revised 4/03), Authorization for Release of Information, when releasing information about individual clients.
- B. Authorization For Release Of Information must include:
1. The agency or individual to whom information will be released.
 2. The agency who is to release the requested information.
 3. The type of information and the purpose for which it is being released.
 4. The signature of client or legal guardian if applicable and the date.
 5. The signature of a witness and date.
 6. The dates of authorization and/or revocation of the authorization.
- C. When authorization is obtained by another agency or individual, other forms are acceptable if they contain the necessary information (see B above).
- D. Any person/agency requesting information obtained from another provider/agency and marked "DO NOT REDISCLOSE" should be referred to the originating facility. Such information may be released with a proper authorization or court order.
- F. Who may consent to release of information:
1. The client, only if 18 years of age or older and not otherwise legally incompetent.
 2. The developmentally disabled client, if 18 years or older, along with an authorized representative if determined by the attending physician that the client is not fully able to give informed consent.
 3. A legal guardian of person if client has been found incapacitated by an appropriate court.
 4. The client, along with the parent or legal guardian of person/legal custodian, in the case of a minor (12-17 years of age) receiving treatment in an alcohol and drug treatment program.
 5. The parent or legal guardian of person in case of a minor (under 18 years of

age) receiving psychiatric treatment/evaluation or mental retardation habilitation.

NOTE: All signatures must be witnessed. The witness must sign and put title or relationship to client and date.

VII. RELEASE OF CONFIDENTIAL INFORMATION

- A. Written Material - Most responses to requests for release of information will be made in a written or photocopied form. Unless specified by a court order, the original medical record will not be removed from Central State Hospital (CSH).
1. Information released in written or photocopied form should be prefaced by one of the following statements, as appropriate:

CONFIDENTIAL AND PRIVILEGED
For Professional Purposes Only
Not for Publication
Not To Be Used Against Client's Interest
OR
CONFIDENTIAL AND PRIVILEGED
(Alcohol and Drug Clients Only)

“This information has been disclosed to you from records protected by Federal Confidentiality rules (42 C.F.R. Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any person to whom these rules apply.”

2. No copies of the record or parts of the record concerning either active or discharged clients may be released except by the Health Information Management Department or Legal and Special Services Office based upon the provisions of this policy.
3. Absolutely no written material, whether in its original form or photocopies, may be released regarding HIV testing either positive or negative, or AIDS and/or any related conditions, except as provided by law, without a specific informed consent from the individual to whom the information pertains. Any such information must be removed prior to the release of other authorized medical information. For specific guidelines on releasing HIV/AIDS confidential information, refer to the CSH Infection Control Manual, Section XVI, Prevention/Transmission of AIDS.
4. Information regarding a voluntary/or involuntary client's plan of treatment may be provided to the authorized representative in compliance with the Official Code of

Georgia Annotated, Section 37-7-164 (Alcohol and Drug), and Section 37-3-164 (Mentally Ill). For specific procedural information, refer to CSH Policy and Procedure 4.18/4.18A, Notification To Authorized Representative of His/Her Rights To Consultation and Involvement in the Client's Treatment Plan.

5. Notice of Discharge (CSH 845) is provided to the authorized representative of the involuntary client and specified others in compliance with the Official Code of Georgia Annotated, Section 37-7-41 and 37-3-41.
6. Copies of correspondence requesting information and/or accompanying any release of information must be included in the client's record.

VIII.RELEASE OF CONFIDENTIAL INFORMATION WITHOUT CLIENT'S CONSENT

A. Listed below are circumstances in which transmission of information is legally permitted. The client should be informed of any such release, and it is preferable that the client consent to the release. Privileged information may not be disclosed without the client's specific consent. However, confidential information can be released without consent:

1. from CSH to another provider on transfer

When a client's discharge plan involves transfer to another client care facility/physician, CSH may release information from the client's record or copies of the record to be transferred with the client.

2. from CSH to a physician

When the chief medical officer/designee deems it essential for the continued treatment of the client, the record or parts thereof may be released to a physician(s) or psychologist(s) when and as necessary for the treatment of the client. This would include those instances when a client is placed on sick leave to an acute care facility for treatment/evaluation, such as MCG, Augusta.

3. to DHR staff

The record or other information may be disclosed to a DHR employee or staff member only when it is necessary for the delivery of services to the client or for completion of necessary clerical/ administrative procedures accompanying the delivery of services. Staff of affiliated organizations are included if there is a contractual agreement requiring staff to follow the DHR confidentiality policy (e.g. DFACS, OBRA).

4. in medical emergencies

In a bona fide medical emergency, as determined by a physician treating the client, pertinent medical information may be released to the treating physician. The client (or legal guardian) should be notified of the release as soon as practical and documentation made in the medical record as to the circumstances of the release.

5. in other emergency situations

If, in the judgment of the attending physician, there is a substantial risk of imminent harm to the client or others, and the potential harm of withholding information outweighs the potential harm of releasing the information, then information may be released to the extent needed to relieve the danger. The client (or legal guardian) should be notified of the release as soon as practical.

6. for research and evaluation

Authorized evaluators, researchers, auditors or persons conducting an investigation in connection with a program of DHR, shall have access to relevant information provided an agreement is signed that personally identifying data on clients will not be redisclosed.

7. for court ordered evaluation or treatment

Information pertaining to a court ordered evaluation and/or treatment may be released directly to the court issuing the order.

8. to other providers

When the written IP for MHDDAD clients involves service providers in other agencies, information related to the health and welfare of the client may be verbally transmitted to those service providers. The information must be needed for the continuity of services relevant to the client's need and there should be no apparent risk that the information will be damaging to the client.

9. to Attorney General's Office

In cases where litigation is pending.

