National Association of State Mental Health Program Directors
66 Canal Center Plaza, Suite 302
Alexandria, Virginia 22314

Assessment #9

2016 Compilation of State Behavioral Health Patient Treatment Privacy and Disclosure Laws and Regulations

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2016 Compilation of State Behavioral Health Patient Treatment Privacy and Disclosure Laws and Regulations

Technical Writers:
Stuart Yael Gordon, J.D.
Director of Policy
National Association of State Mental Health Program Directors

Christy Malik, MSW
Senior Policy Associate
National Association of State Mental Health Program Directors

Justin C. Harding
Federal Programs & Special Projects Analyst
Illinois Division of Mental Health

National Association of State Mental Health Program Directors
66 Canal Center Plaza, Suite 302, Alexandria, VA 22314
703-739-9333 FAX: 703-548-9517
www.nasmhpd.org

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# Table of Contents

- **Introduction** ........................................................................................................... 5
- **Alabama** .................................................................................................................. 6
- **Alaska** ....................................................................................................................... 9
- **Arizona** ..................................................................................................................... 11
- **Arkansas** .................................................................................................................. 18
- **California** ............................................................................................................... 22
- **Colorado** .................................................................................................................. 26
- **Connecticut** ............................................................................................................. 28
- **District of Columbia** .................................................................................................. 32
- **Delaware** .................................................................................................................. 35
- **Florida** ...................................................................................................................... 37
- **Georgia** .................................................................................................................... 39
- **Guam** ....................................................................................................................... 42
- **Hawaii** ...................................................................................................................... 43
- **Idaho** ........................................................................................................................ 44
- **Illinois** ...................................................................................................................... 47
- **Indiana** ...................................................................................................................... 49
- **Iowa** .......................................................................................................................... 51
- **Kansas** ...................................................................................................................... 55
- **Kentucky** .................................................................................................................. 62
- **Louisiana** .................................................................................................................. 64
- **Maine** ....................................................................................................................... 69
- **Maryland** ................................................................................................................... 71
- **Massachusetts** .......................................................................................................... 74
- **Michigan** .................................................................................................................. 77
- **Minnesota** .................................................................................................................. 79
- **Mississippi** ............................................................................................................... 83
Table of Contents (cont’d)

- Missouri .................................................................................................................................................. 85
- Montana .................................................................................................................................................. 87
- Nebraska ................................................................................................................................................ 90
- Nevada .................................................................................................................................................. 92
- New Hampshire ................................................................................................................................... 94
- New Jersey ........................................................................................................................................... 96
- New Mexico .......................................................................................................................................... 101
- New York ............................................................................................................................................ 104
- North Carolina .................................................................................................................................... 108
- North Dakota ...................................................................................................................................... 112
- Ohio ...................................................................................................................................................... 113
- Oklahoma ........................................................................................................................................... 116
- Oregon ................................................................................................................................................. 118
- Pennsylvania ....................................................................................................................................... 121
- Puerto Rico .......................................................................................................................................... 123
- Rhode Island ........................................................................................................................................ 124
- South Carolina ..................................................................................................................................... 127
- South Dakota ....................................................................................................................................... 130
- Tennessee ............................................................................................................................................. 132
- Texas ..................................................................................................................................................... 136
- Utah ....................................................................................................................................................... 138
- Vermont ................................................................................................................................................. 140
- Virginia ................................................................................................................................................ 142
- Washington ......................................................................................................................................... 149
- West Virginia ....................................................................................................................................... 153
- Wisconsin ............................................................................................................................................ 155
- Wyoming .............................................................................................................................................. 160
Introduction

As the Substance Abuse and Mental Health Services Administration (SAMHSA) prepared revised regulations updating the 42 Code of Federal Regulations Part 2 restrictions on the disclosure of confidential alcohol and substance use treatment patient records, the attorneys in the Legal Division of the National Association of State Mental Health Program Directors (NASMHPD) thought it might be helpful to compile, in one place, state laws and regulations impacting those same disclosures and Health Insurance Portability and Accountability Act (HIPAA)-related disclosures. The Legal Division suggested that such a compilation could prove helpful in any legal analysis determining whether state law might be more restrictive than the Federal law and regulations.

To compile and reproduce those laws and regulations (and occasionally legal and non-legal guidance), NASMHPD staffers surveyed state officials individually and did their own independent research. While we cannot guarantee that this compilation is completely definitive, we believe it constitutes a good start in an area that has not been previously addressed.

What NASMHPD determined, and what this compilation shows, is that states almost universally either defer within their own laws to 42 CFR Part 2 and HIPAA regulations by incorporation by reference, or have laws less comprehensive than the restrictions on disclosure imposed by 42 CFR Part 2 and HIPAA.
Alabama

Statutory Authority

The Alabama Mental Health Consumer Rights Act states, at Alabama Code § 22-56-4, in part:

Rights. (a) Consumers of mental health services have the same general rights as other citizens of Alabama. ...

(b) ... the rights of consumers of mental health services within inpatient, residential, or outpatient settings include, but are not limited to, the following: ...

(6) The right to confidentiality of all information in the consumer's mental health, medical, and financial records. ...

(7) The right to access upon request all information in the consumer's mental health, medical, and financial records, unless a clinical determination has been made by professional staff that access would be detrimental to the consumer's health; ...

(10) The right to make an individual, written decision to consent or refuse to participate in research or experimentation, based upon information which is presented in a non-threatening environment and in language appropriate to the consumer's condition and ability to understand

Alabama Code § 22-56-10 emphasizes that these rights are no greater than those guaranteed to any other Alabama citizen.

No reduction or expansion of rights beyond rights guaranteed other persons. Provided that nothing in this chapter shall reduce or expand the rights of mental health consumers in Alabama beyond the rights guaranteed to any other person under the statutes or Constitution of the United States and Alabama statutes or Constitution of Alabama of 1901.
Regulations and Other Sources

The sections of the Alabama Administrative Code governing substance abuse services and providers specifically addresses confidentiality at Alabama Administrative Code 580-9-44-.06, which states:

580-9-44-.06. Confidentiality and Privacy. The entity shall develop, maintain, and document implementation of written policies and procedures that govern confidentiality and privacy of client information that include, at a minimum, the following specifications:

(1) Policies and procedures shall comply with all state and federal laws and regulations relative to confidentiality and privacy of client information, including but not limited to, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Pts. 160 & 164, and shall address:

(a) Protected information, including, but not limited to:
   1. On-site and off-site correspondence.
   2. Telephone correspondence.
   3. Face-to-face correspondence.
   4. Written correspondence.
   5. The provision of any other information that would disclose the identity of an individual as an alcohol or drug abuse client.
   6. The provision of identifiable health information, including medical record numbers.

(b) Disclosure of client information with the client’s consent.

(c) Revocation of authorized information releases.

(d) Authorized information releases.

1. Disclosures with the client’s consent shall be authorized in writing, in a manner understood by the client, and shall include, at a minimum:

   (i) The name of the client for whom the information will be disclosed.
   (ii) The name of the program making the disclosure.
   (iii) The purpose of the disclosure.
   (iv) The identity of the person or organization that will be the recipient of the disclosed information.
   (v) A description of exactly what information will be disclosed.

   (vi) A statement that the client may revoke the consent to release information at any time, except to the extent the program has already acted in reliance upon the consent.

   (vii) A statement that the revocation may be oral as well as written.

   (viii) The date, event, or condition upon which the consent for release of information will expire, not to exceed one (1) year from the date of its execution.

   (ix) Notification to the information recipient prohibiting re-disclosure.

   (x) The signature of the client or the signature of the person who is legally authorized to sign the release.

   (xi) The name and signature of the staff member witnessing the client’s signature.

   (xii) The signature of the client or the signature of the person who is legally authorized to sign the release.

   (xiii) The name and signature of the staff member witnessing the client’s signature.

   (xiv) The date the consent form is signed.

(e) Disclosure of protected information without the client’s consent.

(f) Re-disclosure of protected information.

(g) The entity’s response to:

   1. Subpoenas.
   2. Court orders.
   3. Search warrants.
   4. Arrest warrants.
   5. Deceased client disclosures.

   (a) Electronic health information and records. ...

   (3) The entity shall:

   (a) Document implementation of the process in which clients are notified of their rights to confidentiality and privacy. At a minimum, notice must:

   1. Be given at first delivery of service.
   2. Inform the client of the federal law and regulations that protect alcohol and drug abuse patient records.
   3. Describe limited circumstances of disclosure.
   4. State that violation of the law and regulations is a crime.
   5. State that the client’s commission of a crime on...
Regulations and Other Sources (cont’d)

the premises or against program personnel is not protected.

6. State that suspected child abuse or neglect may be reported.

7. Provide citations to the applicable federal law and regulations.

8. Be provided in writing and orally in a manner understood by the client.

9. Identify program personnel authorized to disclose protected client information. ...

(c) Specify procedures for documenting all disclosures of protected information in the client record.

(d) Specify procedures utilized to give clients access to their records and to ensure protection of the information disclosed. (3) The entity shall not release confidential information in a client’s record that pertains to other clients.

10. When a minor, age fourteen (14) through age eighteen (18), is treated for a substance related disorder, with or without parental consent, the entity shall document compliance with relevant federal, state and local laws, relative to disclosure of adolescent client information.
Alaska

Statutory Authority

Mental Health treatment records privacy rights in Alaska are governed under Title 47, Chapter 30:

Alaska Statutes (AS) § 47.30.590. Patient Rights and the Confidential Nature of Records and Information.

(a) The department shall adopt regulations to assure patient rights and to safeguard the confidential nature of records and information about the recipients of services provided under this chapter. The regulations must require that [community] entities [designated to receive funds to provide behavioral health services] develop and include in any plan submitted for approval adequate provisions for safeguarding confidential information. The regulations must provide for disclosure of confidential information to parents or guardians, to mental health professionals providing services to a recipient, and to other appropriate service agencies when it is in the defined best interests of the patient.

(b) Notwithstanding (a) of this section, the department is authorized to review, obtain, and copy confidential and other records and information about the clients of services requested or furnished under AS 47.30.520 - 47.30.620 to evaluate compliance with those statutes. The department may obtain the records and information regarding clients from the client or directly from an entity designated by the department under AS 47.30.520 - 47.30.620 that furnished those services. Records obtained by the department under this subsection are medical records, shall be handled confidentially, and are exempt from public inspection and copying under AS 40.25.110 - 40.25.120.

AS § 47.30.845. Confidential records.

Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

(1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;

(2) the patient or an individual to whom the patient has given written consent to have information disclosed;
Statutory Authority – cont’d.

(3) a person authorized by a court order;
(4) a person doing research or maintaining health statistics if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking;
(5) the Department of Corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;
(6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment.

Regulations and Other Sources

7 Alaska Administrative Code (AAC), Chapter 85, Article 2. Use, Disclosure, and Access [to Electronic and Other Records Containing Behavioral Health Information].

7 AAC 85.200. Confidential information.
(a) Subject to the provisions of 7 AAC 85.205, information submitted to the department under this chapter about a recipient is confidential information protected under AS 11.56.860 [public servant misuse of confidential information] and AS 40.25.120(a) [public record inspections].
(b) The provisions of this chapter do not affect the obligations of the department or a provider to maintain confidentiality under other state or federal law, including P.L. 104-191, August 21, 1996 (the Health Insurance Portability and Accountability Act of 1996, HIPAA); 42 C.F.R. Part 2; and 45 C.F.R. Parts 160, 162, and 164.

7 AAC 85.205. Use and disclosure of information.
(a) The department will retain control and custody of information submitted under this chapter. Except as provided in (b) of this section and allowed under (c) of this section, the department will disclose that information only in the form of non-identifying aggregate data and only as allowed under (c) of this section.
(b) Subject to (c) of this section, the department will limit the use of identifying information to purposes directly related to the administration of mental health or substance abuse programs. Subject to (c) of this section, the department will:
(1) furnish a provider with records submitted by that provider;
(2) disclose information for an approved research project;
(3) disclose to department staff information for purposes of program oversight and program evaluation; and
(4) allow access to computer records as provided in 7 AAC 85.210.
(c) The department will not disclose identifying information under (b) of this section unless the disclosure is specifically authorized by state or federal law.

7 AAC 85.210. Access to confidential electronic records. Subject to 7 AAC 85.400 - 7 AAC 85.410, the department will allow access to electronic records that contain confidential information only to a (1) provider approved by the department when the provider seeks access to records that it submitted to the department under this chapter; or (2) system and database administrator authorized by the department, if the administrator has read and understands the applicable requirements of state and federal law dealing with confidential information and system security, including 7 AAC 85.200 and other applicable state and federal law.
Arizona

Statutory Authority

Arizona Revised Statutes (ARS) § 36-509 is the primary state-level authority governing mental health treatment records confidentiality. It states, in part:

A. A health care entity must keep records and information contained in records confidential and not as public records, except as provided in this section. Records and information contained in records may only be disclosed to:

1. Physicians and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the patient.
2. Individuals to whom the patient or the patient’s health care decision maker has given authorization to have information disclosed.
3. Persons authorized by a court order.
4. Persons doing research only if the activity is conducted pursuant to applicable federal or state laws and regulations governing research.
5. The state department of corrections in cases in which prisoners confined to the state prison are patients in the state hospital on authorized transfers either by voluntary admission or by order of the court.
6. Governmental or law enforcement agencies if necessary to:
   (a) Secure the return of a patient who is on unauthorized absence from any agency where the patient was undergoing evaluation and treatment.
   (b) Report a crime on the premises.
   (c) Avert a serious and imminent threat to an individual or the public.
7. Persons, including family members, other relatives, close personal friends or any other person identified by the patient, as otherwise authorized or required by state or federal law, including the health insurance portability and accountability act of 1996 privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or pursuant to one of the following:
Statutory Authority – cont’d.

(a) If the patient is present or otherwise available and has the capacity to make health care decisions, the health care entity may disclose the information if one of the following applies:

(i) The patient agrees verbally or agrees in writing by signing a consent form that permits disclosure.

(ii) The patient is given an opportunity to object and does not express an objection.

(iii) The health care entity reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

(b) If the patient is not present or the opportunity to agree or object to the disclosure of information cannot practicably be provided because of the patient's incapacity or an emergency circumstance, the health care entity may disclose the information if the entity determines that the disclosure of the information is in the best interests of the patient. In determining whether the disclosure of information is in the best interests of the patient, in addition to all other relevant factors, the health care entity shall consider all of the following:

(i) The patient's medical and treatment history, including the patient's history of compliance or noncompliance with an established treatment plan based on information in the patient's medical record and on reliable and relevant information received from the patient's family members, friends or others involved in the patient's care, treatment or supervision.

(ii) Whether the information is necessary or, based on professional judgment, would be useful in assisting the patient in complying with the care, treatment or supervision prescribed in the patient's treatment plan.

(iii) Whether the health care entity has reasonable grounds to believe that the release of the information may subject the patient to domestic violence, abuse or endangerment by family members, friends or other persons involved in the patient's care, treatment or supervision.

(c) The health care entity believes the patient presents a serious and imminent threat to the health or safety of the patient or others, and the health care entity believes that family members, friends or others involved in the patient's care, treatment or supervision can help to prevent the threat.

(d) In order for the health care entity to notify a family member, friend or other person involved in the patient's care, treatment or supervision of the patient's location, general condition or death, 10. A governmental agency or a competent professional, as defined in section 36-3701, in order to comply with chapter 37 of this title...

12. A patient or the patient's health care decision maker pursuant to section 36-507.

13. The department of public safety or another law enforcement agency by the court to comply with the requirements of section 36-540, subsections O and P.

14. A third party payor or the payor's contractor as permitted by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 160 and part 164, subpart E....

18. A person or entity as permitted by the federal regulations on alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

19. A person or entity to conduct utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

20. A person maintaining health statistics for public health purposes as authorized by law.

21. A grand jury as directed by subpoena.

22. A person or entity that provides services to the patient's health care provider, as defined in section 12-2291, and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.

B. Information disclosed pursuant to subsection A, paragraph 7 of this section may include only information that is directly relevant to the person's involvement with the patient's health care or payment related to the patient's health care. Subsection A, paragraph 7 of this section does not prevent a health care entity from obtaining or receiving information about the patient from a family member, friend or other person involved in the patient's care, treatment or supervision. A health care entity shall keep a record of the name and contact information of any person to whom any patient information is released pursuant to subsection A, paragraph 7 of this section. A decision to release or withhold information pursuant subsection A, paragraph 7 of this section is subject to review pursuant to section 36-517.01....
Regulations and Other Sources

The Arizona Department of Health Services, Division of Behavioral Health Services, Provider Manual is also an excellent resource for understanding mental health confidentiality issues in Arizona. Particularly useful are §§ 4.1 and 4.2 of the Manual which detail when Arizona directly follows federal law and when it might deviate. For example:

4.1.7-A. Overview of confidentiality information

T/RBHAs and subcontracted behavioral health providers must keep medical and behavioral health records and all information contained in those records confidential and cannot disclose such information unless permitted or required by federal or state law. The law regulates two major categories of confidential information:

- Information obtained when providing behavioral health services not related to alcohol or drug abuse referral, diagnosis and treatment; and
- Information obtained in the referral, diagnosis and treatment of alcohol or drug abuse.

Behavioral Health Information Not Related to Alcohol and Drug Treatment.

Information obtained when providing behavioral health services not related to alcohol and drug abuse treatment is governed by state law and the HIPAA Privacy Rule, 45 C.F.R., Part 164, Subparts A and E, Part 160 Subparts A and B (“the HIPAA Rule”). The HIPAA Rule permits a covered entity (health plan, health care provider, health care clearinghouse) to use or disclose protected health information in a variety of circumstances, some of which are required and others that are permissive. Many of the categories of disclosures contain specific words and phrases that are defined in the HIPAA Rule. Careful attention must be paid to the definitions of words and phrases in order to determine whether disclosure is allowed. In addition, the HIPAA Rule may contain exceptions or special rules that apply to a particular disclosure. State law may affect a disclosure. For example, the HIPAA Rule may preempt a state law or a state law may preempt the HIPAA Rule. In addition, a covered entity must, with certain exceptions, make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the disclosure.

Before disclosing protected health information, it is good practice to consult the specific citation to the HIPAA Rule, state law and consult with legal counsel before disclosing an individual’s protected health information. See 4.1.7-C. for more detail regarding the disclosure of behavioral health information not related to alcohol or drug referral, diagnosis or treatment. Drug and Alcohol Abuse Information regarding treatment for alcohol or drug abuse is afforded special confidentiality by Federal statute and regulation. This includes any information concerning a person’s diagnosis or treatment from a federally assisted alcohol or drug abuse program or referral to a federally assisted alcohol or drug abuse program. See subsection 4.1.7-D. for more detail regarding the disclosure of drug and alcohol abuse information.

4.1.7-B. General procedures for all disclosures

Unless otherwise excepted by state or federal law, all information obtained about a person related to the provision of behavioral health services to the person is confidential whether the information is in oral, written, or electronic format. ...

Disclosure to Clinical Teams

Disclosure of information to members of a clinical team may or may not require an authorization depending upon the type of information to be disclosed and the status of the receiving party. Information concerning diagnosis, treatment or referral for drug or alcohol treatment may only be disclosed to members of a clinical team with patient authorization as prescribed in subsection 4.1.7-D. Information not related to drug and alcohol treatment may be disclosed without patient authorization to members of a clinical team who are providers of health, mental health or social services, provided the information is for treatment purposes as defined in the HIPAA Rule. Disclosure to members of a clinical team who are not providers of health, mental health or social services requires the authorization of the person or the person’s legal guardian or parent as prescribed in subsection 4.1.7-C.

Disclosure to persons involved in court proceedings

Disclosure of information to persons involved in court proceedings including attorneys, probation or parole officers, guardians ad litem and court appointed special advocates may or may not require an authorization depending upon the type of information to be disclosed and whether the court has entered orders permitting the disclosure.

4.1.7-C. Disclosure of information not related to alcohol and drug treatment

The HIPAA Rule and state law allow a covered entity to disclose protected health information under a variety of
Regulations and Other Sources - cont’d.

Disclosure with an individual’s authorization

The HIPAA Rule allows information to be disclosed with an individual’s written authorization.

For all uses and disclosures that are not permitted by the HIPAA Rule, patient authorization is required. See 45 C.F.R. §§ 164.502(a)(1)(iv); and 164.508. An authorization must contain all of the elements in 45 C.F.R. § 164.508.

A copy of the authorization must be provided to the individual. The authorization must be written in plain language and must contain the following elements:

• A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

• The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;

• The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;

• A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;

• An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement “end of the research study,” “none,” or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository; and

• Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative’s authority to act for the individual must also be provided.

In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

• The individual’s right to revoke the authorization in writing, and either:

• The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

A reference to the covered entity’s notice of privacy practices if the notice of privacy practices tells the individual how to revoke the authorization

• The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

• The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in 45 C.F.R. § 164.508 (b)(4) applies; or

• The consequences to the individual of a refusal to sign the authorization when, in accordance with 45 C.F.R. § 164.508 (b) (4), the covered entity can condition treatment, enrollment in the health plan or eligibility for benefits on failure to obtain such authorization.

• The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient.

Disclosure to health, mental health and social service providers for treatment, payment or health care operations; reports of abuse and neglect

Disclosure is permitted without patient authorization to health, mental health and social service providers involved in caring for or providing services to the person for treatment, payment or health care operations as defined in the HIPAA Rule. These disclosures are typically made to primary care physicians, psychiatrists, psychologists, social workers (including DES and DDD) or other behavioral health professionals. Particular attention must be paid to 45 C.F.R.§ 164.506(c) and the definitions of treatment, payment and health care operations to determine the scope of disclosure. For example, a covered entity is allowed to disclose protected health information for its own treatment, payment or health care operations. See 45 C.F.R. § 164.506(c)(1). A covered entity may disclose for treatment activities of a health care provider including providers not covered under the HIPAA Rule. See 45 C.F.R. § 164.506(c)(2). A covered entity may disclose to both covered and non-covered health care providers for payment activities. See 45 C.F.R. § 164.506(c)(3). A covered entity may disclose to another covered entity for the health care operations activities of the receiving entity if each entity has or had a direct treatment relationship with the individual and the disclosure is for certain specified purposes in the definition of health care operations. See 45 C.F.R. § 164.506(c)(4).
Regulations and Other Sources - cont’d.

If the disclosure is not for treatment, payment, or healthcare operations or required by law, patient authorization is required.

The HIPAA Rule does not modify a covered entity’s obligation under A.R.S. § 13-3620 to report child abuse and neglect to Child Protective Services or opportunity to agree or object to the use or disclosure cannot practically be provided because of the individual’s incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person’s involvement with the individual’s health care.  See 45 C.F.R. §164.510(b). …

Disclosure to persons doing research
A covered entity may disclose protected health information to persons doing research without patient authorization provided it meets the de-identification standards of 45 C.F.R. § 164.514(b). If the covered entity wants to disclose protected health information that is not de-identified, patient authorization is required or an institutional Review Board or a privacy board in accordance with the provisions of 45 C.F.R. § 164.512(i)(1)(i) can waive it.

Disclosure to prevent harm threatened by patients
Mental health providers have a duty to protect others against the harmful conduct of a patient.  See A.R.S. § 36-517.02. When a patient poses a serious danger of violence to another person, the provider has a duty to exercise reasonable care to protect the foreseeable victim of the danger.  Little v. All Phoenix South Community Mental Health Center, Inc., 186 Ariz. 97, 919 P.2d 1368 (1996). A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information without patient authorization if the covered entity, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, or is necessary for law enforcement authorities to identify or apprehend an individual.  See 45 C.F.R. §§ 164.512(j)(1)(ii); 164.512(f)(2) and (3) for rules that apply for disclosures made to law enforcement.  See 45 C.F.R. § 164.512(j)(4) for what constitutes a good faith belief.

4.1.7-D. Disclosures of alcohol and drug information
T/RBHAs and their subcontracted providers that provide drug and alcohol screening, diagnosis or treatment services are federally assisted alcohol and drug programs and must ensure compliance with all provisions contained in the Federal statutes and regulations referenced in this section.

T/RBHAs and their subcontracted providers must abuse cases.
Similarly, a covered entity may have an obligation to report adult abuse and neglect to Adult Protective Services.  See A.R.S. § 46-454.

The HIPAA Rule imposes other requirements in addition to those contained in A.R.S. § 46-454, primarily that the individual be notified of the making of the report or a determination by the reporting person that it is not in the individual’s best interest to be notified.  See 45 C.F.R. § 164.512(c).

Disclosure to other persons including family members
A covered entity may disclose protected health information without authorization to other persons including family members actively participating in the patient’s care, treatment or supervision.  Prior to releasing information, an agency or non-agency treating professional or that person’s designee must have a verbal discussion with the person to determine whether the person objects to the disclosure.  If the person objects, the information cannot be disclosed.  If the person does not object, or the person lacks capacity to object, the treating professional must perform an evaluation to determine whether disclosure is in that person’s best interests.  A decision to disclose or withhold information is subject to review pursuant to A.R.S. §36-517.01.

An agency or non-agency treating professional may only release information relating to the person’s diagnosis, prognosis, need for hospitalization, anticipated length of stay, discharge plan, medication, medication side effects and short-term and long-term treatment goals.  See A.R.S. § 36-509(7).

The HIPAA Rule imposes additional requirements when disclosing protected health information to other persons including family members.  A covered entity may disclose to a family member or other relative the protected health information
Regulations and Other Sources - cont’d.

disclose a child’s medical records to Child Protective Services for investigation of child directly relevant to the person’s involvement with the individual’s care or payment related to the individual’s health care. If the individual is present for a use or disclosure and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it obtains the individual’s agreement, provides the individual with the opportunity to object to the disclosure and the individual does not express an objection. If the individual is not present, or the notify persons seeking and/or receiving alcohol or drug abuse services of the existence of the federal confidentiality law and regulations and provide each person with a written summary of the confidentiality provisions. The notice and summary must be provided at admission or as soon as deemed clinically appropriate by the person responsible for clinical oversight of the person. ...

T/RBHAs or their subcontracted providers may not acknowledge that a currently or previously enrolled person is receiving or has received alcohol or drug abuse services without the enrolled person’s authorization as provided in section 4.1.7-D. of this policy.

T/RBHAs or their subcontracted providers must respond to any request for a disclosure of the records of a currently or previously enrolled person that is not permissible under this policy or federal regulations in a way that will not reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse.

The T/RBHA or subcontracted provider must advise the person or guardian of the special protection given to such information by federal law.

Release of information concerning diagnosis, treatment or referral from an alcohol or drug abuse program must be made only as follows:

- The name or general designation of the program making the disclosure;
- The name of the individual or organization that will receive the disclosure;
- The name of the person who is the subject of the disclosure;
- The purpose or need for the disclosure;
- How much and what kind of information will be disclosed;
- A statement that the person may revoke the authorization at any time, except to the extent that the program has already acted in reliance on it;
- The date, event or condition upon which the authorization expires, if not revoked before;
- The signature of the person or guardian; and
- The date on which the authorization is signed.

Redisclosure

Authorization as provided above must be accompanied by the following written statement: “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 alcohol or drug abuse patient.”

If the person is a minor, authorization must be given by both the minor and his or her parent or legal guardian. ...

Authorization is not required under the following circumstances:

- Medical Emergencies - information may be disclosed to medical personnel who need the information to treat a condition which poses an immediate threat to the health of any individual, not necessarily the currently or previously enrolled person, and which requires immediate medical intervention. The disclosure must be documented in the person’s medical record and must include the name of the medical person to who disclosure is made
Regulations and Other Sources - cont’d.

and his or her affiliation with any health care facility, name of the person making the disclosure, date and time of the disclosure and the nature of the emergency. After emergency treatment is provided, written confirmation of the emergency must be secured from the requesting entity.

- Research Activities - information may be disclosed for the purpose of conducting scientific research according to the provisions of 42 C.F.R. § 2.52.

- Audit and Evaluation Activities - information may be disclosed for the purposes of audit and evaluation activities according to the provisions of 42 C.F.R. § 2.53.

- Qualified Service Organizations - information may be provided to a qualified service organization when needed by the qualified service organization to provide services to a currently or previously enrolled person.

Internal Agency Communications - the staff of an agency providing alcohol and drug abuse services may disclose information regarding an enrolled person to other staff within the agency, or to the part of the organization having direct administrative control over the agency, when needed to perform duties related to the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment to a person. For example, an organization that provides several types of services might have an administrative office that has direct administrative control over each unit or agency that provides direct services.

Information concerning an enrolled person that does not include any information about the enrolled person’s receipt of alcohol or drug abuse diagnosis, treatment or referral for treatment is not restricted under this section. For example, information concerning an enrolled person’s receipt of medication for a psychiatric condition, unrelated to the person’s substance abuse, could be released as provided in section 4.1.7-C. of this policy. ...
Arkansas

Statutory Authority


(a) The records, reports, statements, notes, and other information furnished to the Arkansas State Hospital and its divisions for mental research by individuals, by private, public, or governmental hospitals, and by other agencies for the purpose of mental research are not admissible as evidence in any court or in any administrative hearing or procedure. The employees or agents of the Arkansas State Hospital shall not be compelled to divulge any of the records, reports, statements, notes, or other information. All individuals, private, public, or governmental hospitals, or other agencies that furnish the records, statements, notes, or other information shall not be held liable for the reportings to the Arkansas State Hospital and its divisions.

(b) All records, reports, statements, notes, and other information which has been assembled or procured by the Arkansas State Hospital and its divisions for the purpose of research and study which name or otherwise identify any persons and any confidential records within the custody and control of the Arkansas State Hospital or its authorized agents and employees may be used only for the purpose of research and study for which assembled or procured.

(c) It is unlawful for any person to give away or otherwise to disclose to any person who is not engaged in research and study at the Arkansas State Hospital and its divisions as described in this section any of the records, reports, statements, notes, or other information which name or otherwise identify any person or any confidential records.

(d) Any person who violates any provision of this act is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars ($ 500) and imprisoned not more than six (6) months, or both.
Statutory Authority – cont’d.

(e) (1) Nothing in this section applies to or restricts the use or publicizing of statistics, data, or other materials which summarize or refer to any records, reports, statements, notes, or other information in the aggregate and which do not refer to or disclose the identity of any individual person.

(2) Nothing in this section shall be construed to prevent any court from subpoenaing the medical records of any patient.


(a) A mental health services provider, hospital, facility, community mental health center, or clinic is not subject to liability, suit, or a claim under § 19-10-204 on grounds that a mental health services provider did not prevent harm to an individual or to property caused by a patient if:

(1) The patient communicates to the mental health services provider an explicit and imminent threat to kill or seriously injure a clearly or reasonably identifiable potential victim or to commit a specific violent act or to destroy property under circumstances that could easily lead to serious personal injury or death and the patient has an apparent intent and ability to carry out the threat; and

(2) The mental health services provider takes the precautions specified in subsection (b) of this section in an attempt to prevent the threatened harm.

(b) A duty owed by a mental health services provider to take reasonable precautions to prevent harm threatened by a patient is discharged, as a matter of law, if the mental health services provider in a timely manner:

(1) Notifies:

(A) A law enforcement agency in the county in which the potential victim resides;

(B) A law enforcement agency in the county in which the patient resides; or

(C) The Department of Arkansas State Police; or

(2) Arranges for the patient's immediate voluntary or involuntary hospitalization.

(c) (1) If a patient who is under eighteen (18) years of age threatens to commit suicide or serious or life-threatening bodily harm upon himself or herself, the mental health services provider shall make a reasonable effort to communicate the threat to the patient's custodial parent.

(2) If the mental health services provider is unable to contact the patient's custodial parent within a reasonable time, the mental health services provider shall make a reasonable effort to communicate the threat to the patient's noncustodial parent or legal guardian.

(d) A mental health services provider, hospital, facility, community mental health center, or clinic is not subject to liability, suit, or claim under § 19-10-204 for disclosing a confidential communication made by or relating to a patient if the patient has explicitly threatened to cause serious harm to an individual or to property under circumstances that could easily lead to serious personal injury or death or if the provider has a reasonable belief that the patient poses a credible threat of serious harm to an individual or to property.

(e) (1) If a patient in the custody of a hospital, community mental health center, or other facility threatens to harm an individual or property, the mental health services provider and the staff of the hospital, community mental health center, or other facility shall consider and evaluate the threat before discharging the patient.

(2) Under subdivision (e)(1) of this section, the mental health services provider may inform an appropriate law enforcement agency and the victim of the threat.

