

POLICY TITLE

Client Right to Request Amendment of Health Records

Policy No: 300-3-1

Date of Original Approval: 12/16/19

Date(s) of Revision(s):

PURPOSE

This policy establishes the requirements for processing and responding to a client's request to amend records held by Alameda County Behavioral Health (ACBH) and/or its contracted providers under the Health Insurance Portability and Accountability Act (HIPAA) and related federal and state regulations.

AUTHORITY

45 C.F.R. §§ 164.502, 164.526
Cal. Health & Safety Code §§ 123111, 123115, 123116

SCOPE

All ACBH county-operated programs and all ACBH-contracted and subcontracted mental health and substance use disorder service providers, including both individuals and entities.

POLICY

Clients receiving services from ACBH or its contracted providers have the right to request an amendment to their health records. Requests for an amendment of records will be processed in accordance with HIPAA and state regulations.

Clients also have the right to provide a written addendum with respect to any item or statement in their records they believe to be incomplete or incorrect. Requests for an addendum to records will be processed in accordance with the California Health and Safety Code.

ACBH or its contracted providers may deny an individual's request for amendment, if it determines that the protected health information (PHI) or record that is the subject of the request:

- I. Was not created by ACBH or the contracted provider, unless the client provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment;
- II. Is not part of the designated record set;
- III. Would not be available for inspection because it consists of:
 - A. Psychotherapy notes;
 - B. Information compiled in reasonable anticipation of or for use in a legal or administrative action or proceeding;
 - C. PHI maintained by a correctional institution or a health care provider acting under direction of a correctional institution, where an inmate obtaining the requested PHI would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or other inmates or the safety of any officer, employee, or other person at the correctional institution or responsible for transporting of the inmate;
 - D. PHI created or obtained by a provider in the course of research that includes treatment, as long as the research is in progress if the client agreed to the denial of access when consenting to participate in the research treatment, and the provider

- has informed the client that access would be reinstated upon completion of research;
- E. PHI subject to the Privacy Act (5 U.S.C. 552a), if the denial meets that law's requirements;
 - F. PHI obtained from someone other than a health care provider under a promise of confidentiality, where access requested would be reasonably likely to reveal the source of the information;
 - G. PHI that a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person*;
 - H. PHI that references another person (that is not a health care provider), which a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person*;
 - I. PHI requested by a client's personal representative, where a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person*.
 - J. *Note that if denial is for categories g – i, a client has the right to have the denial reviewed by a licensed health care professional who is designated by the ACBH or its contracted provider to act as a reviewing official and who did not participate in the original decision to deny. ACBH or its contracted provider must provide or deny access in accordance with the determination of this reviewing official.
- IV. Is accurate and complete.

For requests for amendment and addenda of records maintained by ACBH, the Custodian of Records or their designee shall be responsible for assisting patients with drafting and accepting patient requests for amendments and addenda. The Custodian of Records will work with the appropriate county clinical staff to review and respond to the request.

For requests for amendment of records maintained by ACBH's contracted providers, a designated staff person shall be responsible for assisting patients with drafting and accepting patient requests for amendments and addenda and for working with the appropriate clinical staff to review and respond to the request.

Information regarding requests for amendment, including completed forms for requests for amendments and correspondence relating to acceptance or denial of requests for amendment, and client requests for addenda, shall be filed with the client's designated record set and appended to the relevant records.

Policy for Unemancipated Minors:

Parents or legal guardians have the right to amend the medical records of an unemancipated minor if they are the minor's personal representative.

However, parents or legal guardians do not have this right if they are not the minor's personal representative, which includes the following situations:

- The minor is the one who consents to care, and the consent of the parent is not required under law;
- When the minor obtains care at the direction of a court or a person appointed by the court; or
- When, and to the extent that, the parent agrees that the minor and health care provider may have a confidential relationship.

A provider may not share the medical records of a minor if they determine that access to the client records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being.

A provider may also choose not to treat a parent or legal guardian as a personal representative when the provider reasonably believes, in their professional judgment, that the child has been or may be subjected to domestic violence, abuse or neglect.