10. to the legal representative of a deceased client's estate

A copy of the record may be released to the legal representative of a deceased clients' estate except for matters privileged under the laws of the state.

IX. RELEASE OF INFORMATION REQUIRED BY LAW

A. Listed below are the circumstances in which the transmission of client information is legally required. The client should be informed of such release, if possible, and advised that it is a legal requirement. The release should be documented in the record. Privileged information may not be disclosed without the client's specific consent.

1. Law enforcement officer

A law enforcement officer, in the course of a criminal investigation, may be informed whether a person is or has been a client in a state MHDDAD facility as well as the client's current address, if known. Any such release should be noted in the client's medical record.

A law enforcement officer in the course of investigating the commission of a crime on the premises of Central State Hospital or another MHDDAD facility may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a client at CSH and his/her name, address and last known whereabouts.

(NOTE: FOR SUBSTANCE ABUSE CLIENTS, A COURT ORDER PRECEDED BY A SHOW CAUSE HEARING IS REQUIRED.)

2. With court order after a show cause hearing

A court order preceded by a show cause hearing is necessary for the release of information related to substance abuse clients.

3. Hearings

In connection with any hearing under the provisions of the Official Code of Georgia Annotated Chapters 37-3, 37-4 and 37-7, any physician who is treating or has treated a mental health, mental retardation or substance abuse client is authorized to give evidence as to any matter concerning the client including evidence as to communication otherwise privileged under code Section 23-9-21. AIDS confidential information may only be disclosed in such proceedings with the specific written consent of the client or a superior court order pursuant to O.C.G.A. 24-9-47.

4. With court order or subpoena

Upon proper receipt of a valid subpoena or court order, confidential information concerning mentally ill/mentally retarded clients may be released to the designated individual or court. For substance abuse clients, a subpoena is not sufficient and the court order must be preceded by a show cause

hearing. (Note: A subpoena is not to be honored unless an actual trial, hearing or deposition is scheduled on the requesting court's calendar.) All subpoenas and court orders are to be referred to the Director of Legal and Special Services/designee. Privileged information may not be disclosed without the client's specific consent.

5. Coroner/Medical Examiner

A copy of the record of a deceased client or deceased former client may be released in response to a valid subpoena of a coroner or medical examiner.

B. Division staff, when asked for a deposition or court testimony, or served with a subpoena or a court order, should politely, but firmly, refuse to give any information until consultation is obtained from the Director of the Legal and Special Services Office.

C. Inquiries to a reception area in person/by telephone

1. The presence of any client may be acknowledged to visitors **ONLY** with the client's consent.
2. A visitor calling upon a client with client's consent will be referred by the receptionist to the client's building without making any mention of the type ward or program.
3. Under no circumstances will the receptionist engage in any discussion with the visitor concerning the client.
4. Inquiries, whether made in person or by telephone, regarding clients who are no longer active, must be told that this information is confidential and cannot be released without authorization by a client. Negative information, such as the fact that a person is not a client, is also confidential.

X. SECURITY OF RECORDS

A. The following policy items are general in nature and form a foundation upon which adequate security of records and information may be based:

1. Precautions must be taken for the security of the medical records and client information to which these regulations apply. Records containing any information pertaining to clients shall be kept in a secure room, or in a locked file cabinet, safe or other similar container when not in use.
2. Clients should not be permitted access to records of other clients, nor should clients be utilized as messengers to pick up, transport or deliver a record.

3. Extraneous written or recorded client identification data including: tapes, transcriptions, microfilms, computer printouts, cards, correspondence, forms, notes, memorandums, etc., should be destroyed by incinerating or shredding when no longer of use.
4. At the end of each business day, all records must be properly secured, either in the records holding area or other authorized area. Discovery that a record is missing and unaccounted for should be reported without delay to the Director of the Health Information Management Department/Designee.

XI. TRAINING

All providers (See Part II.B. Providers) will receive inservice training regarding the confidentiality of client information.

XII. FEES

Health Information Management will ensure that a proper policy is followed in regard to fees charged for reproducing records.

XIII. FORENSIC SERVICES

A. Applicability

This section applies to all clients admitted to this hospital under Commitment Type 244 (Incompetent For Trial), 201 (General Plea of Insanity) (NGRI), 206 Transfer (GDC), 241 (Pre-Trial Examination), 243 (Guilty, But Mentally Ill) and 248 (Guilty But Mentally Retarded).

B. Controlling Policy

1. Clients within the above categories are subject to PART I, and PART II of CSH Policy #4.29, CONFIDENTIALITY, with limited exceptions as noted below:
 - a. Commitment Type 244 - Medical, psychological and/or forensic reports may be made to the committing court in compliance with and as detailed in the court order.
 - b. Commitment Type 201 - Medical reports may be made to the committing court in compliance with and as detailed in the court order.
 - c. Commitment Type 206 and 243 - Medical, psychological and/or forensic reports may be made to any authorized officer or employee of GDC or the State Board of Pardons and

Paroles.

- d. Commitment Type 241 - Medical, psychological and/or forensic reports may be submitted to the committing court as specified in the court order.

XIV. **CONFIDENTIALITY OF OTHER INFORMATION**

- A. Sensitive information about staff or other individuals who are not clients.

Sensitive personal information which is potentially damaging to an individual or which may comprise grounds for legal action against the hospital, Division of Mental Health/Developmental Disabilities/Addictive Diseases or Department of Human Resources, if released, is to be regarded as confidential. Thus, such information can only be released upon the above described individual's written consent.

- B. Information about individuals which is collected for research purposes.

Personal identifying information which is supplied by an individual purely for research or statistical purposes is to be regarded as confidential. Personally identifiable information can only be released upon the above described individual's written consent.

Approved:

This policy has been approved by the CEO and CMO in February, 2008.