(f) Subsections (a) and (c) of this section apply to a hospital or facility that has custody of a patient who has made or makes a threat to harm an individual or property.
**Regulations and Other Sources**

**4001.0.0 NOTICE OF PRIVACY PRACTICES** ...

**4001.0.2** This rule applies to all DHS employees. DHS offices, facilities, programs and workforce members are directed to follow all applicable policies and procedures found in the Health Insurance Portability and Accountability Act (HIPAA) Policies and Procedures Manual. Failure to comply with this rule and its reference documents will result in disciplinary sanctions as defined by the HIPAA Policy and Procedures Manual and in Policy 1084, Employee Discipline.

**4001.2.0 Definitions**

**4001.2.1** Protected Health Information (PHI) - individually identifiable information relating to past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual.

**4001.2.2** Workforce Members - employees, volunteers, trainees, and other persons whose conduct, in the performance of work for DHS, its offices, programs or facilities, is under the direct control of DHS, regardless of whether they are paid by the entity.

**4001.2.3** Covered Entity (CE) - a health plan that provides, or pays the cost of medical care, a health care clearinghouse, or a health care provider.

**4001.2.4** Treatment, Payment and Operations (TPO):

- **Treatment** - the provision, coordination, or management of health care and related services, consultation between providers relating to an individual, or referral of an individual to another provider for health care.
- **Payment** - activities undertaken to obtain or provide reimbursement for health care, including determinations of eligibility or coverage, billing, collection activities, medical necessity determinations and utilization review.
- **Operations** - functions such as quality assessment and improvement activities, reviewing competence or qualifications of health care professionals, conducting or arranging for medical review, legal services and auditing functions, business planning and development, and general business and administrative activities

**4001.3.0** Policy - An individual has a right to adequate notice of the uses and disclosures of his/her PHI that may be made by or on behalf of a CE, and of the individual’s rights and the CE’s legal duties with respect to his/her PHI.

**4001.4.0** Notice of Privacy Practices

**4001.4.1** DHS will make available a copy of the DHS Pub 407, Notice of Privacy Practices, to any client applying for or receiving services from DHS.

**4001.4.2** The Notice of Privacy Practices shall contain all information required under federal regulations regarding the notice of privacy practices for protected health information under HIPAA.

**4001.4.3** Where DHS is a CE, DHS will seek to acquire a signed DHS XXXX, Notice of Privacy Practices Acknowledgement of Receipt, from each client.

**4001.4.4** Provision of Notice: Department facilities and programs must provide individuals with the notice, and obtain the individual’s written acknowledgement of receipt, or document attempts to obtain such acknowledgement, no later than the date of the first service delivery. The receipt of acknowledgement will be maintained in the client file or casehead file. Additionally, the notice in effect (original notice or any subsequent revisions) must be prominently posted at each DHS County Office and copies must be available for individuals at the County Office or upon request.

**4001.4.5** The privacy notice will also be posted on the DHS website and available electronically from the website.

**4001.4.6** Revisions to Notice: DHS will promptly revise and distribute the privacy notice whenever there is a material change to the uses or disclosures, the individual’s rights, the CE’s legal duties, or other privacy practices described in the notice. Except when required by law, a material change to any term may not be implemented prior to the effective date of the notice reflecting the change.
4004.0.0 MITIGATION OF VIOLATIONS OF PRIVACY RIGHTS

4004.1.0 Duty to mitigate violations of privacy rights guaranteed under HIPAA.

As required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Department of Human Services (DHS) shall mitigate any known harmful effect(s) of uses or disclosures of Protected Health Information made by DHS or its business associates in violation of HIPAA or DHS policy related to privacy rights granted by HIPAA. (45 CFR § 164.530 (f))

4004.2.0 Mitigation

Mitigation means taking all appropriate actions listed below if a DHS Client’s HIPAA privacy rights have been violated.

A. Notifying any unintended or unauthorized recipient(s) of Protected Health Information (including by e-mail or fax) and requesting them to disregard, keep confidential, not reveal, and discreetly dispose of said information.

B. Investigating the causes of the disclosure.

C. Taking corrective action, including:

1. Sanctioning personnel for unauthorized use or disclosure of client information in accordance with DHS Policy.
2. Training or retraining as necessary.
3. Correcting faulty processes.

4005.1.0 Privacy Rights Under HIPAA

Generally DHS clients and their legal representatives (DHS clients) have certain rights guaranteed under HIPAA pertaining to the safeguarding of the privacy of their Protected Health Information (PHI) retained by or created by DHS and its agencies. The legal representatives of DHS clients may exercise these rights on behalf of the DHS client they represent. References to clients therefore includes legal representatives of clients.

These rights generally include the following:

4005.1.1 Use and disclosure of a client’s PHI by DHS and its agencies will be limited to those who have a need to know, and the amount of PHI disclosed will be the minimum necessary to accomplish the purpose of the communication. (See DHS Policy No. XXXX)

4005.1.2 Clients have the right to request restrictions on the use and disclosure of their PHI during activities of treatment, payment of claims, and operations. (See DHS Policy No. XXXX)

4005.1.3 Clients may request DHS to send their information to a certain address and package it in a certain way or send it by a certain medium. (See DHS 4008)

4005.1.4 Clients have the right to inspect and copy their PHI. (See DHS Policy No. XXXX)

4005.1.5 Clients have the right to request DHS amend their patient information. (See DHS Policy No. XXXX)

4005.1.6 Clients have the right to request and receive an accounting of disclosures of their PHI. (See DHS 4001)

4005.1.7 Clients have the right to receive a written copy of the DHS Notice of Privacy Practices. (See DHS Policy XXXX)

4005.1.8 Clients have the right to request that DHS not disclose their PHI to certain parties. (See DHS Policy No. XXXX)

4005.1.9 Clients have the right to file complaints regarding violations by DHS of their privacy rights granted to them and created by HIPAA. (See DHS Policy 4005)

4005.1.10 Clients have the right to require that DHS refrain from any activity that may intimidate, threaten, coerce, discriminate against them for exercising their rights under HIPAA. (See DHS Policy No. XXXX)
California

Statutory Authority

California also has its own state-level mental health treatment records confidentiality statutes at California Welfare & Institutions Code §§5328 to 5328.06, which detail the levels of confidentiality and required protections under various circumstances and in various settings.

The primary substance use treatment confidentiality statute is at Cal. Health & Safety Code § 11845.5.

California Welfare and Institutions Code § 5328 applies to:

- Patients who are treated or evaluated under Welfare and Institutions Code §§5150-5344. These code sections include involuntary evaluation and treatment in a designated facility for patients who are a danger to self or others or gravely disabled. These patients do not include patients who may be detained involuntarily for up to 24 hours in a non-designated hospital on an emergency basis (usually, but not always, in the emergency department) under California Health and Safety Code § 1799.111; and

- Patients who are receiving voluntary or involuntary mental health treatment in a: State mental hospital; County psychiatric ward, facility or hospital; Psychiatric hospital, unit or clinic owned by the Regents of the University of California; Federal hospital, psychiatric hospital or unit; Private institution, hospital, clinic or sanitarium which is conducted for, or that includes a department or ward conducted for, the care and treatment of persons who are mentally disordered; Psychiatric health facility; Mental health rehabilitation center; Skilled nursing facility with a special treatment program service unit for patients with chronic psychiatric impairments; Community program funded by the Bronzan-McCorquodale Act; and Community program specified in the Welfare and Institutions Code.

California Welfare and Institutions Code § 5328 broadly states:

All information and records obtained in the course of providing services... to either voluntary or involuntary recipients of services shall be confidential. ... Information and records shall be disclosed only in any of the following cases:
(a) The consent of the patient, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the [caregiver who is in charge of the patient] designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel [the caregiver], attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. ...

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, dependent, or conservatee, and his or her parent, guardian, guardian ad litem, conservator, or authorized representative designates, in writing, persons to whom records or information may be disclosed except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Health Care Services, the Director of State Hospitals, the Director of Social Services, or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows: ....

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed. ...

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate....

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency ....

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies and county child welfare agencies as the psychotherapist determines is needed for the protection of that person or persons. ...

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony ... or a violent felony.... The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients.... If the law
Statutory Authority – cont’d.

enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility....
(u) ...
(2) For purposes of paragraph (1) a facility means all of the following:
(A) A state hospital ...;
(B) A general acute care hospital ... solely with regard to a person with mental illness subject to this section;
(C) An acute psychiatric hospital....
(D) A psychiatric health facility....
(E) A mental health rehabilitation center....
(F) A skilled nursing facility with a special treatment program for individuals with mental illness....
(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to [Welfare and Institutions Code] Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult.

15610.55. (a) “Multidisciplinary personnel team” means any team of two or more persons who are trained in the prevention, identification, management, or treatment of abuse of elderly or dependent adults and who are qualified to provide a broad range of services related to abuse of elderly or dependent adults.
(b) A multidisciplinary personnel team may include, but need not be limited to, any of the following:
(1) Psychiatrists, psychologists, or other trained counseling personnel.
(2) Police officers or other law enforcement agents.
(3) Medical personnel with sufficient training to provide health services.
(4) Social workers with experience or training in prevention of abuse of elderly or dependent adults.
(5) Public guardians.
(6) The local long-term care ombudsman.
(7) Child welfare services personnel.

There follow in California Welfare and Institutions Code §§5328.01 through §5328.06 a great many nuances and exceptions, which include: governmental law enforcement agencies investigating evidence of a crime where the records relate to a patient who is confined or has been confined as a mentally disordered sex offender; a request by a Protection and Advocacy agency; certain research efforts; disclosures by a psychotherapist of a child’s mental health records when the psychotherapist knows the child has been removed from the custody of his or her parent; disclosures to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of a minor, for the purpose of coordinating health care services and medical treatment,... mental health services, or services for developmental disabilities for the minor; disclosures involving abused older adults; and disclosures to protection and advocacy agencies.

California Health and Safety Code § 11845.5.
(a) The identity and records of the identity, diagnosis, prognosis, or treatment of any patient, which identity and records are maintained in connection with the performance of any alcohol and other drug abuse treatment or prevention effort or function conducted, regulated, or directly or indirectly assisted by the department shall, except as provided in subdivision (c), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subdivision (b).
(b) The content of any records referred to in subdivision (a) may be disclosed in accordance with the prior written consent of the client with respect to whom the record is maintained, but only to the extent, under the circumstances, and for the purposes as clearly stated in the release of information signed by the client.
(c) Whether or not the client, with respect to whom any given record referred to in subdivision (a) is maintained, gives his or her written consent, the content of the record may be disclosed as follows:
(d) In communications between qualified professional persons employed by the treatment or prevention program in the provision of service.
(e) To qualified medical persons not employed by the treatment program to the extent necessary to meet a bona fide medical emergency.
(1) To qualified personnel for the purpose of conducting scientific research, management audits, financial and compliance audits, or program evaluation, but the personnel may not identify, directly or indirectly, any individual client in any report of the research, audit, or evaluation, or otherwise disclose patient identities in any manner.
Statutory Authority – cont’d.

For purposes of this paragraph, the term “qualified personnel” means persons whose training and experience are appropriate to the nature and level of work in which they are engaged, and who, when working as part of an organization, are performing that work with adequate administrative safeguards against unauthorized disclosures.

(2) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, or conservator designates, in writing, persons to whom his or her identity in records or information may be disclosed, except that nothing in this section shall be construed to compel a physician and surgeon, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of the client’s family.

(3) If authorized by a court of competent jurisdiction granted after application showing probable cause therefor....

(d) Except as authorized by a court order granted under paragraph (5) of subdivision (c), no record referred to in subdivision (a) may be used to initiate or substantiate any criminal charges against a client or to conduct any investigation of a client.

(e) The prohibitions of this section shall continue to apply to records concerning any individual who has been a client, irrespective of whether he or she ceases to be a client.

Regulations and Other Sources

Disability Rights California has a summary that may be useful to readers, as does the California Healthcare Foundation’s summary, entitled A Delicate Balance: Behavioral Health, Patient Privacy, and the Need to Know.

A particularly useful resource is the California Hospital Association’s 17-page summary entitled Mental Health Law: A Handbook on Laws Governing Mental Health Treatment. It is written from a hospital and provider standpoint. The free preview includes two quotes (both from page 1.2) which provide a flavor of the document and California law and include:

California law provides heightened protection to information relating to mental health treatment delivered in institutional and other specified outpatient settings under the Lanterman-Petris-Short Act (LPS) [Welfare and Institutions Code Section 5000 et seq.], California’s primary mental health law. In addition, the California legislature has seen fit to protect mental health.

...treatment information through the creation of a psychotherapist-patient privilege instead of relying on the physician-patient privilege that applies to routine medical information but which has numerous exceptions.

LPS does not apply to treatment records of a private psychotherapist, even though those records may describe mental health treatment similar to what is protected under LPS. Similarly, LPS does not apply to mental health services provided by a consulting psychotherapist to a medical patient in a hospital who is not otherwise receiving services encompassed by LPS. In both of these instances, the confidentiality of the mental health services provided is protected by the CMIA [the Confidentiality of Medical Information Act (CMIA) [Civil Code Section 56 et seq.] rather than LPS. Details of the CMIA confidentiality protections are described in chapter 8. Note that the psychotherapist-patient privilege may apply to patients covered by either LPS or CMIA.
COLORADO

Statutory Authority

**Colorado Revised Statutes (C.R.S.) § 27-65-121** details confidentiality requirements in the state. The section states in part:

**C.R.S. § 27-65-121. Records.**

(1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services under this article to individuals under any provision of this article shall be confidential and privileged matter. The information and records may be disclosed only:

(a) In communications between qualified professional personnel in the provision of services or appropriate referrals;

(b) When the recipient of services designates persons to whom information or records may be released…;

(c) To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he or she may be entitled;

(d) If the department has promulgated rules for the conduct of research. Such rules shall include, but not be limited to, the requirement that all researchers must sign an oath of confidentiality….

(e) To the courts, as necessary to the administration of the provisions of this article;

(f) To persons authorized by an order of court after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information...
Statutory Authority – cont’d.

(g) To adult family members upon admission of a person with a mental illness for inpatient or residential care and treatment. The only information released pursuant to this paragraph (g) shall be the location and fact of admission of the person with a mental illness who is receiving care and treatment....

(h) To adult family members actively participating in the care and treatment of a person with a mental illness regardless of the length of the participation. The information released pursuant to this paragraph (h) shall be limited to one or more of the following: The diagnosis, the prognosis, the need for hospitalization and anticipated length of stay, the discharge plan, the medication administered and side effects of the medication, and the short-term and long-term treatment goals....

(i) In accordance with state and federal law to the agency designated pursuant to the federal "Protection and Advocacy for Mentally Ill Individuals Act", 42 U.S.C. sec. 10801, et seq....

Subsections (g) and (h) are explained further in C.R.S. § 27-65-122, which states in part:


(1) When a family member requests the location and fact of admission of a person with a mental illness ..., the treating professional person or his or her designee...shall decide whether to release or withhold such information. The location shall be released unless the treating professional person or his or her designee determines, after an interview with the person with a mental illness, that release of the information to a particular family member would not be in the best interests of the person with a mental illness. ... Any decision to withhold information is subject to administrative review ... upon request of a family member or the person with a mental illness. ...

(2) (a) When a family member requests information pursuant to section 27-65-121(1)(h) concerning a person with a mental illness, the treating professional person ... shall determine whether the person with a mental illness is capable of making a rational decision in weighing his or her confidentiality interests and the care and treatment interests implicated by the release of information. ...


(1) The registration and other records of treatment facilities shall remain confidential and fully protected as outlined in federal confidentiality regulations for alcohol and drug abuse patient records found at 42 CFR, part II, secs. 2.1 to 2.67, as amended.

(2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of drug abuse. Information under this subsection (2) shall not be published in a way that discloses patients' names or other identifying information.

C.R.S. §12-43-218 contains language on confidentiality for mental health professionals.

(1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of said communications acquired in such capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates....

Regulations and Other Sources

Understanding Minor Consent and Confidentiality in Colorado, a toolkit produced by the Colorado Association for School-Based Health Care, may be a useful resource for some readers.
Connecticut

Statutory Authority

Connecticut General Statutes (C.G.S.) § 52-146e - Disclosure of Communications.

(a) All communications and records as defined in section 52-146d [privileged communications between psychiatrist and patient] shall be confidential and shall be subject to the provisions of sections 52-146d to 52-146j, inclusive. Except as provided in sections 52-146f to 52-146i, inclusive, no person may disclose or transmit any communications and records or the substance or any part or any resume thereof which identify a patient to any person, corporation or governmental agency without the consent of the patient or his authorized representative.

(b) Any consent given to waive the confidentiality shall specify to what person or agency the information is to be disclosed and to what use it will be put. Each patient shall be informed that his refusal to grant consent will not jeopardize his right to obtain present or future treatment except where disclosure of the communications and records is necessary for the treatment.

(c) The patient or his authorized representative may withdraw any consent given under the provisions of this section at any time in a writing addressed to the person or office in which the original consent was filed. Withdrawal of consent shall not affect communications or records disclosed prior to notice of the withdrawal.
Statutory Authority – cont’d.

C.G.S. § 52-146c – Privileged Communications Between a Psychologist and Patient

...(b) Except as provided in subsection (c) of this section, in civil and criminal actions, in juvenile, probate, commitment and arbitration proceedings, in proceedings preliminary to such actions or proceedings, and in legislative and administrative proceedings, all communications shall be privileged and a psychologist shall not disclose any such communications unless the person or his authorized representative consents to waive the privilege and allow such disclosure. The person or his authorized representative may withdraw any consent given ... at any time in a writing addressed to the individual with whom or the office in which the original consent was filed. The withdrawal of consent shall not affect communications disclosed prior to notice of the withdrawal.

(c) Consent of the person shall not be required for the disclosure of such person’s communications:

(1) If a judge finds that any person after having been informed that the communications would not be privileged, has made the communications to a psychologist in the course of a psychological examination ordered by the court, provided the communications shall be admissible only on issues involving the person’s psychological condition;

(2) If, in a civil proceeding, a person introduces his psychological condition as an element of his claim or defense or, after a person’s death, his condition is introduced by a party claiming or defending through or as a beneficiary of the person, and the judge finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between the person and psychologist be protected;

(3) If the psychologist believes in good faith that there is risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals;

(4) If child abuse, abuse of an elderly individual or abuse of an individual who is disabled or incompetent is known or in good faith suspected;

(5) If a psychologist makes a claim for collection of fees for services rendered, the name and address of the person and the amount of the fees may be disclosed ... provided notification that such disclosure will be made is sent, in writing ... not less than thirty days prior to such disclosure. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the claim, the disclosure ... shall be limited to ... (A) That the person was in fact receiving psychological services,

(B) the dates of such services, and (C) a general description of the types of services ...

(6) If the communications are disclosed to a member of the immediate family or legal representative of the victim of a homicide committed by the person where such person has ... been found not guilty ... by reason of mental disease or defect ... provided such family member or legal representative requests the disclosure of such communications not later than six years after such finding ....

Other notable laws include C.G.S. § 52-146d, governing privileged communications between psychiatrist and patient, and C.G.S. § 52-146f, detailing when consent is not needed for disclosure.

C.G.S. § 52-146d – Privileged Communications Between a Psychiatrist and Patient

As used in sections 52-146d to 52-146i, inclusive:

(1) “Authorized representative” means (A) a person empowered by a patient to assert the confidentiality of communications or records which are privileged under sections 52-146c to 52-146f inclusive, or (B) if a patient is deceased, his personal representative or next of kin, or (C) if a patient is incompetent to assert or waive his privileges hereunder, (i) a guardian or conservator who has been or is appointed to act for the patient, or (ii) for the purpose of maintaining confidentiality until a guardian or conservator is appointed, the patient’s nearest relative;

(2) “Communications and records” means all oral and written communications and records thereof relating to diagnosis or treatment of a patient’s mental condition between the patient and a psychiatrist, or between a member of the patient’s family and a psychiatrist, or between any of such persons and a person participating under the supervision of a psychiatrist in the accomplishment of the objectives of diagnosis and treatment, wherever made, including communications and records which occur in or are prepared at a mental health facility;

(3) “Consent” means consent given in writing by the patient or his authorized representative;

(4) “Identifiable” and “identify a patient” refer to communications and records which contain (A) names or other descriptive data from which a person acquainted with the patient might
reasonably recognize the patient as the person referred to, or (B) codes or numbers which are in general use outside of the mental health facility which prepared the communications and records;

(5) “Mental health facility” includes any hospital, clinic, ward, psychiatrist’s office or other facility, public or private, which provides inpatient or outpatient service, in whole or in part, relating to the diagnosis or treatment of a patient’s mental condition;

(6) “Patient” means a person who communicates with or is treated by a psychiatrist in diagnosis or treatment;

(7) “Psychiatrist” means a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry, or a person reasonably believed by the patient to be so qualified.

C.G.S § 52-146f - Consent not required for disclosure, when

Consent of the patient shall not be required for the disclosure or transmission of communications or records of the patient in the following situations as specifically limited:

(1) Communications or records may be disclosed to other persons engaged in the diagnosis or treatment of the patient or may be transmitted to another mental health facility to which the patient is admitted for diagnosis or treatment if the psychiatrist in possession of the communications or records determines that the disclosure or transmission is needed to accomplish the objectives of diagnosis or treatment. The patient shall be informed that the communications or records will be so disclosed or transmitted. For purposes of this subsection, persons in professional training are to be considered as engaged in the diagnosis or treatment of the patients.

(2) Communications or records may be disclosed when the psychiatrist determines that there is substantial risk of imminent physical injury by the patient to himself or others or when a psychiatrist, in the course of diagnosis or treatment of the patient, finds it necessary to disclose the communications or records for the purpose of placing the patient in a mental health facility, by certification, commitment or otherwise, provided the provisions of sections 52-146d to 52-146j, inclusive, shall continue in effect after the patient is in the facility.

(3) Except as provided in section 17b-225, the name, address and fees for psychiatric services to a patient may be disclosed to individuals or agencies involved in the collection of fees for such services. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the fee or claim, the disclosure of further information shall be limited to the following: (A) That the person was in fact a patient; (B) the diagnosis; (C) the dates and duration of treatment; and (D) a general description of the treatment, which shall include evidence that a treatment plan exists and has been carried out and evidence to substantiate the necessity for admission and length of stay in a health care institution or facility. If further information is required, the party seeking the information shall proceed in the same manner provided for hospital patients in section 4-105.

(4) Communications made to or records made by a psychiatrist in the course of a psychiatric examination ordered by a court or made in connection with the application for the appointment of a conservator by the Probate Court for good cause shown may be disclosed at judicial or administrative proceedings in which the patient is a party, or in which the question of his incompetence because of mental illness is an issue, or in appropriate pretrial proceedings, provided the court finds that the patient has been informed before making the communications that any communications will not be confidential and provided the communications shall be admissible only on issues involving the patient’s mental condition.

(5) Communications or records may be disclosed in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient’s death, when his condition is introduced by a party claiming or defending through or as a beneficiary of the patient and the court or judge finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between patient and psychiatrist be protected.

(6) Communications or records may be disclosed to (A) the Commissioner of Public Health in connection with any inspection, investigation or examination of an institution, as defined in subsection (a) of section 19a-490, authorized under section 19a-
of Mental Health and Addiction Services in connection with any inspection, investigation or examination authorized under subsection (f) of section 17a-451.

(7) Communications or records may be disclosed to a member of the immediate family or legal representative of the victim of a homicide committed by the patient where such patient has, on or after July 1, 1989, been found not guilty of such offense by reason of mental disease or defect pursuant to section 53a-13, provided such family member or legal representative requests the disclosure of such communications or records not later than six years after such finding, and provided further, such communications shall only be available during the pendency of, and for use in, a civil action relating to such person found not guilty pursuant to section 53a-13.

C.G.S. § 52-146g - Access to Communications and Records by Persons Engaged in Research

(a) A person engaged in research may have access to psychiatric communications and records which identify patients where needed for such research, if such person’s research plan is first submitted to and approved by the director of the mental health facility or his designee.

(b) The communications and records shall not be removed from the mental health facility which prepared them. Coded data or data which does not identify a patient may be removed from a mental health facility, provided the key to the code shall remain on the premises of the facility.

(c) The mental health facility and the person doing the research shall be responsible for the preservation of the anonymity of the patients and shall not disseminate data which identifies a patient except as provided by sections 52-146d to 52-146j, inclusive.

Regulations and Other Resources

Connecticut utilizes standardized contract provisions that, in addition to HIPAA business associate provisions, impose obligations on contractors to protect client information and requires the reporting of breaches. Public Law 15-142 (Senate Bill 949), enacted in 2015, codifies these contractual obligations and provides additional security obligations on state contractors handling confidential health information.
District of Columbia

Statutory Authority

D.C. enacted the Mental Health Information Act (MHIA), D.C. Code §§ 7-1201.01 et seq. It states, in part:

**D.C. Code § 7-1201.02. Disclosures prohibited; exceptions.**

(a) Except as specifically authorized by subchapter II, III, or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information.

**D.C. Code § 7-1201.03. Personal notes.**

If a mental health professional makes personal notes regarding a client, such personal notes shall not be maintained as a part of the client’s record of mental health information. Notwithstanding any other provision of this chapter, access to such personal notes shall be strictly and absolutely limited to the mental health professional and shall not be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of professional malpractice or disclosure in violation of this section.
Statutory Authority – cont’d.


(a) Upon disclosure of any of the client's mental health information pursuant to subchapter II, III, or IV of this chapter, a notation shall be entered and maintained with the client's record of mental health information which includes: (1) The date of the disclosure; (2) The name of the recipient of the mental health information; and (3) A description of the contents of the disclosure.

(b) All disclosures of mental health information, except on an emergency basis as provided in § 7-1203.03, shall be accompanied by a statement to the effect that: The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978 (§§7-1201.01 to 7-1207.02). Disclosures may only be made pursuant to a valid authorization by the client or as provided in title III or IV of that Act. The Act provides for civil damages and criminal penalties for violations.

**D.C. Code § 7-1202.01.** Disclosures by client authorization.

Except as provided in § 7-1202.06, a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose mental health information and a client in a group session may disclose mental health information upon the voluntary written authorization of the person or persons who have the power to authorize disclosure under § 7-1202.05.

**D.C. Code § 7-1202.03.** Redisclosure.

Mental health information disclosed pursuant to this subchapter cannot be further disclosed by the recipient without authorization as provided in § 7-1202.01.


Except as provided in § 7-1202.02(a)(3), the person or persons who authorize a disclosure may revoke an authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, mental health facility or data collector authorized to disclose mental health information. The revocation of authorization shall be effective upon receipt. After the effective revocation date, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization.

**D.C. Code § 7-1202.05.** Power to Grant Authorization.

(a) When a client is 18 years of age or over, the client or client representative shall have the power to authorize disclosures.

(b) When a client is under the age of 18, but beyond the age of 14, disclosures which require authorization may only be authorized by the joint written authorization of the client and the client’s parent or legal guardian. When a client is less than 14 years of age, disclosures which require authorization may only be authorized by the client’s parent or legal guardian. However, if the client’s parent or legal guardian has not expressed consent to the mental health professional regarding the client’s receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian.

**D.C. Code § 7-1203.01.** Disclosures within A Mental Health Facility or to Participation Providers.

(a) Mental health information may be disclosed to other individuals employed at the individual mental health facility when and to the extent necessary to facilitate the delivery of professional services to the client.

(b) Subject to subsection (c) of this section, a health care provider may disclose mental health information to another health care provider in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of a health or mental disorder or disease when and to the extent necessary to facilitate the delivery of health or professional services to the client. The authority to disclose mental health information under this subsection does not include the authority to disclose progress notes.

(c) (1) A health care provider shall notify its clients, in plain language in writing, upon registration:

(A) Whether the health care provider’s privacy practices permit the disclosure of mental health information pursuant to subsection (b) of this section; and

(B) That a client may request that his or her mental health information not be disclosed pursuant to subsection (b) of this section.

(2) If a client requests that his or her mental health information not be disclosed, the health care provider shall not disclose the client’s mental health information pursuant to subsection (b) of this section; provided, that nothing contained in this subsection
shall prohibit a health care provider from disclosing mental health information pursuant to another provision of this chapter or pursuant to Chapter 2A of this title [§ 7-241 et seq.].

(d) For the purposes of this section, the term:

(1) “Health care provider” means:

(A) A person who is licensed, certified, or otherwise authorized under Chapter 12 of Title 3 [§ 3-1201.01 et seq.] to provide health care in the ordinary course of business or practice of a health occupation or in an approved education or training program;

(B) A person licensed or permitted to practice a health occupation under the laws of another state; or

(C) A facility where health or mental health services are provided to patients or recipients, including a hospital, clinic, office, nursing home, infirmary, health maintenance organization, medical laboratory, provider, as defined by § 7-1131.02,(27), or similar entity licensed, certified, or otherwise authorized by the District of Columbia.

(2) “Progress notes” means notes recorded, in any medium, by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. The term “progress notes” excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

D.C. Code § 7-1203.03. Disclosures on an emergency basis.

(a) To the extent the disclosure of mental health information is not otherwise authorized by this chapter, mental health information may be disclosed, on an emergency basis, to one or more of the following if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury:

(1) The client’s spouse, parent, or legal guardian;

(2) A duly accredited officer or agent of the District of Columbia in charge of public health;

(3) The Department of Mental Health;

(4) A provider as that term is defined in § 7-1131.02(27);

(5) The District of Columbia Pretrial Services Agency;

(6) The Court Services and Offender Supervision Agency;

(7) A court exercising jurisdiction over the client as a result of a pending criminal proceeding;

(8) Emergency medical personnel;

(9) An officer authorized to make arrests in the District of Columbia; or

(10) An intended victim.

(a-1) Any disclosure of mental health information under this section shall be limited to the minimum necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.

(b) Mental health information disclosed to the Metropolitan Police Department … shall be maintained separately and shall not be made a part of any permanent police record. Such mental health shall not be further disclosed except as a court-related disclosure pursuant to subchapter IV of this chapter. If no judicial action relating to the disclosure … is pending at the expiration of the statute of limitations governing the nature of the judicial action, the mental health information shall be destroyed. If a judicial action relating to the disclosure … is pending at the expiration of the statute of limitations, the mental health information shall be destroyed at the termination of the judicial action.

(c) Mental health information contained in a certification of incapacity, pursuant to § 21-2204, may be disclosed to initiate a proceeding pursuant to Chapter 20 of Title 21.

The District of Columbia has a limited substance use disorder treatment records confidentiality law limited to District agency records.


All information furnished to APRA [the Addiction Prevention and Recovery Administration] pursuant to this chapter shall remain confidential and may be disclosed only to medical personnel for purposes of diagnosis and treatment; except, that with the prior written consent of the client, the information may be disclosed for the purposes of and in accordance with Chapter 2A of this chapter [§§ 7-241 to 248, Data Sharing].
Delaware

Statutory Authority

Delaware has a separate State law governing the confidentiality of personal health information, which can be found at Chapter 12, Informed Consent and Confidentiality, Subchapter II, Confidentiality of Personal Health Information, 16 Delaware Code §§ 1210-1213. The definition of "personal health information" contained in the statute specifically covers mental health status, condition, services, products purchased, or condition of care.


(4) "Protected health information" means any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and that reveals the identity of the individual whose healthcare is the subject of the information, or about which there is a reasonable basis to believe such information could be utilized (either alone or with other information that is or should reasonably be known to be available to predictable recipients of such information) to reveal the identity of that individual.

Disclosure is governed by 16 Delaware Code § 1212, which states in part:


(a) General privacy protection. — Protected health information is not public information as defined at § 10002 of Title 29 and may not be disclosed without the informed consent of the individual (or the individual's lawful representative) who is the subject of the information except as expressly provided by statute. Whenever disclosure of protected health information is made pursuant to this subchapter, such disclosure shall be accompanied by a statement concerning the Department of Health and Social Services' disclosure policy.
Statutory Authority – cont’d.

(b) Scope of disclosure. — Protected health information shall be disclosed with the informed consent of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized pursuant to informed consent.