A psychotherapist who knows that a minor has been removed from the physical custody of their parent or guardian may not allow a parent or legal guardian access to the mental health records of a minor patient, except where a juvenile court issues an order authorizing the parent or guardian access to the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

PROCEDURE

I. Making a Request for Amendment

- A. Clients that wish to make a request for amendment to their health records will contact the Custodian of Records for information maintained by ACBH or a designated staff for information maintained by contracted providers to submit a Request for Amendment or Request for Addendum form (see attached).

If clients are unable to complete the form without assistance, the Custodian of Records for ACBH or a designated staff for contracted provider may complete the form on the clients' behalf or accept an informal written request for amendment or addendum if the request provides sufficient information to process the request.

- B. The Custodian of Records or contracted providers' designated representative will forward the request to the appropriate clinical staff for review and evaluation of the request.

II. Timeline of Response to Request for Amendment

- A. ACBH or the contracted provider must act on the request for amendment no later than 60 days after receipt of the request.
- B. **One Time Extension:** If ACBH or the contracted provider is unable to act on the request for amendment within 60 days of the receipt of the written request, there may be a one-time extension of 30 days. ACBH or the contracted provider must notify the client in writing, including reasons for the delay and the date by which it will complete action on the request.

III. Acceptance of Request for Amendment: If ACBH or the contracted provider accepts the amendment in part or in whole, ACBH or the contracted provider will take the following steps:

- A. The Custodian of Records or the designated staff of the contracted provider shall make the appropriate amendment to the PHI by identifying the records in the designated records set affected by the amendment and appending or providing a link to the location of the amendment. The Custodian of Records or a representative will ensure that the amended documents are placed appropriately in the client's designated record set, working with Information Services for those documents created, maintained, or stored electronically.
- B. The Custodian of Records or the designated staff of the contracted provider shall notify the client in writing within 60 days of receipt of the written request for amendment that the

amendment is accepted.

- C. The Custodian of Records or the designated staff of the contracted provider must obtain the client's identification of and agreement to have the provider notify the relevant persons with which the amendment needs to be shared. The Custodian of Records or the designated staff of the contracted provider must make reasonable efforts to inform and provide the amendment within a reasonable time to 1) persons identified by the client as having received the PHI about the client and needing the amendment and 2) persons, including business associates, that the provider knows have the PHI that is the subject of the amendment and that may have relied or could foreseeably rely on such information to the detriment of the client.

IV. Denial of Request for Amendment: If ACBH or the contracted provider determines that the request for amendment should be denied in part or in whole, the Custodian of Records or the designated staff of the contracted provider will take the following steps:

- A. The Custodian of Records or the designated staff of the contracted provider must notify the client in writing within 60 days of the written request.
- B. The denial must use plain language and contain:
 - 1. The basis for the denial;
 - 2. A statement that the client has a right to submit a written statement disagreeing with the denial and an explanation of how the client may file such a statement;
 - 3. A statement that if the client does not submit a statement of disagreement, the client may request that the provider provide the client's request for amendment and the denial with any future disclosures of the PHI that is subject of the amendment; and
 - 4. A description of how the client may file a complaint with ACBH or the contracted provider or to the Secretary of the U.S. Department of Health and Human Services (under 45 CFR 160.306). This description shall include the name, title, and phone number of the contact person to receive the complaint, which in the case of ACBH is:

Via US Postal Service:

Quality Management Director
ABH Quality Management Office
2000 Embarcadero Cove, Suite 305
Oakland, CA 94606

Via Fax:

Quality Management Director
ABH Quality Management Office
510-639-1346

- C. **Statement of Disagreement:** ACBH or the contracted provider must permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The written statement of disagreement shall be limited to 250 words per alleged incomplete or incorrect item in the client's record.
- D. **Rebuttal Statement:** ACBH or the contracted provider may prepare a written rebuttal to the client's statement of disagreement. Whenever such a rebuttal is prepared, the Custodian of Records or the designated staff of a contracted provider must provide a copy to the client who submitted the statement of disagreement.
- E. **Recordkeeping:** ACBH or the contracted provider must identify the record or PHI in the

designated record set that is the subject of the disputed amendment and append or otherwise link the following documentation to the designated records set:

1. The client's Request for Amendment form;
2. ACBH or the contracted provider's denial letter
3. The client's statement of disagreement, if any; and
4. ACBH or the contracted provider's written rebuttal, if any.