(c) Nonidentifiable information. — Any disclosure of protected health information permitted by this subchapter shall be disclosed in a nonidentifiable form whenever possible, consistent with the accomplishment of legitimate public health purposes, except when the disclosure is authorized through the informed consent of the person who is the subject of the information. Any disclosures of protected health information permitted by this subchapter shall also be limited to the minimum amount of information which the person making the disclosure reasonably believes is necessary to accomplish the purpose of the disclosure, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

(d) Disclosure without informed consent. — Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(1) Directly to the individual;

(2) To appropriate federal agencies or authorities as required by federal or state law and for law-enforcement purposes in accordance with 45 C.F.R. Parts 160, 162, and 164;

(3) To healthcare personnel to the extent necessary in an emergency to protect the health or life of the person who is the subject of the information from serious, imminent harm;

(4) To the public safety authority during a public health emergency in accord with the uses described in § 1211 of this title;

(5) In the course of any judicial or administrative proceeding in accordance with 45 C.F.R. Parts 160, 162, and 164, or pursuant to a court order to avert a clear danger to the individual or the public health;

(10) For patient treatment and care coordination, defined as the provision, coordination, or management of healthcare and related services by 1 or more healthcare providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a patient or the referral of a patient for healthcare from 1 healthcare provider to another; or

(11) To a health plan, healthcare clearinghouse, business associate, or healthcare provider, as each is defined by 45 C.F.R. Part 160, to use only in accordance with federal law for transactions that transmit information between 2 parties to carry out financial or administrative activities related to healthcare, healthcare operations, and health insurance, as set forth in 45 C.F.R Parts 160, 162, and 164.

Delaware has a separate statute governing the confidentiality of substance use disorder treatment records in Title 16, Health and Safety, Chapter 22, the Substance Abuse Treatment Act. This standard is less prescriptive than 42 CFR Part 2:


(6) Each patient shall receive respect and privacy in the patient’s own medical care program. Case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly. In the patient’s discretion, persons not directly involved in the patient’s care shall not be permitted to be present during such discussions, consultations, examinations or treatment except with the consent of the patient. Personal and medical records shall be treated confidentially and shall not be made public without the consent of the patient, except such records as are needed for a law or third party payment contract. No patient’s transfer to another health care institution or as required by personal or medical records shall be released to any person inside or outside the facility who has no demonstrable need for such records.

Delaware also has statutory privacy protections for mental health treatment in both community and institutional settings, in its Community Mental Health Treatment Act at 16 Delaware Code § 5182(5), and the Mental Health Patients’ Bill of Rights, at 16 Delaware Code § 5161(b)(13). However, these additional protections are fairly broad and provide limited guidance on disclosures.

Delaware has a “duty to warn” statute which sets out when mental health treatment providers may breach confidentiality due to a specific safety concern, which can be found at 16 Delaware Code §§ 5401-5402.

Delaware has a specific research-related provision at 16 Delaware Code § 1212(d)(9). Delaware also has a separate confidentiality statute protecting genetic information, which can be found at 16 Delaware Code §§ 1201-1208.
Florida’s statute on the confidentiality for mental health records is found at Title 29 (Public Health), Chapter 394 (Mental Health), § 394.4615. It states:

**Florida Statutes Annotated (F.S.A.) § 394.4615. Clinical records; confidentiality.**

(1) A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from the provisions of s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient’s guardian or guardian advocate or, if the patient is deceased, by the patient’s personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.

(2) The clinical record shall be released when:

(b) The patient or the patient’s guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient’s guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient’s health care or mental health care.

(c) The patient is represented by counsel and the records are needed by the patient’s counsel for adequate representation.

(d) The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

(e) The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified...
Statutory Authority – cont’d.

researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient’s private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s.394.4655(6)(b)2., in accordance with state and federal law.

(3) Information from clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

(4) Information from clinical records may be used by the Agency for Health Care Administration, the department, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.

(5) Clinical records relating to a Medicaid recipient shall be furnished to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request. ...

(7) Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1) [Public Records].

(8) Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release.

(9) Nothing in this section is intended to prohibit the parent or next of kin of a person who is held in or treated under a mental health facility or program from requesting and receiving information limited to a summary of that person’s treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

Florida substance use disorder treatment records confidentiality is governed by Title 29, Chapter 397 (Substance Abuse Services), Section 397.501. Rights of Individuals.

This lengthy provision largely defers to federal law. It states (in part):

(7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent...

1. To medical personnel in a medical emergency.

2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.

3. To the secretary of the department or the secretary’s designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual’s name and other identifying information will not be disclosed. ...

5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.

The Florida law detailing protection and advocacy access is at Title 29 §394.4595.

The Florida psychotherapist-patient privilege can be found at Title 7, Chapter 90 (Evidence Code), § 90.503.
Georgia

Statutory Authority

Georgia's mental health confidentiality statute is located in Title 37 [Mental Health], Chapter 3 [Examination, Treatment, etc. for Mental Illness] of the Georgia Code (O.C.G.A.), Article 6 [Rights of Patients, Their Representatives, etc., Generally] at O.C.G.A. § 37-3-166. It states, in part:

O.C.G.A. § 37-3-166. Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge.

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, a copy of the record or parts thereof may be released to physicians or psychologists when and as necessary for the treatment of the patient;

(2) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court; ...

(3) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(5) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;

(6) In a bona fide medical emergency, as determined by a physician treating the patient, the chief
medical officer may release a copy of the record to the treating physician or to the patient's psychologist;

(7) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;

(8.1) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state;

(9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a patient in a state facility, as well as the patient's current address, if known; and

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40 [sections no longer exist], or 43-39-16 [Professions and Businesses: Psychologists: Privileged Communications].

Georgia’s general physician privilege statute, exempts psychiatrists and hospitals in which the patient is being treated for mental illness. It is at O.C.G.A. § 24-12-1(a).

(a) No physician licensed under Chapter 34 of Title 43 and no hospital or health care facility, including those operated by an agency or bureau of this state or other governmental unit, shall be required to release any medical information concerning a patient except to the Department of Public Health, its divisions, agents, or successors when required in the administration of public health programs pursuant to Code Section 31-12-2 [Control of Hazardous Conditions and Preventable Diseases] and where authorized or required by law, statute, or lawful regulation; or on written authorization or other waiver by the patient, or by his or her parents or duly appointed guardian ad litem in the case of a minor, or on appropriate court order or subpoena; provided, however, that any physician, hospital, or health care facility releasing information under written authorization or other waiver by the patient, or by his or her parents or guardian ad litem in the case of a minor, or pursuant to law, statute, or lawful regulation, or under court order or subpoena shall not be liable to the patient or any other person; provided, further, that the privilege shall be waived to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any judicial proceeding. This Code section shall not apply to psychiatrists or to hospitals in which the patient is being or has been treated solely for mental illness. ...
Statutory Authority – cont’d.

Georgia’s substance abuse confidentiality statute is at \textbf{O.C.G.A. § 37-7-166}:

\textbf{O.C.G.A. § 37-7-166. Maintenance, confidentiality, and release of clinical records; disclosure of confidential or privileged patient information.}

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises as determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;

(2) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the treatment plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(3) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(4) A copy of the record shall be released to the patient’s attorney if the attorney so requests and the patient, or the patient’s legal guardian consents to the release.

(5) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient’s psychologist;

(6) At the request of the patient, the patient’s legal guardian, or the patient’s attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(7) Except for matters privileged under the laws of this state, the record shall be produced in response to a court order issued by a court of competent jurisdiction pursuant to a full and fair show cause hearing;

(8) A copy of the patient’s clinical record may be released under the conditions and for the uses and purposes set forth in Code Section 31-7-6;

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime 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 patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-5-501 [Evidence: Certain Communications Privileged], 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-5-501, 24-12-1, or 43-39-16.

\textbf{O.C.G.A. § 43.39.16. Psychologists: Privileged Communications.}

The confidential relations and communications between a licensed psychologist and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.
Guam

Statutory Authority

Guam’s mental health confidentiality provision is found in Title 10, Health and Safety, Chapter 82, Mentally Ill Persons, of the Guam Code Annotated (G.C.A.), 10 G.C.A § 82605, which states:


All information and records obtained in the course of providing service to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed only:

(a) In communications between qualified mental health professionals in the provision of services or appropriate referrals, or in the course of conservatorship proceedings;

(b) When the qualified mental health professional staff in charge of the patient, with the approval of the patient or his attorney, conservator or guardian, designates persons to whom information or records may be released, except that nothing in this Chapter shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of the patient's family. No record may be released under this subsection after ten (10) years have elapsed since the record was made;

(c) To the extent necessary to make claims on behalf of a recipient for services for aid, insurance, or medical assistance to which he may be entitled;

(d) If the recipient of services is a ward or conservatee, and his guardian or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this Chapter shall be construed to compel a qualified mental health professional, psychologist, social worker, nurse or attorney, to reveal information which has been given him in confidence by members of a patient's family.

(e) For research, provided that the Attorney General provides by regulation, rules for the conduct of research. Such rules shall include, but need not be limited to, the requirement that all researchers must sign an oath of confidentiality ....
Hawaii

Statutory Authority

Hawaii has one statute governing both mental health treatment and substance use disorder treatment records confidentiality.

**Hawaii Revised Statutes (Haw. Rev. Stat.) § 334-5.** Confidentiality of records.

All certificates, applications, records, and reports made for the purposes of this chapter [Chapter 334, which applies to both mental health and substance abuse] that are maintained, used, or disclosed by health care providers as defined in this chapter, health plans as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except as allowed by title 45 Code of Federal Regulations part 164, subpart E. Nothing in this section shall preclude the

(1) Application of more restrictive rules of confidentiality set forth for records covered by title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records;

(2) Disclosure deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, P.L. 99-319, to protect and advocate for the rights of persons with mental illness who reside in facilities providing treatment or care; or

(3) Disclosures made by a court or the Hawaii criminal justice data center of orders of involuntary civil commitment issued pursuant to section 334-60.5 for the purpose of firearms permitting or registration pursuant to chapter 134.
Idaho

Statutory Authority

Although there is no general statute governing the confidentiality of mental health treatment records, Idaho specifically addresses the confidentiality of mental health records of criminal offenders in Idaho Statutes Chapter 18 (Crimes and Punishments), Chapter 2 (Persons Liable, Principals and Accessories).

Idaho Statutes § 18-217. Mental health records of offenders.
(1) For purposes of care, treatment or normal health care operations, records of mental health evaluation, care and treatment shall be provided upon request to and from the mental health professionals of a governmental entity and another entity providing care or treatment for any person who is:
(a) Under court commitment to a state agency pursuant to section 18-212(d), Idaho Code;
(b) A pretrial detainee;
(c) Awaiting sentencing;
(d) In the care, custody or supervision of any correctional facility as defined in section 18-101A, Idaho Code;
(e) On probation or parole;
(f) Being supervised as part of a drug court, mental health court, juvenile detention program, work release program, or similar court program; or
(g) Applying for mental health services after release from a correctional facility.
(2) No court order or authorization from the offender to transfer the records shall be required except for records of substance abuse treatment as provided by 42 CFR part 2, and sections 37-3102 and 39-308 [the latter is repealed], Idaho Code.
Idaho addresses the confidentiality of substance use disorder treatment records in Idaho Statutes Title 37 (Food, Drugs, and Oil), Chapter 31 (Narcotic Drugs - Treatment of Addicts).

**Idaho Statutes § 37-3102. Request for treatment and rehabilitation -- Information confidential.**
A person may request treatment and rehabilitation for addiction or dependency to any drug, as defined in section 37-3101, from a physician qualified to administer such treatment under the provisions of this act; and such physician or any employee or person acting under his direction or supervision shall not report or disclose the name of such person or the fact that treatment was requested or has been undertaken to any law enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A physician may undertake the treatment and rehabilitation of such person or refer such person to another physician or hospital for such purpose. If the person seeking such treatment or rehabilitation is sixteen (16) years of age or older, the fact that such person sought treatment or rehabilitation for such drug addiction or dependency, or that he is receiving such treatment or rehabilitation service, shall not be reported or disclosed to the parents or legal guardian of such person without his consent, and such person who may give legal consent to receive such treatment and rehabilitation under the provisions of this act shall be counseled as to the benefits of involving his parents or legal guardian in his treatment or rehabilitation.

## Regulations and Other Sources

The substance use disorder treatment records statute is implemented in regulation at [Idaho Administrative Code 16.07.17.006](#).

**Idaho Admin. Code 16.07.17.006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records.”

In the absence of a general statute governing medical health treatment records confidentiality, Idaho defaults to its rules for Adult Mental Health Services, Clients Rights and Responsibilities ([Idaho Admin. Code 16.07.33.120](#)) for patients receiving services from the Department of Health and Welfare and to the Department’s medical records confidentiality rule at [Idaho Admin. Code 16.05.01.075](#) [Use and Disclosure of Confidential Information].

**Idaho Admin. Code 16.07.33.120. CLIENTS RIGHTS AND RESPONSIBILITIES.**
Each individual client receiving adult mental health services through the Department must be notified of his rights and responsibilities prior to the delivery of adult mental health services....

**.02 Content of Client’s Rights.** The Department must assure and protect the fundamental human, civil, constitutional, and statutory rights of each client. The written client rights statement must, at a minimum, address the following:...
Regulations and Other Sources – cont’d.

iii. Necessary for the provision of services, benefits or payment; or
iv. The restriction is unreasonable.
b. The uses and disclosures of confidential information are subject to a restriction after it is received and recorded by the Department, Department employees, contractors, and the individual may request the Department to terminate the restriction. The Department will notify the individual of its response to a request to terminate a restriction.
Illinois

Statutory Authority

The Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 Illinois Compiled Statutes (ILCS) §§110/1 et seq., is designed to work in conjunction with HIPAA but also to provide certain additional Illinois protections. The law was written in part to govern health information exchanges, as it defines that term.

ILCS § 110/2 defines "Confidential communication" or "communication" as:

any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514.”

ILCS § 110/3 provides the basic confidentiality protection, stating in part:

(a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship.

(b) A therapist is not required to but may, to the extent he determines it necessary and appropriate, keep personal notes regarding a recipient. Such personal notes are the work product and personal property of the therapist and shall not be subject to discovery in any judicial, administrative or legislative proceeding or any proceeding preliminary thereto. ....

Statutorily permitted disclosures (ILCS § 110/4) include to:

(1) the parent or guardian of a recipient who is under 12 years of age; …

(3) the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying access. The parent or guardian who is denied access by either the recipient or the therapist may petition the court for access to the record. Nothing in this paragraph is intended to prohibit the parent or guardian of a recipient who is at least 12 but under 18 years from requesting the following
information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any;...

(4) the guardian of a recipient who is 18 years or older; ...

and

(8) any person in whose care and custody the recipient has been placed pursuant to Section 3-811 [relating to involuntary admission] of the Mental Health and Developmental Disabilities Code”.

Disclosures with consent are governed by ILCS § 110/5, which states in part:

Except as provided in Sections 6 through 12.2 of this Act, records and communications may be disclosed to someone other than those persons listed in Section 4 of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4 of this Act.

Research is covered in multiple locations, particularly within ILCS §§110/7 and 110/9. Interdisciplinary teams and care coordination are covered by ILCS § 110/9.4, which states:

(a) For recipients in a program administered or operated by the Department of Healthcare and Family Services or the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), records of a recipient may be disclosed without consent by county jails, insurance companies, integrated health systems, and State agencies, including the Department of Corrections, the Department of Children and Family Services, the Department of Healthcare and Family Services and the Department of Human Services, to hospitals, physicians, therapists, emergency medical personnel, and members of an interdisciplinary team treating a recipient for the purposes of treatment and coordination of care.

(b) An interdisciplinary team treating a recipient may disclose the recipient's records without the recipient's consent to other members of the team.

(c) The records that may be disclosed under this Section are services rendered, providers rendering the services, pharmaceuticals prescribed or dispensed, and diagnoses. All disclosures under this Section must be made in a manner consistent with existing federal and State laws and regulations, including the federal Health Insurance Portability and Accountability Act (HIPAA).

ILCS § 110/11 covers disclosures in emergencies: when, and to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder.

Substance abuse treatment confidentiality in Illinois is governed by the Alcoholism and other Drug Abuse and Dependency Act, 20 ILCS 301/1 et seq. Confidentiality is specifically covered in depth at 20 ILCS § 301/30-5(bb), Patient Rights Established, which states in part:

Records of the identity, diagnosis, prognosis or treatment of any patient maintained in connection with the performance of any program or activity relating to alcohol or other drug abuse or dependency education, early intervention, intervention, training, treatment or rehabilitation which is regulated, authorized, or directly or indirectly assisted by any Department or agency of this State or under any provision of this Act shall be confidential and may be disclosed only in accordance with the provisions of federal law and regulations concerning the confidentiality of alcohol and drug abuse patient records as contained in 42 U.S.C. Sections 290dd-3 and 290ee-3 and 42 C.F.R. Part 2.

(1) The following are exempt from the confidentiality protections set forth in 42 C.F.R. Section 2.12(c):

(A) Veteran's Administration records.

(B) Information obtained by the Armed Forces.

(C) Information obtained by a qualified service organization.

(D) Communications within a program or between a program and an entity having direct administrative control over that program.

(E) Information given to law enforcement personnel investigating a patient's commission of a crime on the premises or against program personnel.

(F) Reports under State law of incidents of suspected child abuse and neglect; however, confidentiality restrictions continue to apply to the records and any follow-up information for disclosure and use in civil or criminal proceedings arising from the report of suspected abuse or neglect.

Regulations and Other Sources

The Illinois Foundation for Quality Health Care summarizes all of Illinois’ various confidentiality protections.
Indiana

Statutory Authority

Indiana’s statute governing confidentiality and disclosure of mental health treatment records is at Title 16 (Health), Article 39 (Health Records), Chapter 2 (Release of Mental Health Records to Patient and Authorized Persons).

**Indiana Code (I.C.) § 16-39-2-6** Disclosure without patient’s consent; interpretation of records; immunities.

(a) Without the consent of the patient, the patient’s mental health record may only be disclosed as follows:

1. To individuals who meet the following conditions: (A) Are employed by: (i) the provider at the same facility or agency; (ii) a managed care provider...; or (iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient. (B) Are involved in the planning, provision, and monitoring of services.

2. To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled....

3. To the patient’s court appointed counsel and to the Indiana protection and advocacy services commission.

4. For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health and addiction, the rules of the division of disability and rehabilitative services, or the rules of the provider.

5. To the division of mental health and addiction for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127) who are operating under a contract with the division of mental health and addiction.

6. To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.
Statutory Authority – cont’d.

(7) To a law enforcement agency if any of the following conditions are met:

(A) A patient escapes from a facility to which the patient is committed under IC 12-26.

(B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient’s history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient. Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual’s duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of the patient. ...

(12) To another health care provider in a health care emergency. ...

(14) Under a court order under IC 16-39-3.

(15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:...

(b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.

(c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

Indiana’s substance use disorder treatment records confidentiality statute defers to 42 CFR Part 2. It is located at Title 16 [Health], Article 39 [Health Records], Chapter 1, [Release of Health Records to Patient and Authorized Persons].


Alcohol and drug abuse records described in 42 U.S.C. 290dd-2 may not be disclosed unless authorized in accordance with 42 U.S.C. 290dd-2.
Iowa

Statutory Authority

The Iowa mental health treatment records confidentiality law is found at Title VI [Human Services], Subtitle 3 [Mental Health], Chapter 28 [Disclosure of Mental Health and Psychological Information].

**Iowa Code 228.2 Record of Disclosure.** 1. Except as specifically authorized in section 228.3, 228.5, 228.6, 228.7 [peer review], or 228.8, a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility shall not disclose or permit the disclosure of mental health information.

2. a. Upon disclosure of mental health information pursuant to section 228.3, 228.5, 228.6, 228.7, or 228.8, the person disclosing the mental health information shall enter a notation on and maintain the notation with the individual’s record of mental health information, stating the date of the disclosure and the name of the recipient of mental health information.

   b. The person disclosing the mental health information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an individual or an individual’s legal representative, or as otherwise provided in this chapter, that the unauthorized disclosure of mental health information is unlawful, and that civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information.

3. A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure in section 228.3, 228.5, 228.6, 228.7, or 228.8. However, mental health information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the individual or the individual’s legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of subsection 2 shall be followed.
Statutory Authority – cont’d.

Iowa Code § 228.5. Administrative disclosures.

1. An individual or an individual’s legal representative shall be informed that mental health information relating to the individual may be disclosed to employees or agents of or for the same mental health facility or to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

2. a. If an individual eighteen years of age or older or an individual’s legal representative has received a written notification that a fee is due a mental health professional or a mental health facility and has failed to arrange for payment of the fee within a reasonable time after the notification, the mental health professional or mental health facility may disclose administrative information necessary for the collection of the fee to a person or agency providing collection services.

b. If a civil action is filed for the collection of the fee, additional mental health information shall not be disclosed in the litigation, except to the extent necessary to respond to a motion of the individual or the individual’s legal representative for greater specificity or to dispute a defense or counterclaim.

3. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if necessary for the purpose of conducting scientific and data research, management audits, or program evaluations of the mental health professional or mental health facility, to persons who have demonstrated and provided written assurances of their ability to ensure compliance with the requirements of this chapter. The persons shall not identify, directly or indirectly, an individual in any report of the research, audits, or evaluations, or otherwise disclose individual identities in any manner. A disclosure under this section is not subject to the requirements of section 228.2, subsection 2, with the exception that a person receiving mental health information under this section shall be provided a statement prohibiting redisclosure of information unless otherwise authorized by this chapter.

4. Mental health information relating to an individual may be disclosed to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

Iowa Code § 228.6. Compulsory Disclosures.

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if and to the extent necessary, to meet the requirements of section 229.24, 229.25, 230.20, 230.21, 230.25, 230.26, 230A.108, 232.74, or 232.147, or to meet the compulsory reporting or disclosure requirements of other state or federal law relating to the protection of human health and safety.

2. Mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed pursuant to court rules.

3. Mental health information may be disclosed by a mental health professional if and to the extent necessary, to initiate or complete civil commitment proceedings under chapter 229.

a. Mental health information may be disclosed in a civil or administrative proceeding in which an individual eighteen years of age or older or an individual’s legal representative or, in the case of a deceased individual, a party claiming or defending through a beneficiary of the individual, offers the individual’s mental or emotional condition as an element of a claim or a defense.

b. Mental health information may be disclosed in a criminal proceeding pursuant to section 622.10, subsection 4.

5. An individual eighteen years of age or older or an individual’s legal representative or any other party in a civil, criminal, or administrative action, in which mental health information has been or will be disclosed, may move the court to denominate, style, or caption the names of all parties as “JOHN OR JANE DOE” or otherwise protect the anonymity of all of the parties.

Iowa Code 228.8. Disclosures to Family Members.

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information to the spouse, parent, adult child, or adult sibling of an individual who has chronic mental illness, if all of the following conditions are met:

a. The disclosure is necessary to assist in the provision of care or monitoring of the individual’s treatment.

b. The spouse, parent, adult child, or adult...
sibling is directly involved in providing care to or monitoring the treatment of the individual.

c. The involvement of the spouse, parent, adult child, or adult sibling is verified by the individual’s attending physician, attending mental health professional, or a person other than the spouse, parent, adult child, or adult sibling who is responsible for providing treatment to the individual.

2. A request for mental health information by a person authorized to receive such information under this section shall be in writing, except in an emergency as determined by the mental health professional verifying the involvement of the spouse, parent, adult child, or adult sibling.

3. Unless the individual has been adjudged incompetent, the person verifying the involvement of the spouse, parent, adult child, or adult sibling shall notify the individual of the disclosure of the individual’s mental health information under this section.

4. Mental health information disclosed under this section is limited to the following:

   a. A summary of the individual’s diagnosis and prognosis.

   b. A listing of the medication which the individual has received and is receiving and the individual’s record of compliance in taking medication prescribed for the previous six months.

   c. A description of the individual’s treatment plan.


1. All papers and records pertaining to any involuntary hospitalization or application pursuant to section 229.6 of any person under this chapter, whether part of the permanent record of the court or of a file in the department of human services, are subject to inspection only upon an order of the court for good cause shown.

2. If authorized in writing by a person who has been the subject of any proceeding or report under sections 229.6 to 229.13 or section 229.22, or by the parent or guardian of that person, information regarding that person which is confidential under subsection 1 may be released to any designated person.

3. If all or part of the costs associated with hospitalization of an individual under this chapter are chargeable to a county of residence, the clerk of the district court shall provide to the county of residence and to the county in which the hospitalization order is entered the following information pertaining to the individual which would be confidential under subsection 1:

   a. Administrative information, as defined in section 228.1.

   b. An evaluation order under this chapter and the location of the individual’s placement under the order.

   c. A hospitalization or placement order under this chapter and the location of the individual’s placement under the order.

   d. The date, location, and disposition of any hearing concerning the individual held under this chapter.

   e. Any payment source available for the costs of the individual’s care.

4. This section shall not prohibit any of the following:

   a. A hospital from complying with the requirements of this chapter and of chapter 230 relative to financial responsibility for the cost of care and treatment provided a patient in that hospital or from properly billing any responsible relative or third-party payer for such care or treatment.

   b. A court or the department of public safety from forwarding to the federal bureau of investigation information that a person has been disqualified from possessing, shipping, transporting, or receiving a firearm pursuant to section 724.31.

   Iowa Code § 229.25 contains exceptions to involuntary hospitalization confidentiality.

   Iowa Code § 230A.13 governs budgetary disclosures by community mental health centers.

   Iowa Code § 232.74 governs juvenile justice evidence.

Substance use disorder treatment records confidentiality is addressed in Title IV [Public Health], Chapter 125 [Substance Related Disorders] at Iowa Code § 125.37.
Iowa Code § 125.37. Records Confidential.

1. The registration and other records of facilities shall remain confidential and are privileged to the patient.

2. Notwithstanding subsection 1, the director may make available information from patients’ records for purposes of research into the causes and treatment of substance abuse. Information under this subsection shall not be published in a way that discloses patients’ names or other identifying information.

3. Notwithstanding the provisions of subsection 1 of this section a patient’s records may be disclosed to medical personnel in a medical emergency with or without the patient’s consent.
The Kansas mental health and substance abuse confidentiality provisions are codified in Chapter 59 of the Kansas Code, the Kansas Probate Code, Care and Treatment for Mentally Ill Persons is Article 29 within that Chapter; Care and Treatment for Persons with an Alcohol or Substance Abuse Problem is Article 29b. These chapters bookend Chapter 29a, entitled Commitment of Sexually Violent Predators. All three chapters were passed non-concurrently in the mid-1990s, and are the only non-estate and probate sections of significance in Chapter 59.

Future researchers should keep this location and statutory history in mind when they conduct further research, as these Articles lack the context that many state confidentiality statutes have within other parts of health law. For example Chapter 65 (Public Health), contains a confidentiality law for a patient of a treatment facility at Kansas Statutes Annotated (K.S.A) 65-5602.

That said, the mental health and substance abuse confidentiality provisions are remarkably similar. The mental health provisions were enacted first in 1996, and the substance abuse provisions in 1998.


(a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no legal guardian; (B) the patient's or former patient's legal guardian, if one has been appointed; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 59-2949, and amendments thereto, shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.
(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) To appropriate administrative or professional staff of the department of corrections whenever patients have been administratively transferred to the state security hospital or other state psychiatric hospitals pursuant to the provisions of K.S.A. 75-5209, and amendments thereto. The patient’s or former patient’s consent shall not be necessary to release information to the department of corrections.

(7) To the state central repository at the Kansas bureau of investigation for use only in determining eligibility to purchase and possess firearms or qualifications for licensure pursuant to the personal and family protection act. …

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, shall control the disposition of information contained in such records. …

K.S.A. § 65-5602. Privilege of patient of treatment facility to prevent disclosure of treatment and of confidential communications; extent of privilege; persons who may claim privilege; persons to which confidential communications extend.

(a) A patient of a treatment facility has a privilege to prevent treatment personnel or ancillary personnel from disclosing that the patient has been or is currently receiving treatment or from disclosing any confidential communications made for the purposes of diagnosis or treatment of the patient’s mental, alcoholic, drug dependency or emotional condition. The privilege extends to individual, family or group therapy under the direction of the treatment personnel and includes members of the patient’s family. The privilege may be claimed by the patient, by the patient’s guardian or conservator or by the personal representative of a deceased patient. The treatment personnel shall claim the privilege on behalf of the patient unless the patient has made a written waiver of the privilege and provided the treatment personnel with a copy of such waiver or unless one of the exceptions provided by K.S.A. 65-5603 is applicable.

(b) Confidential communications shall extend to those persons present to further the interests of the patient in the consultation, examination or interview; ancillary personnel; persons who are participating in the diagnosis and treatment under the direction of the treatment personnel, including members of the patient’s family; and any other persons who the patient reasonably believes needs the communication to assist in the patient’s diagnosis or treatment.


(a) The privilege established by K.S.A. 65-5602, and amendments thereto, shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization; …
(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209, and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to the state protection and advocacy system which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;...

(13) any communication and information by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care by and between treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient; ...

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information; or

(16) information limited to whether a person is or has been a patient of any treatment facility within the last six months, such person having been lawfully detained by a law enforcement officer upon reasonable suspicion that such person is committing, has committed or is about to commit a misdemeanor or felony, if such law enforcement officer has reasonable suspicion that such person is suffering from mental illness and such law enforcement officer has a reasonable belief that such person may benefit from treatment at a treatment facility rather than being placed in a correctional institution, jail, juvenile correctional facility or juvenile detention
facility. Any communication and information obtained by any law enforcement officer regarding such person from such treatment facility shall not be disclosed except as provided by this section.

(b) As used in this subsection: ...

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others or the welfare of the community.

(c) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient’s condition an issue of the patient’s claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

Article 29b. - CARE AND TREATMENT FOR PERSONS WITH AN ALCOHOL OR SUBSTANCE ABUSE PROBLEM

(a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no legal guardian; (B) the patient's or former patient's legal guardian, if one has been appointed; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 59-29b49, and amendments thereto, shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) To the state central repository at the Kansas bureau of investigation for use only in determining eligibility to purchase and possess firearms or qualifications for licensure pursuant to the personal and family protection act.

(7) As otherwise provided for in this act.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, shall control the disposition of information contained in such records.

(c) Willful violation of this section is a class C misdemeanor.

In addition to all of the above, there are provisions governing the confidentiality of records in a state mental health treatment facility in the Public Health Article which mirror the provisions in Article 56.

Article 56. PUBLIC HEALTH. K.S.A. § 65-5602. Confidential Communications and Information.

Privilege of patient of treatment facility to prevent disclosure of treatment and of confidential communications; extent of privilege; persons who may claim privilege; persons to which confidential communications extend. (a) A patient of a
Statutory Authority – cont’d.

treatment facility has a privilege to prevent treatment personnel or ancillary personnel from disclosing that the patient has been or is currently receiving treatment or from disclosing any confidential communications made for the purposes of diagnosis or treatment of the patient's mental, alcoholic, drug dependency or emotional condition. The privilege extends to individual, family or group therapy under the direction of the treatment personnel and includes members of the patient's family. The privilege may be claimed by the patient, by the patient's guardian or conservator or by the personal representative of a deceased patient. The treatment personnel shall claim the privilege on behalf of the patient unless the patient has made a written waiver of the privilege and provided the treatment personnel with a copy of such waiver or unless one of the exceptions provided by K.S.A. 65-5603 is applicable.

(b) Confidential communications shall extend to those persons present to further the interests of the patient in the consultation, examination or interview; ancillary personnel; persons who are participating in the diagnosis and treatment under the direction of the treatment personnel, including members of the patient's family; and any other persons who the patient reasonably believes needs the communication to assist in the patient's diagnosis or treatment.


(a) The privilege established by K.S.A. 65-5602, and amendments thereto, shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209, and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to the state protection and advocacy system which concerns individuals who reside in a treatment facility and which is required
Statutory Authority – cont’d.

by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program; ... has made such patient’s condition an issue of the patient’s claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

(13) any communication and information by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care by and between treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities; the proposed patient, patient, or former patient’s consent shall not be necessary to share evaluation and treatment records by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient;...

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner’s designee, requests such information; or

(16) information limited to whether a person is or has been a patient of any treatment facility within the last six months, such person having been lawfully detained by a law enforcement officer upon reasonable suspicion that such person is committing, has committed or is about to commit a misdemeanor or felony, if such law enforcement officer has reasonable suspicion that such person is suffering from mental illness and such law enforcement officer has a reasonable belief that such person may benefit from treatment at a treatment facility rather than being placed in a correctional institution, jail, juvenile correctional facility or juvenile detention facility. Any communication and information obtained by any law enforcement officer regarding such person from such treatment facility shall not be disclosed except as provided by this section.

(b) As used in this subsection:...

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others or the welfare of the community.

(c) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient
Kentucky

Statutory Authority

Kentucky’s mental health treatment records confidentiality law is found at Chapter 210 (State and Regional Mental Health Programs).

**Kentucky Revised Statutes (K.R.S.) § 210.235.** Confidential nature of records -- Conditions under which records may be disclosed.

All applications and requests for admission and release, and all certifications, records, and reports of the Cabinet for Health and Family Services which directly or indirectly identify a patient or former patient or a person whose hospitalization has been sought, shall be kept confidential and shall not be disclosed by any person, except insofar as:

1. The person identified or his guardian, if any, shall consent; or
2. Disclosure may be necessary to carry out the provisions of the Kentucky Revised Statutes, and the rules and regulations of cabinets and agencies of the Commonwealth of Kentucky; or
3. Disclosure may be necessary to comply with the official inquiries of the departments and agencies of the United States government; or
4. Disclosure may be necessary for:
   a. Treatment of the patient by any health care provider involved in the patient's care;
   b. Treatment, payment, or health care operations under the federal [HIPAA], including disclosure between health care providers through an electronic health information exchange or network; or
   c. Participation by health care providers through an electronic health information exchange or network for the purpose of meeting the requirements of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and its related federal regulations; or
5. A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and failure to make such disclosure would be contrary to the public interest. Nothing in this section shall preclude the disclosure, upon proper inquiry of the family or friends of a patient, of information as to the medical condition of the patient.
Kentucky’s substance use disorder treatment records confidentiality law is found at Chapter 22 (Kentucky Alcohol and Other Drug Abuse Prevention, Intervention, and Treatment Law).

**K.R.S. § 222.271** Confidential record of treatment rights of patient.

(1) The administrator of each program shall keep a record of the treatment afforded each alcohol and other drug abuse patient, which shall be confidential in accordance with administrative regulations promulgated by the cabinet.

(2) Any patient may have a physician retained by him examine him, consult privately with his attorney, receive visitors, and send and receive communications by mail, telephone, and telegraph. The communications shall not be censored or read without consent of the patient. The right of the administrator, subject to administrative regulations of the cabinet, to prescribe reasonable rules governing visitation rights, use of the mail, and telephone and telegraph facilities shall not be limited.

**Regulations and Other Sources**

908 Kentucky Administrative Regulations (K.A.R.) 1:320. Confidential record of treatment for federally-assisted alcohol and other drug abuse programs.

Section 1. Definitions. (1) "AOD agency" means an alcohol or other drug abuse agency licensed pursuant to KRS 222.231. (2) "Federally-assisted" is defined at 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records, (October 1, 1994 edition).

Section 2. Applicability. An AOD agency, which is federally-assisted, shall maintain a confidential record of treatment for all clients pursuant to 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records (October 1, 1994 edition), as amended at 60 Federal Register 22,296-22,297.

Louisiana

Statutory Authority

Louisiana’s mental health code is found at Title 28 of the Louisiana Code. There is no provision discussing confidentiality, nor does one appear in any other part of the Louisiana Revised Statutes. However, Louisiana Revised Statutes § 13:3715.1 of the Courts and Judicial Procedures Title does contain provisions limiting disclosure of records during litigation:

Louisiana Revised Statutes § 13:3715.1. Medical or hospital records of a patient; subpoena duces tecum and court order to a health care provider; reimbursement for records produced.

A. As used in this Section, the following terms shall have the respective meanings ascribed thereto:

(1) Patient “records” shall not be deemed to include x-rays, electrocardiograms, and like graphic matter unless specifically referred to in the subpoena, summons, or court order.

(2) “Health care provider” shall mean a person, partnership, corporation, facility, or institution defined in R.S. 40:1299.41(A).

B. The exclusive method by which medical, hospital, or other records relating to a person’s medical treatment, history, or condition may be obtained or disclosed by a health care provider, shall be pursuant to and in accordance with the provisions of R.S. 40:1299.96 or Code of Evidence Article 510, or a lawful subpoena or court order obtained in the following manner:

(1) A health care provider shall disclose records of a patient who is a party to litigation pursuant to a subpoena issued in that litigation, whether for purposes of deposition or for trial and whether issued in a civil, criminal, workers’ compensation, or other proceeding, but only if: the health care provider has received an affidavit of the party or the party’s attorney at whose request the subpoena has been issued that attests to the fact that such subpoena is for the records of a party to the litigation and that notice of the subpoena has been mailed by registered or certified mail to the patient whose records are sought, or, if represented, to his counsel of record, at least seven days...
prior to the issuance of the subpoena; and the subpoena is served on the health care provider at least seven days prior to the date on which the records are to be disclosed, and the health care provider has not received a copy of a petition or motion indicating that the patient has taken legal action to restrain the release of the records. If the requesting party is the patient or, if represented, the attorney for the patient, the affidavit shall state that the patient authorizes the release of the records pursuant to the subpoena. No such subpoena shall be issued by any clerk unless the required affidavit is included with the request.

(2) Any attorney requesting medical records of a patient, who is not a party to the litigation in which the records are being sought may obtain the records by written authorization of the patient whose records are being sought or if no such authorization is given, by court order, as provided in Paragraph (5) hereof....

(6) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance or alcohol abuse, education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized in 42 CFR Part 2. Under this Section, said programs shall include but not be limited to any alcohol or substance abuse clinic or facility operated by the Department of Health and Hospitals. No subpoena or court order shall compel disclosure of any record or patient-identifying information of an individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse in a federally assisted program, unless said court order or subpoena meets the criteria set forth in 42 CFR 2.61, 2.64, or 2.65. No health care provider, employee, or agent thereof shall be held civilly or criminally liable for refusing to disclose protected alcohol and substance abuse records or patient-identifying information unless first presented with a valid consent signed by the individual, which complies with 42 CFR 2.31 or a court order and subpoena which complies with 42 CFR Part 2.

C. No health care provider, employee, or agent thereof shall be held civilly or criminally liable for disclosure of the records of a patient pursuant to the procedure set forth in this Section, R.S. 40:1299.96, or Code of Evidence 510, provided that the health care provider has not received a copy of the petition or motion indicating that legal action has been taken to restrain the release of the records. ....

K. Any attorney who causes the issuance of a subpoena or court order for medical, hospital, or other records relating to a person's medical treatment, history, or condition and who intentionally fails to provide notice to the patient or to the patient's counsel of record in accordance with the requirements of this Section shall be subject to sanction by the court.

L. No provision of this Section shall preclude a patient from personally receiving a copy or synopsis of his medical records as provided by law.

Regulations and Other Sources

Title 48 (Public Health-General), Chapter 5 [Disclosure of Confidential Information] of the Louisiana Administrative Code contains medical records confidentiality regulations that apply to all forms of health care. Mental health entities are specifically included within defined term “agency” under that chapter. Section 513 contains forms for patient waivers of confidentiality.

Louisiana Administrative Code (L.A.C.) § 503.
Definitions.
Agency—each hospital, clinic, institution, school for the mentally deficient, mental health facility, office, bureau, division, board, commission or other entity which has been placed within the Department of Health and Human Resources, which maintains or makes use of medical information concerning individuals.

Mental Health Professional—psychiatrists, psychiatric social workers, psychiatric nurses and psychologists.
L.A.C. § 505. Confidentiality and Disclosure

A. Medical records shall be confidential and may only be disclosed as authorized by these rules.

B. Patient's medical records shall continue to be confidential after the patient is discharged from an agency or is no longer receiving treatment from an agency.

C. Secondary medical information shall be disclosed in the same manner as primary medical information for disclosures made pursuant to §509 of these rules. For disclosures made pursuant to §§507 and 511 an agency shall disclose secondary medical information only if such disclosure is clearly intended by the patient and if the preparer of the secondary medical information authorizes its disclosure. Whenever an agency denies a request for disclosure of secondary medical information pursuant to this rule, the agency shall refer the person requesting the secondary medical information to the preparer of the information. For purposes of this rule, primary medical information means medical information that has been prepared by a person who is an employee of or a contractor with the agency which has custody of the information. Secondary medical information means medical information that is contained in the agency's patient record that was prepared by someone who is not an employee of or a contractor with the agency.

D. Any disclosure made pursuant to these rules, whether with or without the patient’s consent, shall be limited to information necessary in light of the need or purpose for the disclosure, as is determined by the superintendent. ...

E. ...2. No person or agency to whom medical information has been disclosed shall further disclose such information except as authorized by these rules.

3. Whenever a written disclosure of medical information is made under the authority of these rules, a notice shall accompany the medical information. This notice shall state: "The medical information contained herewith is confidential pursuant to the law of Louisiana and the rules of the Department of Health and Human Resources. Further disclosure of this information in a form which contains patient identifying information and in a manner inconsistent with state law and regulations is prohibited." Whenever medical information is disclosed orally, the recipient shall be warned that redisclosure is prohibited. ...

G. Medical Information Concerning Minors.

Except as is provided in §§509 and 1311 of these rules, medical information concerning a minor can only be disclosed upon the written consent of the parent or tutor of the minor. However, if the minor has consented to medical treatment pursuant to R.S. 40:1095 (treatment for illness or disease), R.S. 40:1095 (treatment for drug abuse), or R.S. 40:1065.1 (treatment for venereal disease), medical information can only be disclosed upon the consent of the minor. Consent to disclosure of medical information which has been executed by a minor shall not be subject to a later disaffirmance by reason of his minority. Upon the advice and direction of a treating physician, a physician or a member of a medical staff may, but shall not be obligated to, inform the spouse, parent or tutor of the minor as to the treatment given or needed and this information may be given or withheld without the consent and over the express objection of the minor.

L.A.C. § 507. Disclosures with the Patient’s Consent

A. Consent to disclosure of medical information must be in writing and must contain the following:

1. the name of the patient;
2. the name of the agency which is to make the disclosure;
3. the name or title of the person to whom disclosure is to be made;
4. the purpose or need for disclosure;
5. the extent or nature of the information to be disclosed;
6. the date on which the consent is given;
7. statement that consent is subject to written revocation at any time, except to the extent that action has already been taken on it;
8. specification of the date, event or condition upon which consent will expire without written revocation;
9. the signature of the patient or person authorized by these rules to sign in lieu of the patient;
10. the signature of at least one witness. Each consent form must bear original signatures. Copies of signed consent forms are not acceptable. (Sample consent forms are attached in the appendix.)
B. Disclosures for the Purpose of Diagnosis, Treatment, or Education. Where consent is given in accordance with §507.A, disclosure of medical information may be made to medical personnel, to treatment programs, or to educational facilities where disclosure is needed to better enable them to furnish services or instruction to the patient to whom the information pertains.

C. Disclosure to Family Members

1. Where consent is given in accordance with §507.A, disclosure of medical information may be made to a member of the patient's family.

2. Disclosures to third party payers and funding sources including insurance companies.

3. Where consent is given in accordance with §507.A, disclosure of medical information may be made to third party payers and funding sources including insurance companies, but such disclosure must be limited to that information which is reasonably necessary for the discharge of the legal or contractual obligations of the third party payer or funding source. Ordinarily, disclosures under this rule will consist of the patient's name and address, diagnosis, treatment and the charges for the treatment provided.....

L.A.C. § 509. Disclosures without the Patient’s Consent.

A. Disclosures among Office and Department Employees

1. Disclosure of medical information among the employees of an agency is authorized without the consent of the patient where the employee has a legitimate need for the information in connection with his duties. For purposes of this rule, “employees of an agency” shall include persons under contract with the agency and the employees of private contractors providing services to an agency. The superintendent is authorized to determine what constitutes legitimate need.

2. Disclosure of medical information from one agency to an employee of another agency is authorized without the consent of the patient only in the following situations:

a. when the disclosing agency is required by state law or regulation to provide medical information to the receiving agency;

b. when the disclosing agency and the receiving agency participate in a cooperative program and the medical information is maintained for the purposes of the cooperative program;

c. when an agency has referred one of its patients, clients or residents to another agency for evaluation or treatment; and

d. when an agency cannot perform its function without access to medical information and consent to disclosure of medical information cannot reasonably be obtained.

3. The superintendent of the disclosing agency shall determine whether one of the four enumerated situations exists.

B. Disclosures in Case of Medical Emergencies. Disclosure of medical information to medical personnel and law enforcement personnel is authorized without the consent of the patient to the extent necessary to meet a genuine medical emergency.

C. Disclosures to Qualified Personnel for the Purpose of Scientific Research, Statistical Compilation, Audit or Evaluation

1. Disclosure of medical information to qualified personnel is authorized without the consent of the patient, for the purposes of scientific research, statistical compilation, audit and evaluation when the information disclosed does not contain patient identifying information. The term qualified personnel means persons whose training and experience are appropriate to the nature and level of the work in personnel. The superintendent shall use reasonable means to determine the qualifications of the personnel requesting disclosure under this rule. If the person compiling the scientific research, statistical analysis, audit or evaluation report believes that patient identifying information is essential to his compilation, he shall direct his request for information in writing to the secretary of the department. This request shall contain an explanation of the nature and purpose of the compilation and of the reason patient identifying information is deemed essential. The secretary shall review the request and shall authorize the disclosure of the medical information containing patient identifying
information only if he determines that the value of the compilation outweighs the patient’s right to privacy. If the request is granted, the secretary shall advise the person making the request that his request is granted subject to the following conditions:

a. that the final compilation will not contain any patient identifying information;

b. that the recipient will be given access, during regular working hours, to medical information containing patient identifying information from which he may abstract the information sought, but that he will not be allowed to remove medical records containing patient identifying information or copies thereof from the agency’s premises;

c. that, as soon as the compilation is complete, the recipient will either destroy the abstracts of the medical information in its entirety or will remove the patient identifying information therefrom and will destroy the patient identifying information;

d. that the person receiving the medical information will assume all civil responsibility for invasion of privacy if he violates either of the above conditions;

e. that the person receiving the medical information will sign an agreement to abide by these conditions.

2. Upon receipt of the agreement of compliance, the secretary shall authorize the agencies involved to release the medical information. If the secretary determines that the value of the compilation does not outweigh the patient’s right to privacy he may either deny the request or may authorize disclosure of the medical records with the patient identifying information deleted.

D. Disclosures to Law Enforcement Personnel. When a patient commits or threatens to commit a crime on an agency’s premises, disclosure of the following information to law enforcement personnel is authorized without the consent of the patient: the patient’s name, location at the time the crime was threatened or committed, address and last known whereabouts. When an agency receives for treatment a child who has been the subject of abuse or neglect, as is determined by the treating physician or mental health professional, the agency may disclose to law enforcement personnel, without the consent of the child or his parent or tutor, the name and address of the child, the name and address of the person presenting the child for treatment, and such medical information about the child that would support the conclusion that the child had been abused or neglected. Nothing in this rule shall be construed as limiting the right of law enforcement personnel to medical information where such information is needed to meet a genuine medical or law enforcement emergency.
Maine

Statutory Authority

The State of Maine has a multiplicity of statutes that—in conjunction with the federal HIPAA standards—establish treatment records confidentiality standards in the state. Because of their number, they are being summarized in this chapter, rather than reproduced as for other states.

Maine's general privacy statutes, 22 Maine Revised Statutes Annotated (M.R.S.A.) §§1711 through 1711-F, broadly govern patient access to and confidentiality of hospital and treatment records and health care information. 22 M.R.S.A. § 42(5) governs confidentiality of agency records containing individually identifiable health information collected or processed in connection with state public health activities or programs.

Maine also has standards specific to mental health privacy, including:

1) 34-B M.R.S.A. § 1207 (governing confidentiality of information in the context of state behavioral and developmental services: orders of commitment, medical and administrative records, applications and reports, and facts contained therein); and

2) 5 M.R.S.A. § 19507 (governing the disclosure of confidential information in the context of the powers and duties of the state agency changed with protection and advocacy for the disabled).

Maine's Commissioner of the Department of Health and Human Services is statutorily required by 34-B M.R.S.A. § 3003(2)(G) to adopt rules that establish the right to confidentiality of records and procedures related to a patient's right to access mental health care records. These rules are found at 14-193 Code of Maine Regulations (C.M.R.) ch. 1, § A(IX) (confidentiality and access to records for adults), and 14-472 C.M.R. ch. 1, § A(IX) (confidentiality and access to records for children), available through the Secretary of State's website.
Statutory Authority – cont’d.

Finally, the Department’s Office of Substance Abuse and Mental Health Services has information on its website which provides guidance to consumers, family members, advocates, and providers on the rights and legal issues related to the provision of mental health services in Maine. This site includes links to an "Overview of Confidentiality Laws" and the "Rights of Recipients," among other guidance.

Maine’s confidentiality statute for behavioral and developmental services includes provisions governing confidentiality of records used for statistical compilations or research. See 34-B M.R.S.A. § 1207(2).

In general, personal health care information may be disclosed without authorization under specific circumstances, including when "disclosure is made to avert a serious threat to health or safety" and meets the conditions of 45 C.F.R. 164.512(j) as applicable. 22 M.R.S.A. § 1711-C(6)(D).

For confidential mental health information, a licensed mental health professional is required to disclose when:

(1) the professional believes the information “is necessary to avert a serious and imminent threat to health or safety” and the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat,” 34-B M.R.S.A. § 1207(6-A);

(2) “the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer” if the applicable conditions of 45 C.F.R. 164.512(j) are met, 34-B M.R.S.A. § 1207(7); and

(3) “the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms,” 34-B M.R.S.A. § 1207(8).

In addition, a health care practitioner may disclose to a healthcare practitioner or facility, without authorization, but with notice to the patient, health information for the purposes of care management or coordination of care pertaining to a client. 34-B M.R.S.A. § 1207(8)

Maine follows 42 C.F.R. Part 2 for substance use disorder treatment records confidentiality. There are a handful of state-specific laws that address confidentiality, including:

(1) 5 M.R.S.A. § 20047 (making confidential registration and other records at treatment facilities, but permitting release of non-identifiable information from patients’ records for the purposes of research into the causes and treatment of alcoholism and drug abuse); and

(2) 24 M.R.S.A. § 2329 (requiring health care contracts include certain coverage of alcohol and substance abuse treatment, with such records being confidential).

Providers contracting with the state must comply with all Federal and state statutes and regulations for the protection of confidential information. This includes compliance with 22 M.R.S.A. § 1711-C(7) which requires all health care practitioners, facilities, and state-designated statewide health information exchanges to:

develop and implement policies, standards and procedures to protect the confidentiality, security and integrity of health care information to ensure that information is not negligently, inappropriately or unlawfully disclosed.

The statute provides specifics on what these policies must include.
Maryland does not rely entirely on federal HIPAA standards to ensure mental health privacy. Rather, it has state-specific privacy statutes, including the Maryland Medical Records Act, contained in Maryland Annotated Code (Md. Ann. Code), Health-General Article, Title 4 (Public Information), Subtitles 3 (Denials of Inspection) and 4 (Liability; Prohibited Acts; Penalties; Immunity), which contains confidentiality statutes covering all health information, including mental health records. In addition, the Maryland Public Information Act, Md. Ann. Code General Provisions Article § 4-329(b)(1), contains provisions protecting mental health information. There are also confidentiality statutes codified in statutes on specific health subject areas in the Health-General Article, Title 4 [Statistics and Records], Subtitle 3 [Confidentiality of Medical Records] and Health-Occupations Article of the Maryland Annotated Code.

The mental health confidentiality law, Md. Ann. Code, Health-General Article, § 4-307, states in part:


... (b) Governing provisions. -- The disclosure of a medical record developed in connection with the provision of mental health services shall be governed by the provisions of this section in addition to the other provisions of this subtitle.

(c) Permitted disclosures generally. -- When a medical record developed in connection with the provision of mental health services is disclosed without the authorization of a person in interest, only the information in the record relevant to the purpose for which disclosure is sought may be released.

(d) Personal notes. --

(1) To the extent a mental health care provider determines it necessary and appropriate, the mental health care provider may maintain a personal note regarding a recipient.

(2) A personal note shall be considered part of a recipient’s medical records if, at any time, a mental health care provider discloses a personal note to a person other than:

(i) The provider’s supervising health care provider;
(ii) A consulting health care provider; 
(iii) An attorney of the health care provider; or 
(iv) A recipient under paragraph (3) of this subsection. ...  

(h) Participants in plans of care service agencies. -- This section may not be construed to prevent the disclosure of a medical record that relates to the provision of mental health services between or among the health care providers that participate in the approved plan of a core service agency for the delivery of mental health services, if a recipient: 

(1) Has received a current list of the participating providers; and 
(2) Has signed a written agreement with the core service agency to participate in the client information system developed by the agency. ... 

(j) Health, safety, and protection of recipient or others. -- 

(1) A health care provider may disclose a medical record without the authorization of a person in interest: 

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility if: 
   1. The recipient has been involuntarily committed under State law or a court order to the detention or correctional facility requesting the medical record; and 
   2. After a review of the medical record, the health care provider who is the custodian of the record is satisfied that disclosure is necessary for the proper care and treatment of the recipient; 

(ii) As provided in § 5-609 of the Courts and Judicial Proceedings Article; 

(iii) 1. If a health care provider is a facility as defined in § 10-101 of this article, to a law enforcement agency concerning a recipient who: 
   A. Has been admitted involuntarily or by court order to the facility; and 
   B. Is on an unauthorized absence or has otherwise left the facility without being discharged or released; 
   2. The facility director may disclose to the law enforcement agency identifying information and only such further information that the director believes is necessary to aid the law enforcement agency in locating and apprehending the recipient for the purpose of: 
   A. Safely returning the recipient to custody; or 
   B. Fulfilling the provisions of subparagraph (ii) of this paragraph; 

(iv) If a health care provider is a facility as defined in § 10-101 of this article, the facility director may confirm or deny the presence in the facility of a recipient to a parent, guardian, next of kin, or any individual who has a significant interest in the status of the recipient if that individual has filed a missing persons report regarding the recipient; and 

(v) To allow for the service of process or a court order in a facility when appropriate arrangements have been made with the facility director so as to minimize loss of confidentiality. 

(2) When a disclosure is made under this subsection, documentation of the disclosure shall be inserted in the medical record of the recipient. 

(k) Transfer of recipient; protection and advocacy system; commitment proceedings; court orders, subpoenas, etc.; death of recipient. -- 

(1) A health care provider shall disclose a medical record without the authorization of a person in interest: 

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility or to another inpatient provider of mental health services in connection with the transfer of a recipient from an inpatient provider, if: 
   1. The health care provider with the records has determined that disclosure is necessary for the continuing provision of mental health services; and 
   2. The recipient is transferred: 
      A. As an involuntary commitment or by court order to the provider; 
      B. Under State law to a juvenile or adult detention or correctional facility; or 
      C. To a provider that is required by law or regulation to admit the recipient; 

(ii) To the State designated protection and advocacy system for mentally ill individuals.
under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, if:

1. The State designated protection and advocacy system has received a complaint ... regarding the recipient or the director of the system has certified in writing to the chief administrative officer of the health care provider that there is probable cause to believe that the recipient has been subject to abuse or neglect; ...

2. The recipient by reason of mental or physical condition is unable to authorize disclosure; and

3. A. The recipient does not have a legal guardian or other legal representative who has the authority to consent to the release of health care information; or

B. The legal guardian of the recipient is a representative of a State agency;

(iii) To another health care provider or legal counsel to the other health care provider prior to and in connection with or for use in a commitment proceeding in accordance with Title 10, Subtitle 6 or Title 12 of this article;

Md. Ann. Code, Courts & Judicial Proceedings Article § 5-609 provides, in part:

(b) In general. -- A cause of action or disciplinary action may not arise against any mental health care provider or administrator for failing to predict, warn of, or take precautions to provide protection from a patient's violent behavior unless the mental health care provider or administrator knew of the patient's propensity for violence and the patient indicated to the mental health care provider or administrator, by speech, conduct, or writing, of the patient's intention to inflict imminent physical injury upon a specified victim or group of victims.

With regard to substance use disorder treatment records, Md. Ann. Code, Health-General Article § 8-601 provides, in part:

(a) Statements of abuser; observations and conclusions of counselor; results of examination. -- If any individual seeks counseling, treatment, or therapy, for any form of drug or alcohol abuse, from a health professional licensed under the Health Occupations Article treating patients within the scope of the professional's practice, or hospital, or a person who is certified by the Administration for counseling or treating drug or alcohol abuse, the oral or written statements that the individual makes and the observations and conclusions that the health professional, hospital, or other person derives or the results of an examination to determine the existence of an illegal or prohibited drug in the body of an individual are not admissible in any proceeding against the individual, other than and subject to the federal regulations concerning the confidentiality of alcohol and drug abuse patient records:

(1) A proceeding that relates to parole or probation or conditional release from a not criminally responsible finding, if the examination had been ordered as a condition of parole or probation or the conditional release from a not criminally responsible finding; or

(2) A proceeding under Subtitle 5 of this title, if the examination had been ordered for that proceeding. ...

(c) Disclosure and use of records. -- The disclosure and use of the records of individuals served by alcohol abuse and drug abuse treatment programs shall be governed by the federal regulations on the confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Part 2.
Massachusetts

Statutory Authority

Massachusetts statute MGL ch 123 s.36 (Title 7 Public Welfare, Chapter 123 Mental Health) that makes the records of Department of Mental Health (DMH) facilities private and not open to public inspection.

Section 36. The department shall keep records of the admission, treatment and periodic review of all persons admitted to facilities under its supervision. Such records shall be private and not open to public inspection except (1) upon proper judicial order whether or not in connection with pending judicial proceedings, (2) that the commissioner shall allow the attorney of a patient or resident to inspect records of said patient or resident if requested to do so by the patient, resident or attorney, (3) that the commissioner may permit inspection or disclosure when in the best interest of the patient or resident as provided in the rules and regulations of the department and (4) as required by section one hundred and seventy-eight C to one hundred and seventy-eight O, inclusive, of chapter six. This section shall govern the patient records of the department notwithstanding any other provision of law. Each facility, subject to this chapter and section 19 [Residential Day Care Services] of chapter 19 [Department of Mental Health], that provides mental health care and treatment shall maintain patient records, as defined in the first paragraph of section 70 [Records of Hospitals or Clinics] of chapter 111 [Public Health], for at least 20 years after the closing of the record due to discharge, death or last date of service. A facility shall not destroy such records until after the retention period has elapsed and only upon notifying the department of public health that the records will be destroyed, provided that the department shall promulgate regulations further defining an appropriate notification process. On the notice of privacy practices distributed to its patients, each facility shall provide: (i) information concerning the provisions of this section; and (ii) the hospital or clinic’s records termination policy.
DMH has promulgated regulations (104 [Department of Mental Health] Code of Massachusetts Regulations (C.M.R.) 27.00 and 28.00) that extend this restriction to private licensed psychiatric facilities and community programs that operate under contract to DMH.

104 C.M.R. 27.17. Records and Records Privacy ...

(5) Notice of Privacy Practices. Each facility shall provide each patient with a notice of privacy practices which meets the requirements set forth in 45 CFR 164.520. Additionally, such notice shall describe the facility procedures regarding retention of records. ...

(7) Confidentiality of Records. Each facility shall employ reasonable physical, technical and administrative safeguards to ensure the confidentiality, integrity and availability of individual records, and shall comply with all applicable federal and state laws and regulations. Except as provided in 104 CMR 27.17, all records, relating to any persons admitted to or treated by a facility shall be private and not open to public inspection. ...

(9) Inspection by Other Persons.

(a) The records of a patient shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings. ....

(b) The records of a patient, or parts thereof, shall be open to inspection by other third parties, upon receipt of written authorization from the patient or the patient’s legally authorized representative, provided that such written authorization shall meet the requirements set forth in 45 CFR 164.508.

(c) The Commissioner or designee may permit inspection or disclosure of the records of a patient where he or she has made a determination that

1. such inspection or disclosure would be in the best interest of the patient and

2. such disclosure is permitted by the privacy regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164.

Prior to authorizing any release of records pursuant to 104 CMR 27.17(9)(c) or (d), the Commissioner or designee must make a determination that it is not possible or practicable to obtain the written authorization of the patient, if competent, or the patient’s legally authorized representative.

(d) Without limiting the discretionary authority of the Commissioner or designee to identify other situations where inspection or disclosure is in the patient’s best interest, if it is not possible or practicable to obtain the written authorization of the patient, if competent, or the patient’s legally authorized representative, such inspection or disclosure may be made in the patient’s best interest in the following cases:

1. from a sending facility to a receiving facility for purposes of transfer pursuant to M.G.L. c. 123, § 3;
2. to a physician or other health care provider who requires such records for the treatment of a medical or psychiatric emergency; provided however that the patient is given notice of the access as soon as possible;
3. to a medical or psychiatric facility currently caring for the patient, when the disclosure is necessary for the safe and appropriate treatment and discharge of the patient;
4. if the patient has provided consent for a particular treatment or service, to those persons involved in such treatment or service;
5. Between the Department and a contracted vendor regarding individuals being served by the vendor for purposes related to services provided under the contract;
6. to persons authorized by the Department to monitor the quality of services being provided to the individual;
7. to enable the patient, or someone acting on his or her behalf, to obtain benefits, protective services, or third party payment for services rendered to such patient;
8. to persons conducting an investigation involving the patient pursuant to 104 CMR 32.00;
9. to persons engaged in research if such access is approved by the Department pursuant to 104 CMR 31.00;
Statutory Authority – cont’d.

10. to the Joint Commission and other accrediting bodies; … .

(e) Records may be disclosed as required by law. In addition to the laws and regulations of the Department, such laws include, but are not limited to:
   — M.G.L. c. 6, §§ 178C through 178Q (Sex Offender Registry Law - Department operated and contracted facilities only);
   — M.G.L. c. 19A, § 15 (Department of Elder Affairs - abuse of elderly persons, 60 years of age or older);
   — M.G.L. c. 19C, § 10 (Disabled Persons Protection Commission - abuse of disabled persons between 18 and 59 years of age);
   — M.G.L. c. 119, § 51A (Department of Children and Families - abuse or neglect of children younger than 18 years old);
   — 42 U.S.C. 10806 (Protection and Advocacy for Mentally Ill Individuals); and
   — M.G.L. c. 221, § 34E (Mental Health Legal Advisors Committee).

(g) Any disclosure pursuant to the exceptions outlined in 104 CMR 27.17(9)(c) through (f) shall be limited to the minimum information necessary to achieve the purpose of the exception.

(10) Notwithstanding the provisions of 104 CMR 27.17(8) [Inspection by Patient] and (9) [Inspection by Other Persons], inspection or disclosure of records or information shall not be permitted in the following circumstances:

(a) if the record or information was obtained from someone other than a health care provider on a promise of confidentiality, and the requested disclosure would likely reveal the source;

(b) on a temporary basis only, during the course of research involving treatment, where the subject of the research agreed to such temporary suspension of access when consenting to participation in the research study;

(c) if the subject of the record is in the custody of a correctional institution and the correctional institution has requested that access not be provided for health and safety reasons;

(d) if the records are restricted under the Federal Clinical Laboratory Improvement Amendments; or

(e) if the records are created in anticipation of litigation.

104 C.M.R. 27.19. sets out the standards for licensing and regulating substance use disorder treatment facilities, including the privacy of patient records.

104 C.M.R. 27.19. Substance Use Disorder Treatment Facility.

…

(15) Patient Records. Records of the identity, diagnosis, prognosis or treatment of any patient shall be privileged and confidential and shall only be disclosed in conformity with applicable state and federal laws and regulations regarding the confidentiality of patient records, including but not limited to, 42 CFR Part 2: Confidentiality of Alcohol and Drug Abuse Patient Records, and 45 CFR Parts 160 and 164: HIPAA Privacy and Security Rules and, to the extent not preempted by federal law, M.G.L. c. 123, § 36 and 104 CMR 27.17.

(a) Each patient record shall be maintained and stored in accordance with the requirements of 42 CFR Part 2 and 104 CMR 27.17(3) [Maintenance of Records] and (4) [Format and Storage of Records].

(b) Each patient receiving substance use disorder treatment shall be provided a notice of privacy practices which meets the requirements of 42 CFR Part 2 and 45 CFR Parts 160 and 164. (c) Inspection of the record by the patient or others shall be governed by 42 CFR Part 2, and all applicable federal and state laws and regulations.

Substance abuse in Massachusetts is under the authority of the Department of Public Health. The federal standard is the rule in Massachusetts for substance abuse treatment.
Michigan

Statutory Authority

Michigan’s mental health treatment records confidentiality statute is found at Michigan Consolidated Laws (M.C.L.) § 330.1748 of the Mental Health Code. It states, in part:

**Michigan Compiled Laws § 330.1748. Confidentiality.**

(1) Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section or section 748a [M.C.L. § 330.1748a].