F. Future Disclosures of PHI that is the Subject of the Disputed Amendment:

1. If the client submitted a statement of disagreement, ACBH or the contracted provider must include the information above or an accurate summary of such information with all future disclosures of the PHI to which the disagreement relates;
2. If the client did not submit a statement of disagreement but has requested that ACBH or the contracted provider provide the Request for Amendment and the denial letter with any future disclosures of the PHI related to the disagreement, ACBH or the contracted provider must include these documents or an accurate summary with any subsequent disclosure of the relevant PHI.

V. Request for Addendum to Client Records

- A. Clients have the right to provide to ACBH or contracted provider a written addendum with respect to any item or statement in their records that they believe to be incomplete or incorrect. Clients shall submit a request for a written addendum to the Custodian of Records or the designated staff of the contracted provider
- B. The addendum shall be limited to 250 words per alleged incomplete or incorrect item in the client's record and shall clearly indicate in writing that the client requests the addendum to be made a part of their record.
- C. The Custodian of Records or the designated staff of the contracted provider shall attach the addendum to the client's records and shall include that addendum in future disclosures of the allegedly incomplete or incorrect portion of the client's records to any third party.
- D. The receipt of information in a client's addendum which contains defamatory or otherwise unlawful language, and the inclusion of this information in the patient's records, shall not subject ACBH or the contracted provider to liability in any civil, criminal, administrative, or other proceeding.

VI. Actions on Notices of Amendment from Other Health Care Providers

If another health care provider or mental health plan notifies ACBH or its contracted provider of an amendment to PHI in a client's designated record set, the Custodian of Records or the designated staff of the contracted provider shall make the amendment in ACBH's or the contracted provider's records for the client.

NON-COMPLIANCE

I. Non-Compliance Definition

Non-compliance with this policy is defined as any deviation from the policies or procedures described above.

II. Procedures in the Event of Non-Compliance

In the case of non-compliance, a client or may file a complaint with ACBH or the contracted provider or to the Secretary of the U.S. Department of Health and Human Services.

For ACBH, the contact person is Rudy Arrieta, Quality Management Director (510-567-8277), and complaints may be sent:

Via US Postal Service:

Quality Management Director
ABH Quality Management Office
2000 Embarcadero Cove, Suite 305
Oakland, CA 94606

Via Fax:

Quality Management Director
ABH Quality Management Office
510-639-1346

Via Email:

ProgIntegrity@acgov.org

Any communication that contains protected health information or otherwise confidential information should be sent through secure methods such as fax, mail, or using email with secure encryption.

The client or staff should try to submit the complaint within 180 days of the event of non-compliance, but complaints will be accepted after that period.

Clients and staff who submit a complaint about non-compliance will not face retribution for filing a complaint.

CONTACT

| ACBH Office | Current as of | Email |
|---|---------------|--|
| Anthony Austin, Custodian of Records, Quality Assurance | 8/23/19 | Anthony.Austin@acgov.org |
| Rudy Arrieta, Director, Quality Management | 8/23/19 | Rudy.Arrieta@acgov.org |

DISTRIBUTION

This policy will be distributed to the following:

- ACBH Staff
- ACBH County and Contract Providers
- Public

ISSUANCE AND REVISION HISTORY

Original Authors: Anthony Austin, Custodian of Records; Sophia Lai, Interim Privacy Officer

Original Date of Approval: 12/16/19

Date of Revision:

| Revise Author | Reason for Revise | Date of Approval by (Name) |
|---------------|-------------------|----------------------------|
| | | |

DEFINITIONS

| Term | Definition |
|---|--|
| Designated Record Set | <p>A group of records maintained by or for a health care provider that is:</p> <ul style="list-style-type: none"> (i) The medical records and billing records about clients maintained by or for a health care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the covered entity to make decisions about clients. <p>The term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a health care provider.</p> |
| Protected Health Information (PHI) | <p>Protected health information means individually identifiable health information that is:</p> <ul style="list-style-type: none"> (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium. <p>PHI excludes the following individually identifiable health information:</p> <ul style="list-style-type: none"> (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g, including records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (ii) Employment records held by a provider in its role as employer; and (iii) Records regarding a person who has been deceased for more than 50 years. |