(2) If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

(3) An individual receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

(4) Information made confidential by this section shall be disclosed to an adult recipient, upon the recipient’s request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with the adult recipient’s request for disclosure as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request or, if the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.

(5) Except as otherwise provided in this section or section 748a [M.C.L. § 330.1748a], when requested, information made confidential by this section shall be disclosed only under 1 or more of the following circumstances:

(a) Pursuant to an order or a subpoena of a court of record or a subpoena of the legislature, unless the information is privileged by law.
Statutory Authority – cont’d.

(c) To an attorney for the recipient, with the consent of the recipient.

(d) If necessary in order to comply with another provision of law.

(e) To the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law. …

(6) Except as otherwise provided in subsection (4), if consent is obtained from the recipient, the recipient’s guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:

(a) A provider of mental health services to the recipient.

(b) The recipient or his or her guardian or the parent of a minor recipient or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.

(7) Information may be disclosed in the discretion of the holder of the record under 1 or more of the following circumstances:

(a) As necessary in order for the recipient to apply for or receive benefits.

(b) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation. The individual who is the subject of the information shall not be identified in the disclosed information unless the identification is essential in order to achieve the purpose for which the information is sought or if preventing the identification would clearly be impractical, but not if the subject of the information is likely to be harmed by the identification.

(c) To a provider of mental health services or a public agency if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.

(8) If required by federal law, the department or a community mental health services program or licensed facility shall grant a representative of the protection and advocacy system designated by the governor in compliance with section 931 [M.C.L. § 330.1931] access to the records of all of the following:

(a) A recipient, if the recipient, the recipient’s guardian with authority to consent, or a minor recipient’s parent with legal and physical custody of the recipient has consented to the access.

(b) A recipient, including a recipient who has died or whose location is unknown, if all of the following apply:

(i) Because of mental or physical condition, the recipient is unable to consent to the access.

(ii) The recipient does not have a guardian or other legal representative, or the recipient’s guardian is the state.

(iii) The protection and advocacy system has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.

(c) A recipient who has a guardian or other legal representative if all of the following apply:

(i) A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.

(ii) Upon receipt of the name and address of the recipient’s legal representative, the protection and advocacy system has contacted the representative and offered assistance in resolving the situation.

(iii) The representative has failed or refused to act on behalf of the recipient.

Regulations and Other Sources

Michigan defers to 42 CFR Part for Substance use disorder treatment record confidentiality through a state regulation.

**Michigan Rule 325.14116. Confidentiality of client case records.**

Rule 116. (1) A client’s records shall be kept confidential and shall be maintained in compliance with section 6111 of the act and with other applicable federal and state statutes and rules, including the requirements of 42 C.F.R. §§2.1 to 2.67-e, June 9, 1987. The provisions of 42 C.F.R. §§2.1 to 2.67-e, June 9, 1987, are adopted by reference in these rules. …

(2) An authorization for the release of information shall become part of the client’s permanent case record.

A list of many Michigan health treatment records confidentiality laws and Regulations can be found at the [HealthInfoLaw](#) website maintained by George Washington University’s Hirsch Health Law and Policy Program and The Robert Wood Johnson Foundation.
Minnesota

Statutory Authority

Minnesota generally governs patient record privacy and disclosure through a medical records confidentiality statute that governs all health privacy.

Minnesota Statutes § 144.293. Release or Disclosure of Health Records states:

Subd. 2. Patient Consent to Release of Records. A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without: (1) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release; (2) specific authorization in law; or (3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Subd. 3. Release from one provider to another. A patient's health record, including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition, or a summary of the record, shall promptly be furnished to another provider upon the written request of the patient. The written request shall specify the name of the provider to whom the health record is to be furnished. ...

Subd. 4. Duration of consent. Except as provided in this section, a consent is valid for one year or for a period specified in the consent or for a different period provided by law.

Minnesota Statutes § 144.294 details a process for disclosing mental health information.

Subdivision 1. Provider inquiry. Upon the written request of a spouse, parent, child, or sibling of a patient being evaluated for or diagnosed with mental illness, a provider shall inquire of a patient whether the patient wishes to authorize a specific individual to receive information regarding the patient's current and proposed course of treatment. If the patient so authorizes, the provider shall communicate to the designated individual the patient's current and proposed course of treatment. Section 144.293, subdivisions 2 and 4, apply to consents given under this subdivision.
Subd. 2. Disclosure to law enforcement agency.

Notwithstanding section 144.293, subdivisions 2 and 4, a provider must disclose health records relating to a patient's mental health to a law enforcement agency if the law enforcement agency provides the name of the patient and communicates that the:

(1) patient is currently involved in an emergency interaction with the law enforcement agency; and
(2) disclosure of the records is necessary to protect the health or safety of the patient or of another person.

The scope of disclosure under this subdivision is limited to the minimum necessary for law enforcement to respond to the emergency. A law enforcement agency that obtains health records under this subdivision shall maintain a record of the requestor, the provider of the information, and the patient's name. Health records obtained by a law enforcement agency under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, and must not be used by law enforcement for any other purpose.

Subd. 3. Records release for family and caretaker; mental health care.

(a) Notwithstanding section 144.293, a provider providing mental health care and treatment may disclose health record information described in paragraph (b) about a patient to a family member of the patient or other person who requests the information if:

(1) the request for information is in writing;
(2) the family member or other person lives with, provides care for, or is directly involved in monitoring the treatment of the patient;
(3) the involvement under clause (2) is verified by the patient's mental health care provider, the patient's attending physician, or a person other than the person requesting the information, and is documented in the patient's medical record;
(4) before the disclosure, the patient is informed in writing of the request, the name of the person requesting the information, the reason for the request, and the specific information being requested;
(5) the patient agrees to the disclosure, does not object to the disclosure, or is unable to consent or object, and the patient's decision or inability to

make a decision is documented in the patient's medical record; and
(6) the disclosure is necessary to assist in the provision of care or monitoring of the patient's treatment.

(b) The information disclosed under this paragraph is limited to diagnosis, admission to or discharge from treatment, the name and dosage of the medications prescribed, side effects of the medication, consequences of failure of the patient to take the prescribed medication, and a summary of the discharge plan.

(c) If a provider reasonably determines that providing information under this subdivision would be detrimental to the physical or mental health of the patient or is likely to cause the patient to inflict self harm or to harm another, the provider must not disclose the information.

(d) This subdivision does not apply to disclosures for a medical emergency or to family members as authorized or required under subdivision 1 or section 144.293, subdivision 5, clause (1).

The Chapter 13 of the Minnesota Statutes governing Government Data Practices, provides:


(a) Mental health data are private data on individuals and shall not be disclosed, except:

(1) pursuant to section 13.05, as determined by the responsible authority for the community mental health center, mental health division, or provider;
(2) pursuant to court order;
(3) pursuant to a statute specifically authorizing access to or disclosure of mental health data or as otherwise provided by this subdivision; or
(4) to personnel of the welfare system working in the same program or providing services to the same individual or family to the extent necessary to coordinate services, provided that a health record may be disclosed only as provided under section 144.293;
Statutory Authority – cont’d.

(5) to a health care provider governed by sections 144.291 to 144.298, [Minnesota Health Records Act] to the extent necessary to coordinate services; or

(6) with the consent of the client or patient.

(b) An agency of the welfare system may not require an individual to consent to the release of mental health data as a condition for receiving services or for reimbursing a community mental health center, mental health division of a county, or provider under contract to deliver mental health services.

(c) Notwithstanding section 245.69, subdivision 2, paragraph (f) [Additional Duties of Commissioner], or any other law to the contrary, the responsible authority for a community mental health center, mental health division of a county, or a mental health provider must disclose mental health data to a law enforcement agency if the law enforcement agency provides the name of a client or patient and communicates that the:

(1) client or patient is currently involved in an emergency interaction with the law enforcement agency; and

(2) data is necessary to protect the health or safety of the client or patient or of another person.

The scope of disclosure under this paragraph is limited to the minimum necessary for law enforcement to respond to the emergency. Disclosure under this paragraph may include, but is not limited to, the name and telephone number of the psychiatrist, psychologist, therapist, mental health professional, practitioner, or case manager of the client or patient. A law enforcement agency that obtains mental health data under this paragraph shall maintain a record of the requestor, the provider of the information, and the client or patient name. Mental health data obtained by a law enforcement agency under this paragraph are private data on individuals and must not be used by the law enforcement agency for any other purpose. A law enforcement agency that obtains mental health data under this paragraph shall inform the subject of the data that mental health data was obtained.

(d) In the event of a request under paragraph (a), clause (6), a community mental health center, county mental health division, or provider must release mental health data to Criminal Mental Health Court personnel in advance of receiving a copy of a consent if the Criminal Mental Health Court personnel communicate that the:

(1) client or patient is a defendant in a criminal case pending in the district court;

(2) data being requested is limited to information that is necessary to assess whether the defendant is eligible for participation in the Criminal Mental Health Court; and

(3) client or patient has consented to the release of the mental health data and a copy of the consent will be provided to the community mental health center, county mental health division, or provider within 72 hours of the release of the data.

For purposes of this paragraph, “Criminal Mental Health Court” refers to a specialty criminal calendar of the Hennepin County District Court for defendants with mental illness and brain injury where a primary goal of the calendar is to assess the treatment needs of the defendants and to incorporate those treatment needs into voluntary case disposition plans. The data released pursuant to this paragraph may be used for the sole purpose of determining whether the person is eligible for participation in mental health court. This paragraph does not in any way limit or otherwise extend the rights of the court to obtain the release of mental health data pursuant to court order or any other means allowed by law.

For substance abuse treatment records and facilities, Minnesota follows 42 CFR Part 2, HIPAA, and state statutes. In most cases, 42 CFR Part 2 is more restrictive than state law.

Minnesota research standards for confidentiality for substance abuse research are found at Minnesota Statutes § 254A.09.


The Department of Human Services shall assure confidentiality to individuals who are the subject of research by the state authority or are recipients of alcohol or drug abuse information, assessment, or treatment from a licensed or approved program. The commissioner shall withhold from all persons not connected with the conduct of the research the names or other identifying characteristics of a subject of research unless the individual gives written permission that information relative to treatment and recovery
may be released. Persons authorized to protect the privacy of subjects of research may not be compelled in any federal, state or local, civil, criminal, administrative or other proceeding to identify or disclose other confidential information about the individuals. Identifying information and other confidential information related to alcohol or drug abuse information, assessment, treatment, or aftercare services may be ordered to be released by the court for the purpose of civil or criminal investigations or proceedings if, after review of the records considered for disclosure, the court determines that the information is relevant to the purpose for which disclosure is requested. The court shall order disclosure of only that information which is determined relevant. In determining whether to compel disclosure, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the treatment relationship in the program affected and in other programs similarly situated, and the actual or potential harm to the ability of programs to attract and retain patients if disclosure occurs. This section does not exempt any person from the reporting obligations under section 626.556, nor limit the use of information reported in any proceeding arising out of the abuse or neglect of a child. Identifying information and other confidential information related to alcohol or drug abuse information, assessment, treatment, or aftercare services may be ordered to be released by the court for the purpose of civil or criminal investigations or proceedings. No information may be released pursuant to this section that would not be released pursuant to section 595.02, subdivision 2.

The confidentiality of research data generally is covered by Minnesota Statutes §144.053.

Minn. Stat. § 144.053. Research Studies Confidential.

Subdivision 1. Status of data collected by commissioner.

All information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the state commissioner of health, in connection with studies conducted by the state commissioner of health, or carried on by the said commissioner jointly with other persons, agencies or organizations, or procured by such other persons, agencies or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition of health shall be confidential and shall be used solely for the purposes of medical or scientific research.

notes, memoranda, or other data shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any representative of the state commissioner of health, nor by any other person, except as may be necessary for the purpose of furthering the research project to which they relate. No person participating in such research project shall disclose, in any manner, the information so obtained except in strict conformity with such research project. No employee of said commissioner shall interview any patient named in any such report, nor a relative of any such patient, unless the consent of the attending physician and surgeon is first obtained.

Subd. 3. No liability for giving information.

The furnishing of such information to the state commissioner of health or an authorized representative, or to any other cooperating agency in such research project, shall not subject any person, hospital, sanitarium, nursing home or other person or agency furnishing such information, to any action for damages or other relief. ...

Subd. 5. Personally identifying information.

The commissioner of health or the commissioner’s agent is not required to solicit information that personally identifies persons selected to participate in an epidemiologic study if the commissioner determines that:

(1) the study monitors incidence or prevalence of a serious disease to detect potential health problems and predict risks, provides specific information to develop public health strategies to prevent serious disease, enables the targeting of intervention resources for communities, patients, or groups at risk of the disease, and informs health professionals about risks, early detection, or treatment of the disease;

(2) the personally identifying information is not necessary to validate the quality, accuracy, or completeness of the study; or

(3) the collection of personally identifying information may seriously jeopardize the validity of study results, as demonstrated by an epidemiologic study.
Mississippi

Statutory Authority

Mississippi mental health treatment records confidentiality is governed by the Mississippi Public Health Code (Article 41), Chapter 21 (Individuals with a Mental Illness or an Intellectual Disability), at Mississippi Code § 41-21-97, which states:

**Mississippi Code § 41-21-97.** Confidentiality of hospital records and information; exceptions. The hospital records of and information pertaining to patients at treatment facilities or patients being treated by physicians, psychologists (as defined in Section 73-31-3(e)), licensed master social workers or licensed professional counselors shall be confidential and shall be released only: (a) upon written authorization of the patient; (b) upon order of a court of competent jurisdiction; (c) when necessary for the continued treatment of a patient; (d) when, in the opinion of the director, release is necessary for the determination of eligibility for benefits, compliance with statutory reporting requirements, or other lawful purpose; or (e) when the patient has communicated to the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor an actual threat of physical violence against a clearly identified or reasonably identifiable potential victim or victims, and then the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor may communicate the threat only to the potential victim or victims, a law enforcement agency, or the parent or guardian of a minor who is identified as a potential victim.
Mississippi substance use disorder treatment records confidentiality is governed by the Article 30 (Alcoholism and Alcohol Abuse Prevention, Control, and Treatment), of the Mississippi Public Health Code at Mississippi Code § 41-30-33.

Mississippi Code 41.30.33. Confidentiality of records; conditions for disclosure.

(1) The registration and other records of services by approved treatment facilities, whether in-patient, intermediate or out-patient authorized by this chapter shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any [involuntary commitment for substance abuse treatment]. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.
Missouri

Statutory Authority

Missouri has statutory restrictions in Chapter 630 (Department of Mental Health) on the disclosure of mental health treatment records.

*Missouri Revised Statutes § 630.140*. Records confidential, when—may be disclosed, to whom, how, when—release to be documented—court records confidential, exceptions.

1. Information and records compiled, obtained, prepared or maintained by the residential facility, mental health program operated, funded or licensed by the department or otherwise, specialized service, or by any mental health facility or mental health program in which people may be civilly detained pursuant to chapter 632 in the course of providing services to either voluntary or involuntary patients, residents or clients shall be confidential.

2. The facilities or programs shall disclose information and records including medication given, dosage levels, and individual ordering such medication to the following upon their request:

   (1) The parent of a minor patient, resident or client;

   (2) The guardian or other person having legal custody of the patient, resident or client;

   (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an alleged incompetent, an incompetent ward or a person detained under chapter 632, as evidenced by court orders of the attorney's appointment;

   (4) An attorney or personal physician as authorized by the patient, resident or client;

   (5) Law enforcement officers and agencies, information about patients, residents or clients committed pursuant to chapter 552, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement officers shall be obligated to keep such information confidential;
Statutory Authority – cont’d.

(6) The entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044.

(7) The entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to obtain access to the records of a patient, resident or client who by reason of mental or physical condition is unable to authorize the system to have such access, who does not have a legal guardian, conservator or other legal representative and with respect to whom a complaint has been received by the system or there is probable cause to believe that such individual has been subject to abuse or neglect. The entity or agency obtaining access to a person’s records shall meet all requirements for confidentiality as set out in this section. The provisions of this subdivision shall apply to a person who has a significant mental illness or impairment as determined by a mental health professional qualified under the laws and regulations of the state;

(8) To mental health coordinators, but only to the extent necessary to carry out their duties under chapter 632 [Comprehensive Psychiatric Services].

(9) To individuals, designated by the department of mental health as community mental health liaisons, for the purpose of coordination of care and services.

3. The facilities or services may disclose information and records under any of the following:

(1) As authorized by the patient, resident or client;

(2) To persons or agencies responsible for providing health care services to such patients, residents or clients as permitted by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended;

(3) To the extent necessary for a recipient to make a claim or for a claim to be made on behalf of a recipient for aid or insurance;

(4) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations or similar studies; provided, that such personnel shall not identify, directly or indirectly, any individual patient, resident or client in any report of such research, audit or evaluation, or otherwise disclose patient, resident or client identities in any manner;

(5) To the courts as necessary for the administration of chapter 211 [Juvenile Courts], 475 [Probate Code: Guardianship], 552 [Criminal Proceedings Involving Mental Illness], or 632 [Comprehensive Psychiatric Services];

(6) To law enforcement officers or public health officers, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement and public health officers shall be obligated to keep such information confidential;

(7) Pursuant to an order of a court or administrative agency of competent jurisdiction; …

(9) To the department of social services or the department of health and senior services as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents, or clients;…

(11) To parents, legal guardians, treatment professionals, law enforcement officers, and other individuals who by having such information could mitigate the likelihood of a suicide. The facility treatment team shall have determined that the consumer’s safety is at some level of risk.

4. The facility or program shall document the dates, nature, purposes and recipients of any records disclosed under this section and sections 630.145 and 630.150. …

7. The fact of admission of a voluntary or involuntary patient to a mental health facility under chapter 632 [Comprehensive Psychiatric Services] may only be disclosed as specified in subsections 2 and 3 of this section.
Montana has several health care privacy statutes. First, the various statutes in Montana Code Annotated (M.C.A.) Title 50 (Health and Safety), Chapter 16 (Health Care Information) govern the confidentiality of health care information in a number of settings, distinguish providers subject to HIPAA from providers not subject to HIPAA in how they must treat protected information, and specifically address public health information.

M.C.A. § 50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:
(a) be in writing, dated, and signed by the patient;
(b) identify the nature of the information to be disclosed; and
(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.
(7) pursuant to 50-16-712; or
(8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law.

There are also a pair of statutes, enacted prior to HIPAA, governing the confidentiality of mental health facility records at Montana Code Annotated Title 53 (Social Services and Institutions), Chapter 21 (Mentally Ill), at §53-21-165, specifying records to be maintained, and §53-21-166, specifying records to be kept confidential.

M.C.A. § 53-21-166. Reports to be confidential - exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part are confidential and privileged matter and must remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons to whom records or information may be disclosed. However, this section may not be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in confidence by members of a patient's family.

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which a recipient may be entitled;

(4) for research if the department has promulgated rules for the conduct of research. Rules must include but are not limited to the
requirement that all researchers shall sign an oath of confidentiality.

(5) to the courts as necessary for the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104; and

(8) to the mental health ombudsman when necessary to perform the ombudsman functions as provided in 2-15-210.

Some mental health providers also may be subject to M.C.A. § 53-20-161, also enacted prior to HIPAA, governing developmental disability facility records.

Under Montana Code Annotated Title 27, Chapter 1, Part 11 (Liability of Mental Health Professionals) M.C.A. § 27-01-1102 imposes a duty on mental health professionals to warn of or take reasonable precautions to provide protections against the violent behavior of their patients if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. M.C.A. § 27-01-1103 grants immunity from monetary liability and causes of action to any mental health professional who discloses confidential or privileged information in an effort to discharge that duty.

For most substance abuse treatment records issues, Montana follows 42 CFR Part 2. However, there is also M.C.A. § 53-24-306, governing the confidentiality and disclosure of records of “chemically dependent persons,” which was enacted prior to HIPAA. That provision states:


(1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, or other applicable law information from patients’ records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection may not be published in a way that discloses patients’ names or other identifying information.
Nebraska

Statutory Authority

Nebraska Revised Statutes § 38-2136 governs mental health treatment records confidentiality, stating:

Nebraska Revised Statutes § 38-2136. Mental health practitioners; confidentiality; exception.

No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137.

Nevada Revised Statutes § 38-3131, which governs psychiatrist-patient confidentiality, may also prove relevant.
Substance abuse treatment confidentiality in Nebraska generally defers to 42 CFR Part 2. Title 172, Title 15 [Licensure of Drug Counselors] § 15-016.02 of the Nebraska Administrative Code, cross-references 42 CFR Part 2, and requires a signed release for the oral or written use of client information.

15-016.02 Confidentiality:

A licensee must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. This includes written documentation and oral communications. Commission of any of the following acts or behavior constitutes unprofessional conduct:

1. Violating 42 CFR Part 2 or other federal or state statutes;
2. Releasing client information without a signed release except where otherwise allowed by law; and
3. Releasing client identifying data without a signed release and where another party would be able to recognize the identity of the client except where otherwise allowed by law.
Clinical records: Contents; confidentiality.

1. A clinical record for each consumer must be diligently maintained by any division facility, private institution, facility offering mental health services or program of community-based or outpatient services. The record must include information pertaining to the consumer’s admission, legal status, treatment and individualized plan for habilitation. The clinical record is not a public record and no part of it may be released, except:

(a) If the release is authorized or required pursuant to NRS 439.538.

(b) The record must be released to physicians, attorneys and social agencies as specifically authorized in writing by the consumer, the consumer’s parent, guardian or attorney.

(c) The record must be released to persons authorized by the order of a court of competent jurisdiction.

(d) The record or any part thereof may be disclosed to a qualified member of the staff of a division facility, an employee of the Division or a member of the staff of an agency in Nevada which has been established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq., or the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801 et seq., when the Administrator deems it necessary for the proper care of the consumer.

(e) Information from the clinical records may be used for statistical and evaluative purposes if the information is abstracted in such a way as to protect the identity of individual consumers.

(f) To the extent necessary for a consumer to make a claim, or for a claim to be made on behalf of a consumer for aid, insurance or medical assistance to which the consumer may be entitled, information from the records may be released with the written authorization of the consumer or the consumer’s guardian.
2. As used in this section, “consumer” includes any person who seeks, on the person’s own or others’ initiative, and can benefit from, care, treatment and training in a private institution or facility offering mental health services, from treatment to competency in a private institution or facility offering mental health services, or from a program of community-based or outpatient services.

**N.R.S. § 458.055** under Chapter 458 (Abuse of Alcohol and Drugs – Alcohol and Drug Abuse Programs), prohibits the disclosure, use, or authorization of the disclosure of any confidential information concerning a person receiving services alcohol, drug, or gambling counseling services.

**N.R.S. § 458.055 Confidential information.**

1. To preserve the confidentiality of any information concerning persons applying for or receiving any services pursuant to this chapter, the Division may establish and enforce rules governing the confidential nature, custody, use and preservation of the records, files and communications filed with the Division.

2. Wherever information concerning persons applying for and receiving any services pursuant to this chapter is furnished to or held by any other government agency or a public or private institution, the use of that information by the agency or institution is subject to the rules established by the Division pursuant to subsection 1.

3. Except as otherwise provided in NRS 442.300 to 442.330, inclusive, and 449.705 and chapter 629 of NRS and except for purposes directly connected with the administration of this chapter, a person shall not disclose, use or authorize the disclosure of any confidential information concerning a person receiving services pursuant to this chapter.

**Regulations and Other Sources**

**Nevada Administrative Code (N.A.C.)**

Chapter 458 [Abuse of Alcohol and Drugs—Alcohol and Drug Abuse Programs - Operators and Staff of Programs] § 458.163 states, with regard to the operator of an alcohol and drug abuse program:


An operator shall ensure that:

1. The program complies with all applicable confidentiality and recordkeeping provisions set forth in 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 162 and 164, NRS 458.055 and any other applicable confidentiality laws pertaining to the services provided by the program. In the event of a conflict in the confidentiality requirements set forth in 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 162 and 164, NRS 458.055 and any other applicable confidentiality laws, the more restrictive law will apply.

2. A client or participant provides separate and explicit consent to allow the operator or a designee thereof to release information which identifies the client or participant and his or her human immunodeficiency virus seropositive status.

3. The program allows a consultant to have access to confidential information concerning clients or participants only if the confidentiality agreements required by 42 C.F.R. Part 2 and 45 C.F.R. Parts 160, 162 and 164 are satisfied. Such agreements must be maintained in the personnel file of the consultant.
New Hampshire

Statutory Authority

The most significant of New Hampshire’s state laws on mental health treatment records confidentiality and disclosure is at Title X [Public Health], Chapter 135-C [New Hampshire Mental Health Services System].


I. Notwithstanding RSA § 329:26 [governing confidential doctor-patient communications] and RSA § 330-A:32 [governing privileged communications in a court proceeding], a community mental health center or state facility providing services to seriously or chronically mentally ill clients may disclose information regarding diagnosis, admission to or discharge from a treatment facility, functional assessment, the name of the medicine prescribed, the side effects of any medication prescribed, behavioral or physical manifestations which would result from failure of the client to take such prescribed medication, treatment plans and goals and behavioral management strategies to a family member or other person, if such family member or person lives with the client or provides direct care to the client. The mental health center or facility shall provide a written notice to the client which shall include the name of the person requesting the information, the specific information requested and the reason for the request. Prior to the disclosure, the mental health center or facility shall request in writing the consent of the client. If consent cannot be obtained, the client shall be informed of the reason for the intended disclosure, the specific information to be released and the person or persons to whom the disclosure is to be made.

II. Notwithstanding RSA 329:26 and RSA 330-A:32, when the medical director or designee determines that obtaining information is essential to the care or treatment of a person admitted pursuant to RSA 135-C:27, a designated receiving facility may request, and any health care provider which
Statutory Authority – cont’d.

previously provided services to any person involuntarily admitted to the facility may provide, information about such person limited to medications prescribed, known medication allergies or other information essential to the medical or psychiatric care of the person admitted. Prior to requesting such information the facility shall in writing request the person’s consent for such request for information. If the consent cannot be obtained, the facility shall inform the person in writing of the care providers who have been requested to provide information to the facility pursuant to this section. The facility may disclose such information as is necessary to identify the person and the facility which is requesting the information. No care provider who discloses otherwise confidential information to a designated receiving facility following a request made pursuant to this section shall be held civilly or criminally liable for disclosing such information.

II-a. Notwithstanding RSA 329:26 and RSA 330-A:32, when the medical director, or designee, determines that obtaining information is essential to the care and treatment of a person admitted pursuant to RSA 135-C:27 and the consent of the person admitted cannot be obtained, the designated receiving facility may request and any community mental health program which has previously provided services to such person shall immediately provide information about the person including medications prescribed, known medication allergies, services provided and other information essential to the medical and psychiatric care of the person admitted. The facility may disclose information necessary to identify the person and the facility which is requesting the information. No community mental health program which discloses otherwise confidential information to a designated receiving facility following a request made pursuant to this program shall be held civilly or criminally liable for disclosing such information.

The most significant of New Hampshire’s state laws on substance use disorder treatment records confidentiality is found at Title XII (Public Safety and Welfare), Chapter 172 (Study, Treatment, and Care of Inebriates).


No reports or records or the information contained therein on any client of the program or a certified alcohol or drug abuse treatment facility or any client referred by the commissioner shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, statistical or medical purpose, except upon the written consent of the person examined or treated. Confidentiality shall not be construed in such manner as to prevent recommendation by the commissioner to a referring court, nor shall it deny release of information through court order pursuant to appropriate Federal regulations.

Finally, Title XXX (Occupations and Professions), Chapter 330-A [Mental Health Practice] contains a provision on privileged communications between a mental health practitioner and his or her patient.


The confidential relations and communications between any person licensed under provisions of this chapter and such licensee’s client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order. Confidential relations and communications between a client and any person working under the supervision of a person licensed under this chapter which are necessary and customary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with the supervising person licensed under this chapter, unless such disclosure is required by a court order. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A [Guardians and Conservators].
New Jersey

Statutory Authority

New Jersey does not appear to have a state statute governing mental health treatment records specifically. Instead, the more general confidentiality provisions in Title 30:4 [Institutions and Agencies] control, supplemented by HIPAA. However, regulations governing treatment record disclosures by community mental health providers under the New Jersey Administrative Code are extensive and detailed.

New Jersey Revised Statutes (N.J.R.S.) § 30:4-24.3. Confidentiality; exceptions.

All certificates, applications, records, and reports made pursuant to the provisions of Title 30 of the Revised Statutes and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under Title 30 of the Revised Statutes, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:

a. the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or

b. disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes; or

c. a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest; or

d. disclosure may be necessary to conduct an investigation into the financial ability to pay of any person receiving services or his chargeable relatives pursuant to the provisions of R.S.30:1-12.
Statutory Authority – cont’d.
Amendments Act of 2007, Pub. L. 110-180, and
the Brady Handgun Violence Prevention Act of

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient’s current medical condition to any relative or friend or to the patient’s personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.

Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health Services in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are

patient’s current treatment to the staff of another such agency.

New Jersey’s statute regarding substance use disorder treatment records confidentiality is at Title 26 [Health and Vital Statistics], Subtitle 2B [Division of Alcoholism].

New Jersey Code, § 26:2B-20. Records; confidentiality; rights of patients.

a. The administrator of each facility shall keep a record of the treatment afforded each patient, which shall be confidential and shall be made available only upon proper judicial order, whether in connection with pending judicial proceedings or otherwise ...

Regulations and Other Sources

New Jersey’s Community Mental Health Services Act regulations under Title 10 [Human Services], Chapter 37, Subchapter 6 [General Administrative Requirements for all State-Funded Community Mental Health Program Elements], contains significant detail on the mandated confidentiality of records.


(a) All certificates, applications, information and records directly or indirectly identifying persons who are receiving or have received mental health services from a provider licensed by the Department, or for whom such services were sought, shall be kept confidential and shall not be disclosed by any person, except under the following circumstances:

1. Upon authorization of the consumer:
   i. For adult consumers: Upon the written authorization of the consumer, or his or her legal guardian or authorized representative, if any.
   ii. For consumers who are minors:

   (1) A minor, 14 years or older, who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric hospital, or children’s crisis intervention service pursuant to R. 4:74-7A(c), may authorize the disclosure of his or her records in the same manner as an adult;

(2) The minor’s parent or legal guardian may authorize the disclosure of the minor’s records, provided that the minor shall be given prior notice and an opportunity to object to the disclosure. Objection by a minor, 14 years or older, who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric hospital, or children’s crisis intervention service pursuant to R. 4:74-7A(c), shall render the authorization of the parent or guardian void; or

(3) Disclosure of the clinical records of a minor, 14 years or older, who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric hospital, or children’s crisis intervention service pursuant to R. 4:74-7A(c), is permitted only upon written authorization of the minor; however, a parent or guardian, upon proper authorization of the minor; however, a parent or guardian, upon proper inquiry, shall be told the minor patient’s current medical condition if the minor does not object to such disclosure;
Regulations and Other Sources – cont’d.

2. Pursuant to a court order directing disclosure, upon its determination that disclosure is necessary for the conduct of its proceedings before it and that failure to make such disclosure would be contrary to the public interest; or

3. To carry out any of the provisions of Title 30 or Article 9 of Chapter 82 of Title 2A of the New Jersey Statutes (N.J.S.A. 2A:82-41), or as required by other Federal or State law.

(b) Consumer records may also be disclosed to the following persons, upon presentation of appropriate credentials, under these circumstances:

1. Employees of the agency who are involved in the care of the consumer provided, however, that when a consumer enters treatment(s) he or she will be informed that agency staff will have access to his or her records.

i. Employees of the agency may disclose information that is relevant to a consumer’s current treatment to the staff of another such agency, so long as such disclosure is in compliance with the Health Insurance Portability and Accountability Act 45 CFR Parts 160 and 164;

2. Clinical records audit teams, monitoring and site review staff designated by the Department, the Office of Legislative Services, the New Jersey Department of Health and Senior Services, and the Center for Medicaid & Medicare Services;

3. A person participating in a Professional Standards Review Organization; and

4. Officials within the offices of the State Medical Examiner or a County Medical Examiner making investigations and conducting autopsies, pursuant to N.J.S.A. 52:17B-78 et seq.

(c) The records of a minor shall be released upon request to the Department of Children and Families in connection with investigations of whether the minor has been abused or neglected.

(d) Whenever possible, names of consumers shall be deleted from the records being reviewed under (b) above and consumers shall be identified only by use of their initials.

(e) Nothing in this section shall preclude disclosure, upon proper inquiry and after the consumer has had the opportunity to object and does not express an objection, of information as to a consumer’s current medical condition to any relative or friend.

(f) Information may be disclosed to any licensed mental health provider or medical health care provider who has a contract with the Division of Mental Health Services or the Department of Human Services, or to the consumer’s personal physician if it appears that the information is to be used for the benefit of the consumer.

(g) The records of a deceased individual who has received services or for whom services were sought may be re-leased to the estate’s administrator or executor. If there is no administrator or executor, records may be released to the next of kin indicated in the consumer record. A valid written authorization for the release of information must be obtained from next of kin:

1. Natural or adoptive parents;
2. Siblings;
3. Grandparents;
4. Family caregiver of record;
5. Spouse; or

(h) Where disclosure to third parties is authorized pursuant to (b) above, the following conditions shall be observed:

1. The custodian of the records shall, by written notice, advise the person receiving the records that disclosure without the authorization of the person who is the subject of the records, or as otherwise provided by law, is prohibited.

2. Information and records disclosed for any purpose shall be limited to that information which is relevant and necessary for the purpose of the disclosure, except as authorized by the consumer or his or her representative or required by law. Where the disclosure is between agencies for the purpose
of treatment and is not limited by the consumer's authorization, the agency releasing the information shall rely upon the recipient's assertion of need for the information.

3. A request for information regarding a consumer and the action taken upon the request shall be recorded in the consumer's clinical records and accounted for if requested by the consumer for up to six years from the date of the disclosure.

4. Consumers or other persons consenting to the disclosure of records shall be informed of their right subject to (j) below to inspect the

Information disclosed shall be limited to information generated at the provider agency. However, the agency shall list the sources of nondisclosed information contained in the consumer's records.

(i) Consent to disclosure of records shall be evidenced by a signed authorization from the consumer or his or her legally authorized representative.

1. The authorization shall contain the following:
   i. The name of the agency disclosing the information;
   ii. The name or title of the person or organization to which disclosure is to be made;
   iii. The name of the consumer;
   iv. The purpose of the disclosure and predictable outcome;
   v. The information to be disclosed;
   vi. The date on which the authorization is signed; and
   vii. The signature of the consumer or of a person authorized by law to sign for the consumer, following a statement that the undersigned understands the nature of the authorization and has been informed that he or she has the right to revoke consent at any time by written communication to the custodian of the records.

2. Unless the time limit of, or the event that will trigger, expiration has been determined with the consumer and noted on the release form, consumer permission to release information automatically expires four months from the date the authorization is signed by the consumer.

(j) Consumer access to records:

1. In case of Family Therapy, if the records for all participants have been integrated, no single family member shall have access to those records unless all adult participants and the guardians of any minor participants agree through a signed authorization form.

2. A consumer currently receiving services from an agency is entitled to inspect and/or receive a copy of his or her own clinical records unless the consumer's treating clinician certifies to the Director of the agency that such disclosure would be seriously harmful to the consumer's treatment or health. A denial of access to records shall be limited only to the extent necessary to protect the consumer. Denial shall be accompanied by a verbal explanation to the consumer. Denial shall be documented in the consumer's records, as to the clinical data, findings, etc., that led to the denial of access.

3. A consumer is entitled to inspect or receive a copy of his or her financial records.

4. A consumer who formerly received services from an agency is entitled to inspect and/or receive a copy of his or her records. However, if a particular consumer has been inactive for brief periods of time in the past and repeatedly requests and obtains service re-admission, the same criteria for access to records outlined in (j)2 above shall apply.

(k) Modification of records:

1. A consumer may submit in writing to the Director of the agency a statement for the purpose of clarifying or correcting his or her clinical record. Such a statement shall become part of the consumer's clinical records.

2. A consumer may request in writing to the Director of the agency an amendment or clarification of a clinical record and, not later than 30 days after the date of receipt of such request, the agency shall acknowledge in writing such request and, within 10 days thereafter:
Regulations and Other Sources – cont’d.

i. Make each correction, in accordance with the consumer’s request, of any or all portions of a record which the consumer believes is not accurate or complete; or

ii. Inform the consumer of its refusal to amend the record or portions thereof, in accordance with such consumer’s request; the reason for the refusal should be explained to the consumer and documented in the consumer’s record.

(l) At the time that a formal consumer record is going to be initiated for ongoing service purposes, each consumer shall receive notice:

1. Of the specific conditions under which information may be disclosed without his or her authorization;

2. That he or she may request access to his or her records;

3. That he or she may supplement or request a modification of his or her clinical records; and

4. Of the name of the agency’s privacy officer and the avenues for redress of any complaints the consumer may have that his or her privacy was violated.

(m) Agency records directly or indirectly identifying a consumer shall be retained for six years.
New Mexico

Statutory Authority

In New Mexico, all health information is considered confidential under Chapter 14 [Records, Rules, Legal Notices, Oaths], Section 6 [Health and Hospital Records].

New Mexico Statutes (N.M.S.) § 14-6-1.A. Health information; confidentiality; immunity from liability for furnishing.

A. All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities.

B. A custodian of information classified as confidential in Subsection A may furnish the information upon request to a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities, and the custodian furnishing the information shall not be liable for damages to any person for having furnished the information.

C. Statistical studies and research reports based upon confidential information may be published or furnished to the public, but these studies and reports shall not in any way identify individual patients directly or indirectly nor in any way violate the privileged or confidential nature of the relationship and communications between practitioner and patient.

D. This section does not affect the status of original medical records of individual patients and the rules of confidentiality and accessibility applicable to these records continue in force. …

This is reinforced through the statute governing digital records, in Chapter 24 (Health and Safety), Section 14A (Health Information Systems).

N.M.S. § 24-14A-8.A. Health Information System. Confidentiality

A. Health information collected and disseminated pursuant to the Health Information System Act is strictly confidential and shall not be a matter of public record or accessible to the public except as
Statutory Authority - cont’d.

provided in Sections 24-14A-6 [Aggregate data] and 24-14A-7 NMSA 1978 [Health Information System Reports]. No data source shall be liable for damages to any person for having furnished the information to the department.

B. Record-level data provided to the department pursuant to Section 24-14A-6 NMSA 1978 are confidential. The agency that receives record-level data shall not disclose the data except to the extent that they are included in a compilation of aggregate data.

C. The individual forms, electronic information or other forms of data collected by and furnished for the health information system shall not be public records subject to inspection pursuant to Section 14-2-1 NMSA 1978 [Right to Inspect Public Records]. Compilations of aggregate data prepared for release or dissemination from the data collected, except for a report prepared for an individual data provider or the provider’s designee containing information concerning only its transactions, shall be public records.

Regulations and Other Sources

Title 16 (Occupational and Professional Licensing), Chapter 27 (Counselors and Therapists), Part 18 (Code of Ethics) sets for the confidentiality rules for counselors and therapists.

New Mexico Administrative Code (N.M.A.C.) §16.27.18.17. Confidentiality and Data Privacy.

A. The counselor or therapist shall safeguard the confidential information obtained in the course of practice, teaching, research or other professional services. This includes a counselor or therapist’s employees and professional associates as defined by law. The counselor or therapist shall disclose confidential information to others only with the informed written consent of the client.

B. A licensed or registered individual shall inform a client of limitations of confidentiality. These limitations include, but are not limited to:

(1) Limitations mandated by the law;

(2) When the counselor or therapist judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person(s).

(3) When the counselor or therapist is a defendant in a civil, criminal, or disciplinary action arising from the therapy, in which case, client confidences may be disclosed in the course of that action.

(4) When a written waiver has been obtained, all information revealed must be in accordance with the terms of the waiver. If there is more than one party involved in the therapy, the waiver must be signed by all members legally competent to execute such a waiver (i.e., couples, marital couples, family, group).

(5) When release of information pertaining to a client under the age of consent is requested, it must be signed by a parent or guardian. The counselor or therapist, to the extent the client can understand, shall inform the minor client of the limit the law imposes on his/her right of confidentiality.

(6) Reporting of abuse of children and vulnerable adults. The counselor or therapist shall be familiar with any relevant law, and shall comply with such laws.

(7) Limitations mandated by employing agencies.

C. A licensed or registered individual shall ensure that all records and written data are stored using reasonable security measures that prevent access to records by unauthorized persons.

D. A licensed or registered individual shall ensure that the content and disposition of all records is in compliance with the relevant state laws and parts.

E. A licensed or registered individual shall continue to treat information regarding a client as confidential after the professional relationship between the counselor or therapist and the client has ceased.

F. A licensed or registered individual shall exercise reasonable care to ensure that confidential information is appropriately disguised to prevent client identification when used as a basis of supervision, teaching, research or other published reports.
G. A licensed or registered individual shall clarify to the client the limitations and foreseeable uses of confidential information. ...

In addition, New Mexico Medicaid providers are required under the Medicaid Statute Title 8, Chapter 302), to follow HIPAA:


A provider is required to comply with the HIPAA privacy regulations. Confidential medical information regarding medicaid information on the applicant or eligible recipient must be released by providers to MAD, and to other state or federal agencies, or their employees at no cost when:

A. the agency is involved in the administration of medicaid;

B. the information is to be used to establish eligibility, determine the amount of assistance or provide services related to medicaid;

C. the agency is subject to the same standards of confidentiality as MAD; and

D. the agency has the actual consent of applicant or eligible recipient or their personal representative for release of the information, or consent is obtained when an eligible recipient or their personal representative or a member of the assistance group makes application for benefits or services with the human services department.
New York

Statutory Authority

New York State relies on New York State Mental Hygiene Law §§33.13. Clinical Records: Confidentiality and 33.16 9. Access to Clinical Records, as well as HIPAA. There are also numerous NY statutes that address disclosure of mental health information in various situations. The more stringent rule will apply; a preemption analysis by the New York State Office of Mental Health, with respect to state law and HIPAA, is available on that agency’s website.

New York Statutes (N.Y.S.) Mental Hygiene Law § 33.13 contains a detailed and complex confidentiality law, which nevertheless defers to the Federal law underlying 42 CFR Part 2 when appropriate:

... (c) Such information about patients or clients reported to the offices [for mental health and facilities and for people with developmental disabilities], including the identification of patients or clients, clinical records or clinical information tending to identify patients or clients, and records and information concerning persons under consideration for proceedings pursuant to [the chapter of law governing the civil commitment and supervision of sex offenders], at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

1. pursuant to an order of a court of record requiring disclosure upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality, provided, however, that nothing herein shall be construed to affect existing rights of employees in disciplinary proceedings.

2. to the mental hygiene legal service.

3. to attorneys representing patients or clients in proceedings in which the patients' or clients' involuntary hospitalization or assisted outpatient treatment is at issue.

4. to the commission on quality of care for the mentally disabled and any person or agency under contract with the commission which provides protection and advocacy services pursuant to the authorization of the commission to administer the protection and advocacy system as provided for by federal law. ...
Statutory Authority – cont’d.

6. to an endangered individual and a law enforcement agency when a treating psychiatrist or psychologist has determined that a patient or client presents a serious and imminent danger to that individual. The reasons for any such disclosures shall be fully documented in the clinical record. Nothing in this paragraph shall be construed to impose an obligation upon a treating psychiatrist or psychologist to release information pursuant to this paragraph.

7. with the consent of the patient or client or of someone authorized to act on the patient’s or client’s behalf, to persons and entities who have a demonstrable need for such information and who have obtained such consent, provided that disclosure will not reasonably be expected to be detrimental to the patient, client or another provided, however, that release of such information to a patient or client shall not be governed by this subdivision. …

9. with the consent of the appropriate commissioner, to: …

(iii) qualified researchers upon the approval of the institutional review board or other committee specially constituted for the approval of research projects at the facility, provided that the researcher shall in no event disclose information tending to identify a patient or client. …

(v) appropriate persons and entities when necessary to prevent imminent serious harm to the patient or client or another person, provided, however, nothing in this subparagraph shall be construed to impose an obligation to release information pursuant to this subparagraph.

(vi) a district attorney when such request for information is in connection with and necessary to the furtherance of a criminal investigation of patient or client abuse. …

10. to a correctional facility, when the chief administrative officer has requested such information with respect to a named inmate of such correctional facility as defined by subdivision three of section forty of the correction law or to the department of corrections and community supervision, when the department has requested such information with respect to a person under its jurisdiction or an inmate of a state correctional facility, when such inmate is within four weeks of release from such institution to community supervision. Information released pursuant to this paragraph may be limited to a summary of the record, including but not limited to: the basis for referral to the facility; the diagnosis upon admission and discharge; a diagnosis and description of the patient’s or client’s current mental condition; the current course of treatment, medication and therapies; and the facility’s recommendation for future mental hygiene services, if any. Such information may be forwarded to the department of corrections and community supervision staff in need of such information for the purpose of making a determination regarding an inmate’s health care, security, safety or ability to participate in programs. In the event an inmate is transferred, the sending correctional facility shall forward, upon request, such summaries to the chief administrative officer of any correctional facility to which the inmate is subsequently incarcerated. The office of mental health and the office for people with developmental disabilities, in consultation with the commissioner of correction and the department of corrections and community supervision, shall promulgate rules and regulations to implement the provisions of this paragraph.

11. to a qualified person pursuant to section 33.16 of this chapter [for a report of potential abuse].

12. to a director of community services as defined in article nine of this chapter or his or her designee, provided that such director or his or her designee (i) requests such information in the course of his or her statutory functions, powers and duties pursuant to section 9.37 [involuntary admission], 9.45 [involuntary admission for observation], 9.47 [duties of local officers with regard to the mentally ill], 9.48 [duties of directors of assisted outpatient treatment programs], 9.60 [assisted outpatient treatment] or 41.13 of this chapter; or

(ii) the disclosure of information is required pursuant to section 9.46 of this chapter [Reports of substantial risk or threat of harm by mental health professionals].

13. to the state division of criminal justice services for the sole purposes of:

(i) providing, facilitating, evaluating or auditing access by the commissioner of mental health to criminal history information pursuant to subdivision (i) of section 7.09 of this chapter; or

(ii) providing information to the criminal justice information services division of the federal bureau of investigation by the commissioner of mental health or the commissioner of developmental disabilities, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

14. to the criminal justice information services
Statutory Authority – cont’d.

division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system, regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

15. to the division of criminal justice services, names and other non-clinical identifying information for the sole purpose of implementing the division’s responsibilities and duties under sections 400.00 and 400.02 of the penal law [governing the licensing of firearms].

16. to a mental health incident review panel, or members thereof, established by the commissioner pursuant to section 31.37 of this title, in connection with incident reviews conducted by such panel.

17. to the agency designated by the governor pursuant to subdivision (b) of section 558 of the executive law to provide protection and advocacy services and administer the protection and advocacy system as provided for by federal law.

* (d) Nothing in this section shall prevent the electronic or other exchange of information concerning patients or clients, including identification, between and among (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one of this chapter, or pursuant to agreement with the department, and (ii) the department or any of its licensed or operated facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

* NB Effective until June 30, 2017

* (d) Nothing in this section shall prevent the exchange of information concerning patients or clients, including identification, between (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one, or pursuant to agreement with the department and (ii) the department or any of its facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

* NB Effective June 30, 2017

(e) Clinical information tending to identify patients or clients and clinical records maintained at a facility not operated by the offices, shall not be a public record and shall not be released to any person or agency outside such facility except pursuant to subdivisions (b), (c) and (d) of this section. The director of such a facility may consent to the release of such information and records, subject to regulation by the commissioner, pursuant to the exceptions stated in subdivision (c) of this section; provided that, for the purpose of this subdivision, such consent shall be deemed to be the consent otherwise required of the commissioner pursuant to subdivision (c) of this section. Nothing in this subdivision shall be construed to limit, restrict or otherwise affect access to such clinical information or records by the mental hygiene legal service, the commission on quality of care for the
mentally disabled or the offices when such access is authorized elsewhere in law.

(f) All records of identity, diagnosis, prognosis, treatment, care coordination or any other information contained in a patient or client's record shall be confidential unless disclosure is permitted under subdivision (c) of this section. Any disclosure made pursuant to this section shall be limited to that information necessary and required in light of the reason for disclosure. Information so disclosed shall be kept confidential by the party receiving such information and the limitations on disclosure in this section shall apply to such party. Except for disclosures made to the mental hygiene legal service, to persons reviewing information or records in the ordinary course of insuring that a facility is in compliance with applicable quality of care standards, or to governmental agents requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, a notation of all such disclosures shall be placed in the clinical record of that individual who shall be informed of all such disclosures upon request; provided, however, that for disclosures made to insurance companies licensed pursuant to the insurance law, such a notation need only be entered at the time the disclosure is first made.

Article 22 of the NYS Mental Hygiene Law (Chemical Dependence Programs, Treatment Facilities, and Services), at NYS Mental Health Law § 22.05(b), Patient’s Records, states simply:

(a) …

(b) All records of identity, diagnosis, prognosis, or treatment in connection with a person's receipt of chemical dependence services shall be confidential and shall be released only in accordance with applicable provisions of the public health law, any other state law, federal law and duly executed court orders.

Regulations and Other Sources

Perceived provider regulatory barriers were reviewed in 2009 and an FAQ was developed by the New York State Office of Mental Health (OMH).

Guidance is also provided in the OMH Privacy Policy manual.

**N.C.G.S. § 122C-52. Right to confidentiality.**

(a) Except as provided in G.S. 132-5 and G.S. 122C-31(h) [report required on death of client], confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes.

(b) Except as authorized by G.S. 122C-53 through G.S. 122C-56, no individual having access to confidential information may disclose this information, provided, however, a HIPAA covered entity or business associate receiving confidential information that has been disclosed pursuant to G.S. 122C-53 through G.S. 122C-56 may use and disclose such information as permitted or required under 45 Code of Federal Regulations Part 164, Subpart E.

(c) Except as provided by G.S. 122C-53 through G.S. 122C-56, each client has the right that no confidential information acquired be disclosed by the facility.

(d) No provision of G.S. 122C-205 and G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

N.C.G.S. §§122C-53 through 122C-56 provide exceptions. They include N.C.G.S. § 122C-53. Exceptions; client; and N.C.G.S. § 122C-54. Exceptions; abuse reports and court proceedings.
Statutory Authority – cont’d.

The primary confidentiality exception section is N.C.G.S. § 122C-55. Exceptions; care and treatment. It states, in part:

a) Any facility may share confidential information regarding any client of that facility with any other facility when necessary to coordinate appropriate and effective care, treatment or habilitation of the client. (For the purposes of this section, coordinate means the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and other health or related services by one or more facilities and includes the referral of a client from one facility to another.

(a1) Any facility may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with a facility when necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment or habilitation of the client.

(a5) Any area facility may share confidential information with any other area facility regarding an applicant when necessary to determine whether the applicant is eligible for area facility services. For the purpose of this subsection, the term “applicant” means an individual who contacts an area facility for services.

(a7) A facility may share confidential information with one or more HIPAA covered entities or business associates for the same purposes set forth in subsection (a1) of this section. Before making disclosures under this subsection, the facility shall inform the client or his legally responsible person that the facility may make such disclosures unless the client or his legally responsible person objects in writing or signs a non-disclosure form that shall be supplied by the facility. If the client or his legally responsible person objects in writing or signs a non-disclosure form, the disclosures otherwise permitted by this subsection are prohibited. A covered entity or business associate receiving confidential information that has been disclosed by a facility pursuant to this subsection may use and disclose the information as permitted or required under 45 Code of Federal Regulations Part 164, Subpart E; provided however, that such confidential information shall not be used or disclosed for discriminatory purposes including, without limitation, employment discrimination, medical insurance coverage or rate discrimination, or discrimination by law enforcement officers.

(c) A facility may furnish confidential information in its possession to the Division of Adult Correction of the Department of Public Safety when requested by that department regarding any client of that facility when the inmate has been determined by the Division of Adult Correction of the Department of Public Safety to be in need of treatment for mental illness, developmental disabilities, or substance abuse. The Division of Adult Correction of the Department of Public Safety may furnish to a facility confidential information in its possession about treatment for mental illness, developmental disabilities, or substance abuse that the Division of Adult Correction of the Department of Public Safety has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

(d) A responsible professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

(e1) A State facility may furnish client identifying information to the Department for the purpose of maintaining an index of clients served in State facilities which may be used by State facilities only if that information is necessary for the appropriate and effective evaluation, care and treatment of the client.

(e2) A responsible professional may disclose an advance instruction for mental health treatment or confidential information from an advance instruction to a physician, psychologist, or other qualified professional when the responsible professional determines that disclosure is necessary to give effect to or provide treatment in accordance with the advance instruction.
Statutory Authority – cont’d.

(f) A facility may disclose confidential information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services and the agreement includes a provision in which the provider of support services acknowledges that he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State, local, or federal government agencies. Except as provided in subsections (a3) and (g1) of this section, disclosure is limited to that confidential information necessary to establish financial benefits for a client.

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange confidential information as needed for the purpose of carrying out their responsibility in serving the client.

(i) Upon specific request, a responsible professional may release confidential information to a physician or psychologist who referred the client to the facility.

(j) Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin or other family member or the designee with notification of the client's diagnosis, the prognosis, the medications prescribed, the dosage of the medications prescribed, the side effects of the medications prescribed, if any, and the progress of the client, provided that the client or his legally responsible person has consented in writing to the release of the information requested.

(k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206 [Transfers of clients between 24-hour facilities], upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin, or family member, or the designee, notification of the client's admission to the facility, transfer to another facility, decision to leave the facility against medical advice, discharge from the facility, and referrals and appointment information for treatment after discharge, after notification to the client that this information has been requested.

(l) In response to a written request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client, for additional information not provided for in subsections (j) and (k) of this section, and when such written request identifies the intended use for this information, the responsible professional shall, in a timely manner:

(1) Provide the information requested based upon the responsible professional's determination that providing this information will be to the client's therapeutic benefit, and provided that the client or his legally responsible person has consented in writing to the release of the information requested; or

(2) Refuse to provide the information requested based upon the responsible professional's determination that providing this information will be detrimental to the therapeutic relationship between client and professional; or

(3) Refuse to provide the information requested based upon the responsible professional's determination that the next of kin or family member or designee does not have a legitimate need for the information requested.

(m) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules specifically to define the legitimate role referred to in subsections (j), (k), and (l) of this section.

N.C.G.S. § 122C-56 provides an exception for information used in research in the areas of mental health, developmental disabilities, and substance abuse, but forbids further disclosures of identifiable information.

N.C.G.S. § 122C-56. Exceptions; research and planning.

(a) The Secretary may require information that does not identify clients from State and area facilities for purposes of preparing statistical reports of activities and services and for planning and study. The Secretary may also receive confidential information from State and area facilities when specifically required by other State or federal law.

(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, developmental disabilities, and substance abuse. No confidential information shall be further disclosed.
Statutory Authority – cont’d.

(c) A facility may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for this information. A person receiving the information may not directly or indirectly identify any client in any report of the research or audit or otherwise disclose client identity in any way.

North Carolina does not have a specific state statute on substance abuse information, but the state statute cited above also applies to substance abuse treatment information.

North Carolina’s Chapter 122C, like 42 CFR Part 2, makes it a crime to re-disclose confidential information that may have been lawfully acquired for a specific purpose.
North Dakota

Statutory Authority

North Dakota laws on treatment confidentiality are limited. 

North Dakota Century Code (N.D.C.C.) § 25-03.1-43. Confidential records states:

All information and records obtained in the course of an investigation, an evaluation, an examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility are confidential, but the information and records may be disclosed to and be used by a court as required to carry out the purposes of this chapter, and as authorized under title 45, Code of Federal Regulations, part 164. Courts also may release nonclinical identifying information of persons subject to proceedings under this chapter for the purposes of section 62.1-02-01.2. Any information disclosed to a court remains confidential information, except as provided in section 62.1-02-01.2.

In involuntary commitments, N.D.C.C. § 25-03.1-25 requires a detailed written report by the treating provider to the receiving institution, stating the circumstances under which the individual was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that individual's condition, there exists a serious risk of harm to that individual, others, or property if the individual is not immediately detained.

Regulations and Other Sources

North Dakota Administrative Code Section 75-09.1-01-23. Client rights, governing client rights in substance use disorder treatment programs, specifically references Federal law on confidentiality:

N.D.C.C. § 75-09.1-01-23 Client rights.
1. A program must assure the right of each client to ...
    d. Have all information handled confidentially in accord with applicable laws, regulations, and standards; 
    e. Receive notice of federal confidentiality requirements. ...
Ohio

Statutory Authority

Ohio's general medical records confidentiality statutes at Ohio Revised Code, Chapter 37 Title 3798 should be considered applicable for substance use disorder and mental health treatment records.

Ohio Revised Code § 5119.27. Confidentiality of records pertaining to identity, diagnosis or treatment.

(A) Records or information, other than court journal entries or court docket entries, pertaining to the identity, diagnosis, or treatment of any person seeking or receiving services that are maintained in connection with the performance of any drug treatment program or services licensed by, or certified by, the director of mental health and addiction services under this chapter shall be kept confidential, may be disclosed only for the purposes and under the circumstances expressly authorized under this section, and may not otherwise be divulged in any civil, criminal, administrative, or legislative proceeding.

(B) When the person, with respect to whom any record or information referred to in division (A) of this section is maintained, gives consent in the form of a written release signed by the person, the content of the record or information may be disclosed if the written release conforms to all of the following:

(1) Specifically identifies the person, official, or entity to whom the information is to be provided;
(2) Describes with reasonable specificity the record, records, or information to be disclosed; and
(3) Describes with reasonable specificity the purposes of the disclosure and the intended use of the disclosed information.

(C) A person who is subject to a community control sanction, parole, or a post-release control sanction or who is ordered to rehabilitation in lieu of conviction, and who has agreed to participate in a drug
Statutory Authority – cont’d.

treatment or rehabilitation program as a condition of the community control sanction, post-release control sanction, parole, or order to rehabilitation, shall be considered to have consented to the release of records and information relating to the progress of treatment, frequency of treatment, adherence to treatment requirements, and probable outcome of treatment.

(D) Disclosure of a person’s record may be made without the person’s consent to qualified personnel for the purpose of conducting scientific research, management, financial audits, or program evaluation, but these personnel may not identify, directly or indirectly, any individual person in any report of the research, audit, or evaluation, or otherwise disclose a person’s identity in any manner.

Also of note is Ohio is Title 51 (Public Welfare), Chapter 5122 (Hospitalization of the Mentally Ill).

Ohio Revised Code § 5122.31 states in part:

(A) All certificates, applications, records, and reports made for the purpose of this chapter and sections 2945.38, 2945.39, 2945.40, 2945.401, and 2945.402 of the Revised Code, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization or commitment has been sought under this chapter, shall be kept confidential and shall not be disclosed by any person except:

(1) If the person identified, or the person’s legal guardian, if any, or if the person is a minor, the person’s parent or legal guardian, consents, and if the disclosure is in the best interests of the person, as may be determined by the court for judicial records and by the chief clinical officer for medical records;

(2) When disclosure is provided for in this chapter or Chapters 340 [Counties: alcohol, Drug Addiction, and Mental Health Services] or 5119 [Department of Mental Health and Addiction Services] of the Revised Code or in accordance with other provisions of state or federal law authorizing such disclosure;

(3) That hospitals, boards of alcohol, drug addiction, and mental health services, and community mental health services providers may release necessary medical information to insurers and other third-party payers, including government entities responsible for processing and authorizing payment, to obtain payment for goods and services furnished to the patient;

(4) Pursuant to a court order signed by a judge;

(5) That a patient shall be granted access to the patient’s own psychiatric and medical records, unless access specifically is restricted in a patient’s treatment plan for clear treatment reasons;

(6) That hospitals and other institutions and facilities within the department of mental health and addiction services may exchange psychiatric records and other pertinent information with other hospitals, institutions, and facilities of the department, and with community mental health services providers and boards of alcohol, drug addiction, and mental health services with which the department has a current agreement for patient care or services. Records and information that may be released pursuant to this division shall be limited to medication history, physical health status and history, financial status, summary of course of treatment in the hospital, summary of treatment needs, and a discharge summary, if any.

(7) That hospitals within the department and other institutions and facilities within the department may exchange psychiatric records and other pertinent information with payers and other providers of treatment and health services if the purpose of the exchange is to facilitate continuity of care for a patient or for the emergency treatment of an individual;

(8) That a patient’s family member who is involved in the provision, planning, and monitoring of services to the patient may receive medication information, a summary of the patient’s diagnosis and prognosis, and a list of the services and personnel available to assist the patient and the patient’s family, if the patient’s treating physician determines that the disclosure would be in the best interests of the patient. No such disclosure shall be made unless the patient is notified first and receives the information and does not object to the disclosure.

(9) That community mental health services providers may exchange psychiatric records and certain other information with the board of alcohol, drug addiction, and mental health services and other providers in order to provide services to a person involuntarily committed to a board. Release of records under this division shall be limited to medication history, physical health status and history, financial status, summary of course of treatment, summary of treatment needs, and discharge summary, if any.

(13) That the department of mental health and addiction services may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with the department of rehabilitation...
Statutory Authority – cont’d.

and correction with the department of youth services to ensure continuity of care for inmates or offenders who are receiving mental health services in an institution of the department of rehabilitation and correction or the department of youth services and may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services and community mental health services providers to ensure continuity of care for inmates or offenders who are receiving mental health services in an institution and are scheduled for release within six months. The department shall not disclose those records unless the inmate or offender is notified, receives the information, and does not object to the disclosure. The release of records under this division is limited to records regarding an inmate's or offender's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and a discharge summary, if any; …

Finally, Ohio Revised Code § 3701.17 defines “protected health information (PHI)”, and governs the release of PHI by the Department of Health and related public agencies.

Ohio Revised Code § 3701.17 Protected Health Information.

… (A)(2) “Protected health information” means information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, if either of the following applies:

(a) The information reveals the identity of the individual who is the subject of the information.

(b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

(B) Protected health information reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless the information is released pursuant to division (C) of this section or one of the following applies:

(1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.

(4) The director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Information may be released pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease.

(C) Information that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form. Information that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record under section 149.43 of the Revised Code and, upon request, shall be released by the director.

(D) Except for information released pursuant to division (B)(4) of this section, any disclosure pursuant to this section shall be in writing and accompanied by a written statement that includes the following or substantially similar language: “This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section.”

Regulations and Other Sources

Chapter 5122-26 governs Policies and Procedures for the Operation of Mental Health Services Agencies.

Section 5122-26-06, Human Resources Management, provides:

… (g) (i) For providers which provide alcohol and other drug services, documentation that the employee has reviewed and agreed to abide by the federal regulations on the confidentiality of alcohol and drug abuse patient records (Title 42, Code of Federal Regulations, part 2).
Oklahoma

Statutory Authority

Oklahoma has a single statute governing both mental health and substance use disorder treatment records confidentiality. Oklahoma officials will generally defer to HIPAA despite this, except in the case of the release of records when a subpoena is issued. HIPAA says that a subpoena is sufficient to release records. O.S.A. Title 43A, § 1-1-09(D) says that a court order is needed rather than a subpoena.

Oklahoma Statutes Annotated (O.S.A.) Title 43A (Mental Health) § 1-1-09. Privileged, Confidential Nature of Medical Records and Physician/Client Communications states in part:

A. 1. All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or licensed mental health professional …, or a licensed alcohol and drug counselor …, and a consumer are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged.

2. Such information shall only be available to persons actively engaged in the treatment of the consumer or in related administrative work. The information available to persons actively engaged in the treatment of the consumer or in related administrative work shall be limited to the minimum amount of information necessary for the person or agency to carry out its function.

3. Except as otherwise provided in this section, such information shall not be disclosed to anyone not involved in the treatment of the patient or related administrative work. …

D. Except as otherwise permitted, mental health and alcohol or substance abuse treatment information may not be disclosed without valid patient authorization or a valid court order issued by a court of competent jurisdiction. For purposes of this section, a subpoena by itself is not sufficient to authorize disclosure of mental health and alcohol or substance abuse treatment information.

E. An authorization shall not be required for the following uses and disclosures, but information disclosed pursuant to one of these exceptions must be limited to the minimum amount of information necessary:

1. Disclosure by a health care provider of mental health information necessary to carry out another providers own treatment, payment, or health care operations. Such disclosures shall be limited to mental health information and shall not include substance abuse information;
2. Communications to law enforcement officers regarding information directly related to the commission of a crime on the premises of a facility or against facility personnel, or a threat to commit such a crime. Such communications involving persons with substance abuse disorders shall be limited to the circumstances surrounding the incident, consumer status, name and address of that individual and the last-known whereabouts of that individual;

3. A review preparatory to research, research on decedents’ information or research conducted when a waiver of authorization has been approved by either an institutional review board or privacy board;

4. Communications pursuant to a business associate agreement, qualified service organization agreement or a qualified service organization/business associate agreement. ...

5. Reporting under state law incidents of suspected child abuse or neglect to the appropriate authorities; provided, however, for disclosures involving an individual with a substance abuse disorder, this exception does not allow for follow-up communications;

6. Disclosure of consumer-identifying information to medical personnel who have a need for information about a consumer for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention; ...

8. When a program or facility director determines that an adult person with a substance abuse disorder has a medical condition which prevents the person from “knowing or effective action on his or her own behalf”, the program or facility director may authorize disclosures for the sole purpose of obtaining payment for services. If the person has been adjudicated incompetent, the facility must seek permission to disclose information for payment from the legal guardian.

9. Reporting of such information as otherwise required by law; provided however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder; ...

10. Disclosure to professional licensure boards investigating alleged unethical behavior towards a patient; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

13. Disclosure to the parent of a minor for the purpose of notifying the parent of the location of his or her child; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

14. Mental health records may be disclosed to parties in a judicial or administrative proceeding in cases involving a claim for personal injury or death against any practitioner of the healing arts, a licensed hospital, or a nursing facility or nursing home ... arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims;

15. Disclosure of consumer-identifying information when it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody and the release is to a law enforcement authority for the purpose of identification and apprehension. Such disclosures shall be limited to mental health information and shall not include substance abuse information.

16. When failure to disclose the information presents a serious threat to the health and safety of a person or the public; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder.
Oregon

Statutory Authority

Multiple Oregon statutes and administrative rules protect mental health information. They include:

- **Oregon Revised Statutes (O.R.S.) §§179.505 Disclosure of written accounts by health care services provider and 179.507 Enforcement of O.R.S. 179.505**;
- **O.R.S § 192.496. Medical records; sealed records; records of individual in custody or under supervision.**;
- **O.R.S. §§ 192.553 to 192.581. Protected health information**; and
- **O.R.S. § 413.175. Oregon Health Policy Board - Prohibition on disclosure of information; exceptions**;

Exemptions from Disclosure under Public Records Law:

- **O.R.S. § 192.496** [regarding records older than 25 years]; and
- **O.R.S. § 192.502(2), (8), (9), (38)** [other public records exempt from disclosure].

And under the Evidence Code, patient privilege statutes for psychotherapists (O.R.S. § 40.230), physicians (O.R.S. § 40.235), nurses (O.R.S § 40.240), social workers (O.R.S. § 40.250), counselors (O.R.S. § 40.262), and public officers (O.R.S. 40.270).

**O.R.S. § 179.505** is the primary section controlling health records access. It states, in § 179.505(2): *Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to access and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.*
Statutory Authority – cont’d.

The enumerated exceptions include:

(6) The content of any written account referred to in subsection (2) of this section and held by a health care services provider currently engaged in the treatment of an individual may be disclosed to officers or employees of that provider, its agents or cooperating health care services providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating an individual when the written account is to be used in the course of diagnosing or treating the individual. Nothing in this subsection prevents the transfer of written accounts referred to in subsection (2) of this section among health care services providers, the Department of Corrections, the Oregon Health Authority or a local correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

O.R.S § 192.553. Policy for Protected Health Information., states:

(1) It is the policy of the State of Oregon that an individual has:
(a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and
(b) The right to access and review protected health information of the individual.

(2) In addition to the rights and obligations expressed in O.R.S. § 192.553 to 192.581, the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, establish additional rights and obligations regarding the use and disclosure of protected health information and the rights of individuals regarding the protected health information of the individual.

Generally providers who contract with the state Contractors with the state must agree to comply with all applicable laws as a term of their contract. See also O.R.S. § 943-120-0170 and O.R.S. § 943-120-0114. Licensing rules may also require licensees to comply with applicable law and to afford certain patient/client rights including rights to confidentiality, though the individual licensing requirements are specific to each type of license. The protections in O.R.S. 179.505 apply to a broad category of entities as defined in the statute. (See O.R.S. § 179.505(1)(g)).

Research and medical emergency issues are covered largely by O.R.S. § 179.505(4):

(4) The content of any written account referred to in subsection (2) of this section may be disclosed without an authorization:
(a) To any person to the extent necessary to meet a medical emergency.
(b) At the discretion of the responsible officer of the health care services provider, which in the case of any Oregon Health Authority facility or community mental health program is the Director of the Oregon Health Authority, to persons engaged in scientific research, program evaluation, peer review and fiscal audit. However, individual identities may not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit and is consistent with state and federal law.

O.R.S § 179.505(12) covers the public danger exception:

(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual that, in the professional judgment of the health care services provider, indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection does not subject the provider to any civil liability.

O.R.S § 430.399(6) protects substance use disorder treatment information for individuals treated in a treatment facility:

(6) The records of a patient at a treatment facility may not be revealed to any person other than the director and staff of the treatment facility without the consent of the patient. A patient’s request that no disclosure be made of admission to a treatment facility shall be honored unless the patient is incapacitated or disclosure of admission is required by O.R.S. § 430.397 [voluntary admission of a person under age 18 to a treatment facility; notice to parent or guardian].
Regulations and Other Sources

Oregon Administrative Rules (OAR) 943-014-020, Uses and Disclosures of Client or Participant Protected Information provides:

(1) Uses and disclosures with individual authorization. The Authority must obtain a completed and signed authorization for release of information from the individual, or the individual’s personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Authority.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

(2) Uses and disclosures without authorization. The Authority may use and disclose information without written authorization in the following circumstances:

(a) The Authority may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 943-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Authority may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Authority or health care provider;

(B) Payment activities, for the Authority, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Authority.

(d) Psychotherapy notes. The Authority may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Authority’s supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Authority in a legal action or other proceeding brought by the individual. …

(n) Research. The Authority may disclose individual information without authorization for research purposes, as specified in OAR 943-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Authority may disclose individual information if:

(A) The Authority believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. …

(r) Emergency treatment. In case of an emergency, the Authority may disclose individual information to the extent needed to provide emergency treatment.

See OAR 943-014-0060. Uses and Disclosures of Protected Information for Research Purposes for additional information on research use.

For more information on emergencies, see OAR-407-120-0170. Provider Rules - Electronic Data Transmission.
Pennsylvania

Statutory Authority

Pennsylvania has a state statute in its Mental Health Title (Title 50), 50 Pennsylvania Statutes (P.S.) § 7111, and regulations, 55 Pa. Code §§ 5100.31-5100.39, governing the confidentiality of mental health records, but in practice, records confidentiality is still largely driven by HIPAA.

50 P.S. § 7111. Confidentiality of records.
(a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:
(1) those engaged in providing treatment for the person;
(2) the county administrator, pursuant to section 110;
(3) a court in the course of legal proceedings authorized by this act; and
(4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.

In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent. This shall not restrict the collection and analysis of clinical or statistical data by the department, the county administrator or the facility so long as the use and dissemination of such data does not identify individual patients. ...

(b) This section shall not restrict judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators from disclosing information to the Pennsylvania State Police or the Pennsylvania State Police from disclosing information to any person, in accordance with the provisions of 18 Pa.C.S. § 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

With respect to substance use disorder treatment records, the Pennsylvania Drug and Alcohol Abuse Control Act, at 71 P.S. § 1690.108, and implementing regulations, 4 Pa. Code § 255.5, govern, but again practice is driven largely by 42 CFR Part 2.
Confidentiality of records.

57 P.S. §1690.108. Confidentiality of records.

... (b) All patient records (including all records relating to any commitment proceeding) prepared or obtained pursuant to this act, and all information contained therein, shall remain confidential, and may be disclosed only with the patient's consent and only (i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient or (ii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence except that in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient. Disclosure may be made for purposes unrelated to such treatment or benefits only upon an order of a court of common pleas after application showing good cause therefor. ... No such records or information may be used to initiate or substantiate criminal charges against a patient under any circumstances.

(c) All patient records and all information contained therein relating to drug or alcohol abuse or drug or alcohol dependence prepared or obtained by a private practitioner, hospital, clinic, drug rehabilitation or drug treatment center shall remain confidential and may be disclosed only with the patient's consent and only (i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient or (ii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence except that in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient.

Regulations and Other Sources

The Pennsylvania Code has a number of relevant provisions governing mental health treatment record disclosures.

55 Pa Code §5100.31(b) states:

Persons seeking or receiving services from a mental health facility are entitled to do so with the expectation that information about them will be treated with respect and confidentiality by those providing services. Confidentiality between providers of services and their clients is necessary to develop the trust and confidence important for therapeutic intervention. While full confidentiality cannot be guaranteed to everyone as a result of Federal and State statutes which require disclosure of information for specific purposes, it remains incumbent upon service providers to inform each current client/patient of the specific limits upon confidentiality which affect his treatment when these limits become applicable. When facilities are required by Federal or State statutes or by order of a court to release information regarding a discharged patient, a good faith effort shall be made to notify the person by certified mail to the last known address.

55 Pa Code §5100.32 governs nonconsensual releases of information.

(a) Records concerning persons receiving or having received treatment shall be kept confidential and shall not be released nor their content disclosed without the consent of a person given under § 5100.34 (relating to consensual release to third parties), except that relevant portions or summaries may be released or copied as follows:

(1) To those actively engaged in treating the individual, or to persons at other facilities, including professional treatment staff of State Correctional Institutions and county prisons, when the person is being referred to that facility and a summary or portion of the record is necessary to provide for continuity of proper care....

(6) To a court or mental health review officer, in the course of legal proceedings authorized by the act or this chapter.

(7) In response to a court order, when production of the documents is ordered by a court....

(9) In response to an emergency medical situation when release of information is necessary to prevent serious risk of bodily harm or death. Only specific information pertinent to the relief of the emergency may be released on a nonconsensual basis.

55 Pa Code §5100.35 addresses the release of information to the courts. There is also a 1999 bulletin from the Department of Human Service describing research legalities.

55 Pa Code §710.23 addresses the confidentiality of patient records at inpatient detox facilities.

(b) Patient records shall be kept confidential in accordance with applicable Federal drug and alcohol regulations and the confidentiality requirements in 4 Pa. Code §§255.4 and 255.5 (relating to the UDCS [Uniform Data Collection System]: confidentiality and access to information and projects; and coordinating bodies: disclosure of client-oriented information).
Puerto Rico

Statutory Authority

Puerto Rico’s Mental Health Code creates a Bill of Rights for recipients of mental health services, codified at Title 24 (Health and Sanitation), Chapter 201A (Mental Health Code), Subchapter 3 (Bill of Rights of Adults Who Receive Mental Health Services) (Sections 6154 et seq.) of the Puerto Rico Code.

24 Laws of Puerto Rico Annotated (L.P.R.A.) § 6154e(b) establishes:

... (b) Right not to be identified as a mental health patient.

Any adult who receives mental healthcare services shall have the right not to be identified as a patient, or as a former patient, except when the person so requests or authorizes pursuant to the procedure established in this chapter for such purpose.

Subsection (m) of that section governs the rights of individuals who are the subject of scientific mental health research, requiring that the identity of each research participant be “kept in strict confidentiality”.

24 L.P.R.A § 6153f. Notice of Right to Confidentiality, which is not part of the Bill of Rights, establishes:

Insofar as the person who receives mental healthcare services is able to communicate rationally, the mental healthcare service provider shall notify him/her in writing and orally, at the time of the initial evaluation or as soon as possible after the same, of his/her right to confidentiality. He/She shall be also informed that any violation of the provisions that protect confidentiality is a crime ...and he/she shall receive a written notice of the proper procedures to notify any case of violation. The notification required in this section shall be made to the parent with legal or physical custody, or to the legal guardian, in all cases in which mental healthcare services are provided to a minor or a disabled person. The mental healthcare professional assigned through institutional regulation to notify as provided in this section shall include the contents of said notice in the clinical record, as well as the date and time when said notice was delivered, in a form provided by the Administration, which shall be signed by the recipient so that the form is understood to be completed. The direct mental healthcare service provider, whether an individual or an institution, shall notify the patient, if he/she has a health plan, that the indirect provider may access his/her clinical record to ascertain services rendered in order to pay for the same. In examining the record, the indirect provider shall not have access to the notes of the psychotherapist.
Rhode Island

Statutory Authority

Rhode Island’s new mental health confidentiality statute, found in Title 40.1 - Mental Health Law of the Rhode Island General Laws, address the confidentiality of mental health treatment records.


(a) The fact of admission or certification, and all information and records compiled, obtained, or maintained in the course of providing services to persons under this chapter, shall be confidential.

(b) Information and records may be disclosed only:

(1) To any person, with the written consent of the patient or his or her guardian.

(2) In communications among qualified medical or mental health professionals in the provision of services or appropriate referrals, or in the course of court proceedings. The consent of the patient, or his or her guardian, must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical responsibility for the patient’s care.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents or guardian make the designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) To proper medical authorities for the purpose of providing emergency medical treatment where the person’s life or health are in immediate jeopardy.

(6) For program evaluation and/or research, provided that the director adopts rules for the conduct of the evaluations and/or research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality, agreeing not to divulge, publish, or otherwise
Rhode Island has a second statute, R.I.G.L. § 40.1-24.5-11, which briefly mentions disclosures among professionals at a community residence. States in part:


(a) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to persons under this chapter shall be confidential.

(b) Except as provided in subsections (c) and (d), the fact of admission and all confidential information and records shall not be released without the written consent of the resident concerned.

(c) No consent for release of confidential information and records is required in the following situations:

1. To proper medical or psychiatric authorities for the purpose of providing emergency medical or psychiatric treatment when the resident’s life or health is in immediate jeopardy.

2. Between or among residence staff within the same community residence for purposes of coordinating services for a resident.

3. For program evaluation and/or research, provided that the director of mental health, retardation, and hospitals adopts rules ensuring the anonymity of the resident’s identity. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality, agreeing not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of the evaluation or research regarding residents who have received services such that the resident who received the services is identifiable.

4. Pursuant to an order of a court of competent jurisdiction.

(d) If a resident is deceased, consent for release of information deemed confidential under this section may be obtained from his or her personal representative, or in the absence of a personal representative, his or her surviving spouse. If there is neither a personal representative nor surviving spouse, consent may be obtained from the resident’s kindred of the closest degree; if there is more than one person of lawful age within the same degree of kindred, each shall individually possess the right to provide consent.
Rhode Island also has a general medical records confidentiality statute in Chapter 5-37.3 (Confidentiality of Health Care Communications and Information Act).

**R.I.G.L. § 5-37.3-4. Limitations on and permitted disclosures.**

(a)(1) Except as provided in subsection (b) of this section, or as specifically provided by the law, a patient's confidential health care information shall not be released or transferred without the written consent of the patient, or his or her authorized representative, on a consent form meeting the requirements of subsection (d) of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any signed consent shall, upon request, be provided to the patient prior to his or her signing a consent form. Any and all managed care entities and managed care contractors writing policies in the state shall be prohibited from providing any information related to enrollees that is personal in nature and could reasonably lead to identification of an individual and is not essential for the compilation of statistical data related to enrollees, to any international, national, regional, or local medical information database. This provision shall not restrict or prohibit the transfer of information to the department of health to carry out its statutory duties and responsibilities. (b) No consent for release or transfer of confidential health care information shall be required in the following situations:

1. To a physician, dentist, or other medical personnel who believes, in good faith, that the information is necessary for diagnosis or treatment of that individual in a medical or dental emergency;

2. To medical and dental peer review boards, or the board of medical licensure and discipline, or board of examiners in dentistry;

3. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies; provided, that personnel shall not identify, directly or indirectly, any individual patient in any report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

4(i) By a health care provider to appropriate law enforcement personnel, or to a person if the health care provider believes that person, or his or her family, is in danger from a patient; or to appropriate law enforcement personnel if the patient has, or is attempting to obtain, narcotic drugs from the health care provider illegally; or to appropriate law enforcement personnel, or appropriate child protective agencies, if the patient is a minor child or the parent or guardian of said child and/or the health care provider believes, after providing health care services to the patient, that the child is, or has been, physically, psychologically, or sexually abused and neglected as reportable pursuant to § 40-11-3; or to appropriate law enforcement personnel or the division of elderly affairs if the patient is an elder person and the healthcare provider believes, after providing healthcare services to the patient, that the elder person is, or has been, abused, neglected, or exploited as reportable pursuant to § 42-66-8; or to law enforcement personnel in the case of a gunshot wound reportable under § 11-47-48; ...

5. Between, or among, qualified personnel and health care providers within the health care system for purposes of coordination of health care services given to the patient and for purposes of education and training within the same health care facility; ...

**Regulations and Other Sources**

The Rhode Island regulations governing the licensing of Chemical Dependency Professionals, at Regulation 8.1.9, provides that the licensing board may recommend refusal to grant a license to, or to suspend, revoke, condition, limit, qualify, or restrict the license of any individual who the licensing Board or its designee, after a hearing, determines that the individual has failed to maintain confidentiality per in accordance with 42 CFR, Part 2.
South Carolina

Statutory Authority

South Carolina has two relevant mental health laws covering information disclosures and confidentiality. The first is under Title 44 (Health), Chapter 22 (The Rights of Mental Health Patients). It states:

South Carolina Code § 44-22-90. Communications with mental health professionals privileged; exceptions.

(A) Communications between patients and mental health professionals including general physicians, psychiatrists, psychologists, psychotherapists, nurses, social workers, or other staff members employed in a patient therapist capacity or employees under supervision of them are considered privileged. The patient may refuse to disclose and may prevent a witness from disclosing privileged information except as follows:

(1) communications between facility staff so long as the information is provided on a "need-to-know" basis;

(2) in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of commitment to a mental health facility for care of the patient's mental illness;

(3) in an emergency where information about the patient is needed to prevent the patient from causing harm to himself or others;

(4) information related through the course of a court-ordered psychiatric examination if the information is admissible only on issues involving the patient's mental condition;

(5) in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when the condition is introduced by a party claiming or defending through or as a beneficiary of the patient, and the court finds that it is more important to the interests of justice that the communication be disclosed than the relationship between the patient and psychiatrist be protected;
**Statutory Authority – cont’d.**

(6) when a competent patient gives consent or the guardian of a patient adjudicated as incompetent gives consent for disclosure;

(7) as otherwise authorized or permitted to be disclosed by statute.

(B) This does not preclude disclosure of information to the Governor’s ombudsman office or to the South Carolina Protection and Advocacy System for the Handicapped, Inc.

The second, which also covers substance use disorder treatment records (Title 44, Chapter 52), is:

*South Carolina Code § 44-22-100. Confidentiality of records; exceptions; violations and penalties.*

(A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9 [State Department of Mental Health], Chapter 11 [Organization and Control of State Mental Health Facilities], Chapter 13 [Admission, Detention and Removal of Patients at State Mental Health Facilities], Chapter 15 [Local Mental Health Programs, Boards, and Centers], Chapter 17 [Care and Commitment of Mentally Ill Persons], Chapter 20, Chapter 23 [Provisions Applicable to Both Mentally Ill Persons and Persons of Intellectual Disabilities], Chapter 24 [Commitment of Children in Need of Mental Health Treatment], Chapter 25 [Interstate Compact on Mental Health], Chapter 27 [Patients at Federal Institutions], or Chapter 52 [Alcohol and Drug Abuse Commitment], and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless:

1. the individual identified or the individual’s guardian consents;

2. a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest;

3. disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the patient’s consent;

4. disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies, or when furthering the welfare of the patient or the patient’s family;

5. disclosure to a court of competent jurisdiction is necessary for the limited purpose of providing a court order to SLED in order to submit information to the federal National Instant Criminal Background Check System (NICS), established pursuant to the Brady Handgun Violence Prevention Act of 1993, Pub.L. 103-159, and in accordance with Article 10, Chapter 31, Title 23; or disclose is necessary to carry out the provisions of this chapter or Chapter 9 [State Department of Mental Health], Chapter 11 [Organization and Control of State Mental Health Facilities], Chapter 13 [Admission, Detention and Removal of Patients at State Mental Health Facilities], Chapter 15 [Local Mental Health Programs, Boards, and Centers], Chapter 17 [Care and Commitment of Mentally Ill Persons], Chapter 20, Chapter 23 [Provisions Applicable to Both Mentally Ill Persons and Persons of Intellectual Disabilities], Chapter 24 [Commitment of Children in Need of Mental Health Treatment], Chapter 25 [Interstate Compact on Mental Health], Chapter 27 [Patients at Federal Institutions], or Chapter 52 [Alcohol and Drug Abuse Commitment].

(B) Nothing in this section:

1. precludes disclosure, upon proper inquiry, of information as to a patient’s current medical condition to members of the patient’s family, or the Governor’s Office of Ombudsman; or

2. requires the release of records of which disclosure is prohibited or regulated by federal law.

**Regulations and Other Sources**

Regulations of the South Carolina Department of Health and Human Services (Chapter 126) address the confidentiality and disclosure of substance use disorder treatment records.

**Subarticle 4. Safeguarding of Client Information.**

126-170. General.

A. Disclosure of Commission held client information is limited to purposes directly connected to the administration of the Commission’s programs and grants.

B. This Subarticle applies to Commission held client information from all programs and grants administered by the Commission and applies to all requests for client information received from outside the agency.
Regulations and Other Sources – cont’d.

C. In addition to the safeguards provided by this Subarticle the following may apply:

1. Records maintained in connection with any federally assisted alcohol or drug abuse program are subject to special confidentiality standards contained in the Public Health Service Act. The intent is that those Sections (currently, 42 USC Sections 290dd 3 & 290ee 3), however amended or recodified are referenced here as long as they apply.

2. Information received by the Commission from another agency may continue to be protected by the confidentiality statutes or regulations of that agency. In each instance, the receiver of the information should understand what statutes and regulations apply.

126-171. Protected Information.
Protected information is of two (2) general types which include but are not limited to the following:

...B. Medical Information:
1. Medical data, including diagnosis and history of diseases or disabilities;
2. Medical services provided;
3. Medical status, psycho behavioral status, and functional ability;
4. Results of laboratory tests; and
5. Medication records.
South Dakota

Statutory Authority

Mental health treatment records confidentiality is treated under Title 27A (Mentally Ill Persons), Chapter 12 (Care, Treatment, and Rights of Patients with Mental Illness) of the South Dakota Code:

**South Dakota Code § 27A-12-25.** Individual records required--Contents--Confidentiality.

A complete statistical and medical record shall be kept current for each person receiving mental health services, or being otherwise detained under this title. The record shall include information pertinent to the services provided to the person, pertinent to the legal status of the recipient, required by this title or other provision of law, and required by rules or policies. The material in the record shall be confidential in accordance with the provisions of this title.

**South Dakota Code § 27A-12-26.** Confidentiality of information acquired in course of providing mental health services.

Information in the record of a person, and other information acquired in the course of providing mental health services to a person, shall be kept confidential and are not open to public inspection. The information may be disclosed outside the center, department, mental health program, or inpatient facility, whichever is the holder of the record, only if the holder of the records and the person, his parents if he is a minor or his guardian, consent or, in the absence of such consent, in the circumstances and under the conditions set forth in §§ 27A-12-25 to 27A-12-32, inclusive, and in conformity with federal law.
**South Dakota Code § 27A-12-27.** Obligation to disclose confidential information.

If requested, information shall be disclosed:

(1) Pursuant to orders or subpoenas of a court of record or subpoenas of the Legislature;

(2) To a prosecuting or defense attorney or to a qualified mental health professional as necessary for him to participate in a proceeding governed by this title;

(3) To an attorney representing a person who is presently subject to the authority of this title or who has been discharged when that person has given his consent;

(4) If necessary in order to comply with another provision of law;

(5) To the department if the information is necessary to enable the department to discharge a responsibility placed upon it by law; or

(6) To a states attorney or the attorney general for purpose of investigation of an alleged criminal act either committed by or upon a human services center patient while a patient of the center.

**South Dakota Code § 27A-12-29.** Discretionary disclosure of confidential information.

Information may be disclosed in the discretion of the holder of the record:

(1) As necessary or beneficial in order for the person, or persons acting on behalf of the person, to apply for and acquire benefits for the person, including third-party financial payments, assistance, or services and follow-up, care, and treatment by local centers serving the area to which a person is expected to go upon temporary or permanent release or discharge;

(2) As necessary or beneficial for evaluation and accreditation;

(3) As necessary or beneficial to train persons enrolled in an accredited course leading to a degree and qualification, certification, or registration as a qualified mental health professional, licensed practical nurse, registered nurse, psychologist, social worker, physical therapist, occupational therapist, laboratory technician, medical records professional, dietician, or other health care professional;

(4) Upon request of the Human Services Center, with disclosure of records limited to relevant medical and psychiatric records; or

(5) If any person subject to the proceedings under this chapter has communicated a serious threat of serious physical injury against a reasonably identifiable victim, the person with knowledge of the threat may disclose the threat to the potential victim or to any law enforcement officer, or both. No cause of action may arise under this chapter against the person who, in good faith, discloses the threat to a potential victim or law enforcement officer pursuant to the provisions of this subdivision.

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**Regulations and Other Sources**

South Dakota Rules defer to 42 CFR Part 2 on the confidentiality of substance use disorder treatment records:

**South Dakota Rules 46:05:07:02.**

Guaranteed rights. A client has rights guaranteed under the constitution and laws of the United States and the state including:

(4) The right to confidentiality of all records, correspondence, and information relating to assessment, diagnosis, and treatment in accordance with 42 U.S.C. §§ 290 dd-2 and 42 C.F.R. Part 2 (June 9, 1987), and 45 C.F.R. Parts 160 and 164 (April 17, 2003).
The restrictions under the Tennessee Code Title 33 (Mental Health and Developmental Disabilities), Chapter 3 (General Rules Applicable to Service Recipients), Part 1 (General Rights of All Service Recipients), governing the disclosure of confidential identifiable health information, are more limiting than the restrictions under HIPAA, and thus control.

Also controlling because more restrictive than HIPAA is Tennessee Code § 33-8-202. Rights of a child 16 years of age or older.

The following are two of the most relevant of the referenced provisions.

All applications, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, provided under, or regulated under this title and directly or indirectly identifying a service recipient or former service recipient shall be kept confidential and shall not be disclosed by any person except in compliance with this part.

Tennessee Code § 33-3-104. Persons who may consent to disclosure of confidential information.
Information about a service recipient that is confidential under § 33-3-103 may be disclosed with the consent of:

(1) The service recipient who is sixteen (16) years of age or over;

(2) The conservator of the service recipient;

(3) The attorney in fact under a power of attorney who has the right to make disclosures under the power;
(4) The parent, legal guardian, or legal custodian of a service recipient who is a child;

(5) The service recipient's guardian ad litem for the purposes of the litigation in which the guardian ad litem serves;

(6) The treatment review committee for a service recipient who has been involuntarily committed;

(7) The executor, administrator or personal representative on behalf of a deceased service recipient; or

(8) The caregiver under title 34, chapter 6, part 3.

**Tennessee Code § 33-3-105.** Disclosure of confidential information without consent.

Information that is confidential under § 33-3-103 may be disclosed without consent of the service recipient if:

1. Disclosure is necessary to carry out duties under this title;

2. Disclosure may be necessary to assure service or care to the service recipient by the least drastic means that are suitable to the service recipient's liberty and interests;

3. As a court orders, after a hearing, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to public interest or to the detriment of a party to the proceedings;

4. It is solely information as to a residential service recipient's overall medical condition without clinical details and is sought by the service recipient's family members, relatives, conservator, legal guardian, legal custodian, guardian ad litem, foster parents, or friends;

5. A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service; or

6. A custodial agent for another state agency that has legal custody of the service recipient cannot perform the agent's duties properly without the information.

**Tennessee Code § 33-3-106.** Disclosure to advocacy agency Disclosure to organization paying for treatment Limitations.

(a) If the head of the federally mandated protection and advocacy agency for persons with mental illness, serious emotional disturbance, or developmental disability, or the designated representative of the agency head, requests disclosure of information protected by § 33-3-103 and specifies the personally identifiable service recipient information sought and the federally mandated function for which it is required, the information may be disclosed to the agency without consent. The disclosure of information shall be made solely for use in connection with the federally mandated function. The disclosures are subject to federal confidentiality laws, including the requirement that there be no further disclosure of the personally identifiable information by the agency without consent of the service recipient or conservator or of the parent's or legal guardian's consent in the case of a child. The service provider shall notify the service recipient, a child service recipient's parent or legal guardian, and the service recipient's conservator, if any, of the disclosure. All public and private service providers shall cooperate with the agency in responding to requests, including, but not limited to, those made under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6000 et seq.; the Protection and Advocacy for Mentally Ill Individuals (PAMII) Act of 1986, 42 U.S.C. § 10801 et seq.; and the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e.

(b) If an organization may pay for a service provider's service to a service recipient, the service provider may disclose to the organization without service recipient consent only such information about the service recipient as is reasonably necessary to obtain timely payment. Disclosures are on the condition that there be no further disclosure of the personally identifiable information by the agency without service recipient consent. ...
Statutory Authority – cont’d.
Substance use disorder treatment records are addressed, at least with regard to alcohol abuse, in Title 33 (Mental Health and Substance Abuse and Intellectual and Developmental Disabilities), Chapter 10 (Comprehensive Alcohol and Drug Treatment Act of 1973), Part 4 (Alcohol Abuse Prevention). There does not appear to be a parallel section of law addressing drug abuse.

Tennessee Code § 33-10-408. Registration and records of treatment facilities -- Confidentiality - Exception.
(a) The registration and other records of treatment facilities shall remain confidential and are privileged.

(b) Notwithstanding subsection (a), the director may make available information from patients’ records for purposes of research into the causes and treatment of alcoholism. Information under this subsection (b) shall not be published in a way that discloses patients’ names or other identifying information.

Regulations and Other Sources

Disclosures of Protected Health Information Under HIPAA
HIPAA-04-1

2.1 It is the policy of the State of Tennessee, Department of Mental Health and Developmental Disabilities (DMHDD), not to use or disclose PHI except as permitted or required by HIPAA regulations and relevant federal and state laws.

2.2 All requests for use or disclosure of PHI, regardless of service recipient’s authorization, must be in writing.

2.3 The DMHDD must verify the identity and authority of the individual or agency representative making the request for use or disclosure of PHI.

2.4 The DMHDD must comply with statutory “minimum necessary” requirements in all uses and disclosures of PHI. (See HIPAA Policy 04-2, “Uses and Disclosures of PHI Limited to the Minimum Necessary”).

2.5 The DMHDD may disclose PHI upon receipt of a completed authorization to release information, that has been signed and dated by the service recipient, the parent(s) of a minor child, or the service recipient’s legal representative.

2.6 The DMHDD may use or disclose PHI without service recipient authorization as follows:

2.6.1 To the service recipient about whom the PHI relates.

2.6.2 To facilitate treatment, payment or health care activities of the DMHDD.

2.6.3 To another health care provider for treatment activities involving the service recipient about whom the PHI relates. In this circumstance, the minimum necessary requirement does not apply. All medical information deemed reasonably necessary by the health care provider may be released to the treating provider.

2.6.4 To another covered entity or a health care provider for the payment activities of the entity that receives the information.

2.6.5 To another covered entity for health care operational activities of the entity that receives it, if both entities have or have had a relationship with the service recipient who is the subject of the PHI requested, the PHI pertains to such relationship, and the disclosure is for the purpose of:

2.6.5.1 Conducting quality assessment and improvement activities, including outcome evaluations and development of clinical guidelines, provided that obtaining generalizable knowledge is not the primary purpose of any studies resulting from such activities; or

2.6.5.2 Reducing health care costs, protocol development, care management and care coordination, communicating with health care providers and patients with information about treatment alternatives; or

2.6.5.3 Health care fraud and abuse detection or compliance.
Regulations and Other Sources – cont’d.

HIPAA-04-02.

2.1 The Department of Mental Health and Developmental Disabilities (DMHDD) will use or disclose only the minimum amount of PHI necessary to accomplish the purpose for which the disclosure is made. This is called the “minimum necessary” standard.

2.2 Uses and disclosures are not limited to the minimum necessary standard when:

2.2.1 Requested by a health care provider for the purpose of treatment;

2.2.2 Made to the individual/service recipient.

2.2.3 Made under a valid authorization.

2.2.4 Made to the Secretary of the U. S. Department of Health and Human Services during complaint investigations or compliance reviews, in accordance with HIPAA Regulation 45 C.F.R. 160, Subpart C.

2.2.5 Required by state and federal laws; and

2.2.6 Required for compliance with HIPAA Regulation 45 C.F.R. 164.502.

Tennessee also requires contractors/grantees to enter into business association agreements to keep the State and the Contractor/Grantee in compliance with HIPAA, Health Information Technology for Economic and Clinical Health ("HITECH") Act, and any other relevant laws and regulations regarding privacy.
Texas

Statutory Authority

Texas covers both mental health and substance use disorder treatment records under the Texas Health and Safety Code of the Texas Statutes, Title 7, (Mental Health and Intellectual Disability), Chapter 611 [Mental Health Records].

Texas Health and Safety Code § 611.001, DEFINITIONS, defines “Patient” as “a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction”.

These records are given blanket protection in Texas Health and Safety Code § 611.002.

Texas Health and Safety Code § 611.004, AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING.

(a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Note that Texas Health and Safety Code § 611.004(a)(3) covers disclosure of confidential treatment records for research.

Texas Health and Safety Code § 611.006 covers disclosures of confidential treatment records pursuant to legal proceedings.
Statutory Authority

Medical treatment records confidentiality generally is covered within Title 58 [Occupations and Professions] of the Utah Code. The mental health provisions are found in Chapter 60 [the Mental Health Professional Practice Act].


(1) A mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) the authorized agent of a client or patient.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.
The substance use treatment records provision, found at Utah Code § 58-60-509, is identical to the mental health treatment records provision.

Utah also has a research data confidentiality provision at Utah Code § 26-21-1.

**Regulations and Other Sources**

**Rule 495-881 of the Utah Administrative Code** adopts HIPAA, with some state-specific language:

**R495-881-2. Definitions.**

As used in this rule:

1. "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.


3. "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.

**R495-881-3. General Compliance.**

1. This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

2. Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information. ...

**R495-881-8. Right to Request Privacy Protection.**

1. An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.

2. The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

**R495-881-9. Individual Access to Protected Health Information.**

1. An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.

2. The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.
Title 18 (Health) Vermont Statutes § 7103 sets the baseline for mental health disclosures, stating, in part:

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the individual identified, the individual's health care agent under section 5264 of this title, or the individual's legal guardian, shall consent in writing; or

(2) as disclosure may be necessary to carry out any of the provisions of this part; or

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(4) as the disclosure is made to comply with the reporting requirements of section 7617a of this title or 13 V.S.A. § 4824 [both involving reporting to the National Instant Criminal Background Check System].

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning medical condition to the individual's family, clergy, physician, attorney, the individual's health care agent under section 5264 of this title [repealed], a person to whom disclosure is authorized by a validly executed durable power of attorney for health care, or to an interested party.

(e) Mandatory disclosure to home providers.

(1) With the written consent of the individual, or his or her guardian, an agency designated by the department of disabilities, aging, and independent living or of health to provide developmental disability
(2) If the individual, or his or her guardian, does not consent to the disclosure, the placement will not occur unless the home care provider agrees, in writing, to the placement, absent disclosure.

(3) A home care provider must furnish to any person providing respite care, the individual’s relevant information obtained from the agency designated by the department of disabilities, aging, and independent living or of health to provide developmental disability and mental health services, as provided in this subsection. Where the home care provider has agreed to placement without disclosure, the home care provider shall inform the respite provider of that fact.

(4) Home care and respite providers, whether or not they agree to a placement, shall be subject to the confidentiality and disclosure requirements of subsections (a), (b), and (c) of this section.

(5) As used in this subsection:

(A) “Home care provider” means a person or entity paid by an agency designated by the department of disabilities, aging, and independent living or of health to provide developmental disability and mental health services, to provide care in his or her home.

(B) “Relevant information” means information needed to protect the individual and others from harm, including any relevant history of violent behavior or conduct causing danger of harm to others, as defined in subdivision 7101(17)(A) of this title, any medications presently prescribed to the individual, and any known precursors of dangerous behavior that may cause future harm.

(C) “Respite provider” means a person, paid by a home care provider, to provide care by the day or overnight in the person’s home.

(6) Any written disclosure of relevant information under this subsection shall also include notice of the confidentiality and disclosure requirements of this section.

(7) Where the individual has consented to disclosure, an agency designated by the department of disabilities, aging, and independent living or health to provide developmental disability and mental health services shall provide updated information regarding the individual to the home care provider.

There is no statutory protection for substance abuse confidentiality in Vermont. The licensing rules provide some guidance.

In addition, the Vermont Patient’s Bill of Rights, set out at § 1852, states:

(7) The patient has the right to expect that all communications and records pertaining to his or her care shall be treated as confidential. Only medical personnel, or individuals under the supervision of medical personnel, directly treating the patient, or those persons monitoring the quality of that treatment, or researching the effectiveness of that treatment, shall have access to the patient’s medical records. Others may have access to those records only with the patient’s written authorization.

There is no specific statutory provision governing research data confidentiality for mental health or substance use disorder treatment confidentiality in Vermont.
Mental health confidentiality is included in Virginia’s general medical records confidentiality provisions in Title 32.1 (Health), Chapter 5 (Regulation of Medical Care Facilities and Services) which incorporates HIPAA and 42 CFR Part 2 by reference.

**Code of Virginia Code § 32.1-127.1:03** states, in part:

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F and subsection B of § 8.01-413 [that the release of an electronic health record to the individual would, in the exercise of the provider’s professional judgment, be reasonably likely to endanger the life or physical safety of the individual or another person].

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent —

(i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or
Statutory Authority – cont’d.

(ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

4. Health care entities shall, upon the request of the individual who is the subject of the health record, disclose health records to other health care entities, in any available format of the requestor’s choosing, as provided in subsection E [Relating to the HITEC Act]. …

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969 [Authority to consent to surgical and medical treatment of certain minors] or (b) the minor himself, if he has consented to his own treatment pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual’s written authorization, pursuant to the individual’s oral authorization for a health care provider or health plan to discuss the individual’s health records with a third party specified by the individual;

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;…

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283., 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In connection with the health care entity’s own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412; 10.

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;…

18. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

20. In accord with subsection B of § 54.1-2400.1, to communicate an individual’s specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person; …

22. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1; .
Statutory Authority – cont’d.

29. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person; ...

34. To notify a family member or personal representative of an individual who is the subject of a proceeding ... of information that is directly relevant to such person’s involvement with the individual’s health care, which may include the individual’s location and general condition, when the individual has the capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification. ...

Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an individual’s written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity’s conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law. ...

Emergency mental health situations are covered by Code of Virginia § 37.2-804.2. Other emergency situations are covered by Code of Virginia § 32.1-127:03.

G. A written authorization to allow release of an individual’s health records shall substantially include the following information:

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual’s Name

________________________________________

Health Care Entity’s Name

________________________________________

Person, Agency, or Health Care Entity to whom disclosure is to be made

________________________________________

Information or Health Records to be disclosed

________________________________________

Purpose of Disclosure or at the Request of the Individual

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

This authorization expires on (date) or (event)

________________________________________

Signature of Individual or Individual’s Legal Representative if Individual is Unable to Sign

________________________________________

Relationship or Authority of Legal Representative

________________________________________

Date of Signature __________________________
Regulations and Other Sources

Virginia specifically defers to 42 CFR Part 2 within the state’s very lengthy records confidentiality regulations at 12 Virginia Administrative Code (V.A.C.) § 35-115-80.

A. Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. Each individual has a right to give his authorization before the provider shares identifying information about him or his care unless another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider’s duties.

1. Providers shall maintain the confidentiality of any information that identifies an individual. If an individual’s services record pertains in whole or in part to referral, diagnosis or treatment of substance use disorders, providers shall disclose information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall obtain and document in the individual’s services record the individual’s authorization or that of the authorized representative prior to disclosing any identifying information about him. The authorization must contain the following elements:

   a. The name of the organization and the name or other specific identification of the person or persons or class of persons to whom disclosure is made;

   b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the authorization extends to the information placed in the individual’s record after the authorization was given but before it expires;

   c. An indication of the effective date of the authorization and the date the authorization will expire, or the event or condition upon which it will expire; and

   d. The signature of the individual and the date. If the authorization is signed by an authorized representative, a description of the authorized representative’s authority to act.

3. Providers shall tell each individual and his authorized representative about the individual’s confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his authorization. If a disclosure is not required by law, the provider shall give strong consideration to any objections from the individual or his authorized representative in making the decision to disclose information.

4. Providers shall prevent unauthorized disclosures of information from services records and shall maintain and disclose information in a secure manner.

5. In the case of a minor, the authorization of the custodial parent or other person authorized to consent to the minor’s treatment under § 54.1-2969 is required, except as provided below:

   a. Section 54.1-2969 E of the Code of Virginia permits a minor to authorize the disclosure of information related to medical or health services for a sexually transmitted or contagious disease, family planning or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.

   b. The concurrent authorization of the minor and custodial parent is required to disclose inpatient substance abuse records.

   c. The minor and the custodial parent shall authorize the disclosure of identifying information related to the minor’s inpatient psychiatric hospitalization when the minor is 14 years of age or older and has consented to the admission.

6. When providers disclose identifying information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual authorizes the disclosure or unless state law or regulation allows or requires further disclosure without authorization.

7. Providers may encourage individuals to name family members, friends, and others who may be told of their presence in the program and general condition or well-being. Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly relevant to that person’s involvement with the individual’s care or payment for his health care, if (i) the provider obtains the individual’s agreement, (ii) the provider provides the individual with the opportunity to object to the disclosure, and (iii) the individual does not object or the provider reasonably infers for the circumstances, based or the exercise of professional judgment, that the individual does not object to the disclosure. If the opportunity to agree or object cannot be provided because of the individual’s incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual.
Regulations and Other Sources – cont’d.

and, if so, disclose only the information that is directly relevant to the person’s involvement with the individual’s health care.

8. Providers may disclose the following identifying information without authorization or violation of the individual’s confidentiality, but only under the conditions specified in the following subdivisions of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section.

a. Emergencies: Providers may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to or death of an individual or other person. The provider shall not disclose any information that is not needed for this specific purpose.

b. Providers or health plans: Providers may permit any full-time or part-time employee, consultant, agent, or contractor of the provider to use identifying information or disclose to another provider, a health plan, the department, or a CSB, information required to give services to the individual or to get payment for the services.

c. Court proceedings: If the individual or someone acting for him introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary admission or certification for admission is being proposed.

d. Legal counsel: Providers may disclose information to their own legal counsel or to anyone working on behalf of their legal counsel in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General or to anyone appointed by or working on behalf of that office in providing representation to the Commonwealth of Virginia.

e. Human rights committees: Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

f. Others authorized or required by the commissioner, CSB, or private program director: Providers may disclose information to other persons if authorized or required for the following activities:

1. Licensing, human rights, or certification or accreditation reviews;

2. Hearings, reviews, appeals, or investigations under these regulations;

3. Evaluation of provider performance and individual outcomes (see §§ 37.2-508 and 37.2-608 of the Code of Virginia);

4. Statistical reporting;

5. Preauthorization, utilization reviews, financial and related administrative services reviews, and audits; or

6. Similar oversight and review activities.

g. Preadmission screening, services, and discharge planning: Providers may disclose to the department, the CSB, or to other providers information necessary to screen individuals for admission or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.2-505 of the Code of Virginia).

h. Protection and advocacy agency: Providers may disclose information to the protection and advocacy agency in accordance with that agency’s legal authority under federal and state law.

i. Historical research: Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

1. The request for historical research shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its expected date of completion, a rationale explaining the need to access otherwise private information, and the specific identification of the type and location of the records sought;

2. The commissioner, CSB executive director, or private program director has authorized the research;

3. The individual or individuals who are the subject of the disclosure are deceased;

4. There are no known living persons permitted by law to authorize the disclosure; and

5. The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

j. Protection of public safety: If an individual receiving services makes a specific threat to cause serious bodily injury or death to an identified or readily identifiable person and the provider reasonably believes that the individual has the intent and the ability to carry out the threat immediately or imminently, the provider may disclose those facts necessary to alleviate the potential threat.
k. Inspector General: Providers may disclose to the Office of the State Inspector General (§ 2.2-308 of the Code of Virginia) any individual services records and other information relevant to the provider's delivery of services.

l. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

m. Psychotherapy notes: Providers shall obtain an individual's authorization for any disclosure of psychotherapy notes, except when disclosure is made:

(1) For the provider's own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or improve their skills in group, joint, family or individual counseling;

(2) To defend the provider or its employees or staff against any accusation or wrongful conduct;

(3) In discharge of the provider's duty, in accordance with § 54.1-2400.1 B of the Code of Virginia, to take precautions to protect third parties from violent behavior or other serious harm;

(4) As required in the course of an investigation, audit, review, or proceeding regarding a provider's conduct by a duly authorized law enforcement, licensure, accreditation, or professional review entity; or

(5) When otherwise required by law.

n. A law-enforcement official:

(1) Pursuant to a search warrant or grand jury subpoena;

(2) In response to their request, for the purpose of identifying or locating a suspect, fugitive, an individual required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information is disclosed:

(a) Name and address of the individual;

(b) Date and place of birth of the individual;

(c) Social security number of the individual;

(d) Blood type of the individual;

(e) Date and time of treatment received by the individual;

(f) Date and time of death of the individual;

(g) Description of distinguishing physical characteristics of the individual; and

(h) Type of injury sustained by the individual;

(3) Regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct; or

(4) If the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises.

o. Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or law or regulation. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization.

9. Upon request, the provider shall tell the individual or his authorized representative the sources of information contained in his services records and provide a written listing of disclosures of information made without authorization, except for disclosures:

a. To employees of the department, CSB, the provider, or other providers;

b. To carry out treatment, payment, or health care operations;

c. That are incidental or unintentional disclosures that occur as a by-product of engaging in health care communications and practices that are already permitted or required;

d. To an individual or his authorized representative;

e. Pursuant to an authorization;

f. For national security or intelligence purposes;

g. To correctional institutions or law-enforcement officials; or

h. That were made more than six years prior to the request.
10. The provider shall include the following information in the listing of disclosures of information provided to the individual or his authorized representative under subdivision 9 of this subsection:

a. The name of the person or organization that received the information and the address if known;
b. A brief description of the information disclosed; and
c. A brief statement of the purpose of the disclosure or, in lieu of such a statement, a copy of the written request for disclosure.

11. If the provider makes multiple disclosures of information to the same person or entity for a single purpose, the provider shall include the following:

a. The information required in subdivision 10 of this subsection for the first disclosure made during the requested period;
b. The frequency, periodicity, or number of disclosures made during the period for which the individual is requesting information; and
c. The date of the last disclosure during the time period.

12. If the provider makes a disclosure to a social service or protective services agency about an individual who the provider reasonably believes to be a victim of abuse or neglect, the provider is not required to inform the individual or his authorized representative of the disclosure if:

a. The provider, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or
b. The provider would be informing the authorized representative, and the provider reasonably believes that the authorized representative is responsible for the abuse or neglect, and that informing such person would not be in the best interests of the individual.
Washington

Statutory Authority

Washington has a lengthy mental health confidentiality statute at Revised Code of Washington (R.C.W.) § 70.02.230, which is effective until April 1 2018. It states, in part. April 2018 changes are in red.

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW [Mental Health Services for Minors], may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW [Mental Illness], in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person: (i) Employed by the facility; (ii) Who has medical responsibility for the patient’s care; (iii) Who is a designated mental health professional crisis responder; (iv) Who is providing services under chapter 71.24 RCW [Community Mental Health Services Act]; (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW [forensic mental health procedures];

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside; …

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.
(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration. ...

3(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 810.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(f) To the attorney of the detained person.

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence. ...

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. ...

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii) relating to the unlawful possession of firearms. The extent of information that may be released is limited as follows:

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of regional support networks, to behavioral health organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;
Statutory Authority – cont’d.

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the consent of the patient is necessary, information and records related to mental health treatment records services could be injurious to the patient’s health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t) Consistent with the requirements of the federal health information portability and accountability act, to a licensed mental health professional or a health care professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person.

Psychotherapy notes may not be released without authorization of the person who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW or upon transfer of the person from one treatment facility to another. The release of records under this subsection is limited to the mental health treatment records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient’s problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient’s complete treatment record;

(w) To the person’s counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient’s right under chapter 71.05 RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian’s appointment. Any staff member who wishes to obtain additional information must notify the patient’s resource management services in writing of the request and of the resource management services’ right to object. The staff member shall send the notice by mail to the guardian’s address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

“As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . . , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . .”

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under
Statutory Authority – cont’d.

standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. …

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *** 71.05.280(3) or **** 71.05.320(3)(c) 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.
West Virginia’s statutory provisions governing the confidentiality and disclosure of mental health treatment records are found in Chapter 27 (Mentally Ill Persons), Article 3 (Confidentiality) of the West Virginia Code.

**West Virginia Code § 27-3-1. Definition of confidential information; disclosure.**

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition, any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

(1) In a proceeding under section four, article five of this chapter [involuntary hospitalization final commitment proceedings] to disclose the results of an involuntary examination made pursuant to section two, three or four of said article;

(2) In a proceeding under article six-a of this chapter [competency hearing] to disclose the results of an involuntary examination made pursuant thereto;
Statutory Authority – cont’d.

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To provide notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, in accordance with article seven-a, chapter sixty-one of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

(6) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and

(7) Without the patient’s consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative.


No consent or authorization for the transmission or disclosure of confidential information is effective unless it is in writing and signed by the patient or client by his or her legal guardian. Every person signing an authorization shall be given a copy.

Every person requesting the authorization shall inform the patient, client or authorized representative that refusal to give the authorization will in no way jeopardize his or her right to obtain present or future treatment.

Regulations and Other Sources

The West Virginia Division of Health Rules regulating Opioid Treatment programs under Title 64, Series 9 of the West Virginia Legislative Rules address the confidentiality of substance use disorder treatment records by deferring to 42 CFR Part 2.

West Virginia Legislative Rule 64-90-15.3.e requires that administrators of medically-based opioid treatment services conform their treatment programs “with federal confidentiality regulations (42 CFR Part 2)”.

West Virginia Legislative Rule 64-90-19.3 requires that “treatment programs inform the patient as to federal confidentiality regulations (42 CFR Part 2) and the Health Insurance Portability and Accountability Act of 1996”.

West Virginia Legislative Rule 24-1 states that

k. ... confidentiality in accordance with federal regulations (42 CFR Part 2) and the Health Insurance Portability and Accountability Act of 1996;

l. ... be informed of the extent of confidentiality, including the conditions under which information can be released without consent, the use of identifying information for the purposes of program evaluation, billing and statutory requirements for reporting abuse;

m. ... give informed consent prior to being involved in research projects and the right to retain a copy of the informed consent form; and

n. ... full disclosure of information about treatment and medication, including accommodation for those who do not speak: English, or who are otherwise unable to read an informed consent form.”
Wisconsin

Statutory Authority

Wisconsin has detailed statutory requirements covering patient treatment records confidentiality in Chapter 51, the State Alcohol, Drug Abuse, Developmental Disabilities, and Mental Health Act. The statute makes clear that it covers both mental health and substance abuse with definitions, including the term “treatment records” in Wisconsin Statutes § 51.30. Records.

**Wisconsin Statutes § 51.30(1). Definitions.**

(b) "Treatment records" include the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by county departments under s. 51.42 [Community mental health, developmental disabilities, alcoholism and drug abuse services] or 51.437 [Developmental disabilities services] and their staffs; by treatment facilities; or by psychologists licensed under s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility, if the notes or records are not available to others.

**Wisconsin Statutes § 51.30(4). Access to registration and treatment records.**

(a) Confidentiality of records. Except as otherwise provided in this chapter and ss. 118.125(4) [Pupil records], 610.70 (3) and (5) [Disclosure of personal medical information], 905.03 [Lawyer-client privilege] and 905.04 [Physician-patient, registered nurse-patient, chiropractor-patient, psychologist-patient, social worker-patient, marriage and family therapist-patient, podiatrist-patient and professional counselor-patient privilege], all treatment records shall remain confidential and are privileged to the subject individual. Such records may be released only to the persons designated in this chapter or ss. 118.125(4), 610.70 (3) and (5), 905.03 and 905.04, or to other designated persons.
with the informed written consent of the subject individual as provided in this section. This restriction applies to elected officials and to members of boards appointed under s. 51.42(4)(a) or 51.437(7)(a).

(b) Access without informed written consent. Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):

1. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits, financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individual whose records are being released. The department shall promulgate rules to assure the confidentiality of such information.

2. To the department, the director of a county department under s. 51.42 or 51.437, or a qualified staff member designated by the director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and county departments shall develop procedures to assure the confidentiality of such information ....

3. For purposes of research as permitted in s. 51.61(1)(j) and (4) [Patients’ rights] if the research project has been approved by the department and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individual whose treatment records are being released under this subsection without the informed written consent of the individual. ... In approving research projects under this subsection, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

4. Pursuant to lawful order of a court of record.

5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress adequacy of treatment, to determine whether the person should be transferred to a less active or more appropriate treatment modality or facility or for the purposes of s. 51.14 [Review of outpatient mental health treatment of minors aged 14 or older]. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.

6. Within the treatment facility where the subject individual is receiving treatment confidential information may be disclosed to individuals employed, individuals serving in bona fide training programs or individuals participating in supervised volunteer programs, at the facility when and to the extent that performance of their duties requires that they have access to such information.

7. Within the department to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department. The department shall promulgate rules to assure the confidentiality of such information.

8. For treatment of the individual in a medical emergency, to a health care provider who is otherwise unable to obtain the individual’s informed consent because of the individual’s condition or the nature of the medical emergency. Disclosure under this subdivision shall be limited to that part of the records necessary to meet the medical emergency.
Regulations and Other Sources

Wisconsin’s Administrative Code is similarly specific. The relevant regulations are found at Wisconsin Department of Health Services (DHS) 92.03 et seq. The structure of the regulation mirrors Wisconsin Statutes § 51.30, covering the same topics in the same order as that statute.

DHS 92.01. Introduction.

(1) Scope. This chapter applies to all records of persons who are receiving treatment or who at any time received treatment for mental illness, developmental disabilities, alcohol abuse or drug abuse from the department, a board established under s. 46.23, 51.42 [Community mental health, developmental disabilities, alcoholism and drug abuse services] or 51.437 [developmental disability services], Stats., or treatment facilities and persons providing services under contract with the department, a board or a treatment facility whether the services are provided through a board or not. Private practitioners practicing individually who are not providing services to boards are not deemed to be treatment facilities and their records are not governed by this chapter.

DHS 92.02. Definitions.

(7) “Patient” means any individual who is receiving or who at any time has received services for mental illness, developmental disabilities, alcoholism or drug dependence from the department, a board established under s. 46.23, 51.42 [Community mental health, developmental disabilities, alcoholism and drug abuse services] or 51.437 [developmental disability services], Stats., or treatment facilities and persons providing services under contract with the department, a board or a treatment facility.

(15) “Treatment facility” has the meaning designated in s. 51.01 (19), Stats., namely, any publicly or privately operated facility or unit of a facility providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs and rehabilitation programs.

(16) “Treatment records” has the meaning designated in s. 51.30 (1) (b), Stats., namely, all records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by boards and their staffs, and by treatment facilities. “Treatment records” include written, computer, electronic and microform records, but do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

DHS 92.03. General requirements.

(1) Treatment records.

(a) All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual. …

(f) No personally identifiable information contained in treatment records may be released in any manner, including oral disclosure, except as authorized under s. 51.30, Stats., this chapter or as otherwise provided by law.

(g) Whenever requirements of federal law regarding alcoholism and drug dependence services in 42 CFR Part 2 require restrictions on the disclosure of treatment records greater than the restrictions required by this section, the federal requirements shall be observed.

(h) No personally identifiable information in treatment records may be re-released by a recipient of the treatment record unless re-release is specifically authorized by informed consent of the subject individual, by this chapter or as otherwise required by law.

(i) Any disclosure or re-release, except oral disclosure, of confidential information shall be accompanied by a written statement which states that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law....

(n) Whenever information from treatment records is disclosed, that information shall be limited to include only the information necessary to fulfill the request.

(o) Any request by a treatment facility for written information shall include a statement that the patient has the right of access to the information as provided under ss. DHS 92.05 and 92.06.

(p) The conditions set forth in this section shall be broadly and liberally interpreted in favor of confidentiality to cover a record in question.

(2) Disclosure of patient status in response to inquiries.

(a) No person may disclose information or acknowledge whether an individual has applied for, has received or is receiving treatment except with the informed consent of the individual, as authorized under s. 51.30 (4) (b), Stats., or as
otherwise required by law and as governed by this subsection.

(b) The department and each board and treatment facility shall develop written procedures which include a standard, noncommittal response to inquiries regarding whether or not a person is or was receiving treatment. All staff who normally deal with patient status inquiries shall be trained in the procedures.

(3) Informed consent. Informed consent shall be in writing and shall comply with requirements specified in s. 51.30 (2), Stats., and this subsection.

(a) Informed consent shall be valid only if voluntarily given by a patient who is substantially able to understand all information specified on the consent form. A guardian may give consent on behalf of the guardian’s ward. If the patient is not competent to understand and there is no guardian, a temporary guardian shall be sought in accordance with s. 54.50, Stats.

(b) Informed consent is effective only for the period of time specified by the patient in the informed consent document.

(c) A copy of each informed consent document shall be offered to the patient or guardian and a copy shall be maintained in the treatment record.

(d) Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed as required under ss. DHS 92.05 [Patient access to treatment records] and 92.06[Minors and incompetents].

(e) Any patient or patient representative authorized under s. 51.30 (5), Stats., may refuse authorization or withdraw authorization for disclosure of any information at any time. If this occurs, an agency not included under s. 51.30 (4) (b), Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested. ...

DHS 92.04 Disclosure without informed consent.

...(3) Research. Treatment records may be released for purposes of research only as authorized under s. 51.30 (4) (b) 3., Stats.

(4) Court order.

(a) Treatment records may be released pursuant to a lawful court order only as authorized under s. 51.30 (4) (b) 4, Stats., and this subsection.

Note: If a treatment facility director, program director or department official believes that the court order is unlawful, that person should bring the order to the attention of his or her agency’s legal counsel.

(b) A subpoena, unless signed by a judge of a court of record, is not sufficient to authorize disclosure.

(c) A court order regarding confidential drug or alcohol treatment information shall be in compliance with 42 CFR Part 2, Subpart E.

Note: When a subpoena signed by an attorney or the clerk of court requires the record custodian to appear at the hearing with the records, the custodian should assert the privilege and refuse to turn the records over until ordered to do so by the circuit judge.

(5) Progress determination and adequacy of treatment.

(a) Treatment records may be made accessible to department and board staff to determine progress and adequacy of treatment or to determine whether a person should be transferred, discharged or released, but only as authorized under s. 51.30 (4) (b) 5., Stats., and this subsection.

(b) Treatment information as specified under s. 51.30 (4) (b) 10, Stats., may also be released to the following state employees and department board members concerning persons under their jurisdiction:

1. Members of the parole board;

2. Members of the special review board for sex crimes;

3. Employees of the juvenile offender review program; and
4. Members of the juvenile corrections reception center's joint planning and review committee.

(6) Within the treatment facility.

(a) Treatment records maintained in the facility or as computerized records by the provider of data-processing services to the facility may be made available to treatment staff within the facility only as authorized under s. 51.30 (4) (b), Stats., and this subsection.

(b) Confidential information may be released to students or volunteers only if supervised by staff of the facility.

(c) Treatment records may be taken from the facility only by staff directly involved in the patient's treatment, or as required by law.

(8) Medical emergency. Treatment records may be released to a physician or designee for a medical emergency only as authorized under s. 51.30 (4) (b) 8., Stats.

(9) Transfer of person involuntarily committed.

(a) Treatment records may be released to a treatment facility which is to receive an involuntarily committed person only as authorized under s. 51.30 (4) (b) 9., Stats., and this subsection.

(b) When an individual is to be transferred, the treatment director or designee shall review the treatment record to ensure that no information is released other than that which is allowed under this subsection.

(c) If a summary of somatic treatments or a discharge summary is prepared, a copy of the summary shall be placed in the treatment record.

(d) A discharge summary which meets discharge summary criteria established by administrative rules or accreditation standards shall be considered to meet the requirements for a discharge summary specified under s. 51.30 (4) (b) 9., Stats.

(e) Treatment information may be disclosed only to the extent that is necessary for an understanding of the individual's current situation.

(f) Disclosure of information upon transfer of a voluntary patient requires the patient's informed consent, a court order or other provision of law.
Wyoming has a single statute that governs the confidentiality of both mental health and substance use disorder treatment records in Title 9, Chapter 2, Article 1 (Department of Health).

**Wyoming Statutes (W.S.) § 9-2-125** states in part:

a) **Client registration records and treatment records relating to persons receiving mental health or substance abuse treatment at a treatment facility under contract with the department shall remain confidential, except as provided in this section, W.S. 7-4-201(f), 28-8-107, 28-8-108, 28-8-111 and 35-2-605 through 35-2-617.**

(b) The content of any record specified in subsection (a) of this section may be disclosed in accordance with the prior written consent of the person who is the subject of the record, but only to the extent, under the circumstances, and for the purposes as are allowed under the terms of the written consent.

(c) The records specified in subsection (a) of this section shall be provided by the treatment facility or by another division within the department to the mental health division or the substance abuse division for the purpose of determining compliance with state or federal requirements and as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse.

(d) Treatment records of a person may be released without informed written consent of the patient or his legal representative in the following circumstances:

(i) To an agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the persons whose records are being released;

(ii) For purposes of research as provided in W.S. 9-2-126. Information obtained under this paragraph shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the persons whose records are being released;
Statutory Authority – cont’d.

(iii) Within the treatment facility where the client is receiving treatment as necessary for the provision of mental health or substance abuse services;

(iv) To a licensed physician or a licensed health care provider who has determined that the life or health of the client is in danger and that treatment without the information contained in the treatment records could be injurious to the client’s health. Disclosure under this paragraph shall be limited to the portions of the records necessary to meet the medical emergency;

(v) To a treatment facility that is to receive the client from another treatment facility. The release of records under this subsection shall be limited to the treatment records required by law and those treatment records as necessary for the provision of mental health and substance abuse services;

(vi) To a correctional facility, the board of parole, corrections employee or contractor who is responsible for the supervision of a person who is receiving mental health or substance abuse services. Release of records under this paragraph is limited to and as follows:

(A) An evaluation report provided pursuant to a written supervision plan;

(B) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan;

(C) When a person is returned from a treatment facility to a correctional facility or when a person under the supervision of the department of corrections is receiving mental health or substance abuse services from a treatment facility, the information provided under paragraph (v) of this subsection. Disclosure under this paragraph shall be made to clinical staff only;

(D) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by the department of corrections, the contractor or the board of parole. In cases involving a person transferred back to a correctional facility, disclosure under this paragraph shall be made to clinical staff only.

(viii) Pursuant to lawful search warrant or other order issued by a court.

(f) Nothing in this section shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, as established by rule and regulation of the department.

The state research confidentiality provisions are at Wyoming Statutes § 9-2-126. Client treatment records; research; access; disclosure; penalties, reproduced here in part:

(a) The department may authorize or provide access to or provide copies of an individually identifiable record for research purposes if informed written consent for the disclosure has been given to the department by the person to whom the record pertains or, in the case of minors and legally incompetent adults, the person's legal representative. ...

(c) No research professional who has established an individually identifiable research record from record information pursuant to subsection (b) of this section, or who has established a research record from data or information voluntarily provided by a treatment facility under a written confidentiality assurance for the explicit purpose of research, may disclose the record in individually identifiable form unless:

(i) The person to whom the research record pertains or the person’s legal representative has given prior informed written consent for the disclosure;

(ii) The research organization reasonably believes that disclosure will prevent or minimize injury to a person and the disclosure is limited to information necessary to protect the person who has been or may be injured, and the research organization reports the disclosure only to the person involved or the person's guardian, the person's physician and the department; ....

Wyoming does not have a statutory provision governing emergency disclosures.

Regulations and Other Sources

The Wyoming Department of Health regularly contracts with its mental health and substance abuse providers to provide payment for many of these services in the State. These contracts require the providers to be nationally accredited, and comply with HIPAA and 42 CFR Part 2. Conflicts arise when providers refuse to contract if a request for protection from liability is not part of an established privacy law.