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POLICY TITLE

**Privacy, Security and Oath of Confidentiality of
Substance Use Services, Records and Information**

Policy No: 350-3-1

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Date(s) of Revision(s): N/A

PURPOSE

This policy addresses the need to ensure that all Alameda County Behavioral Health Care Services (ACBHCS) employees, volunteers, sub-contracted and contracted Substance Use (SUD) treatment and service programs operate in accordance with legal and ethical standards. Federal and State laws and regulations protect the confidentiality of patient records maintained by all Substance Abuse Block Grant and Federally funded contracted providers.

AUTHORITY

42 Code of Federal Regulations (CFR) Part 2 Confidentiality of Alcohol and Drug Patient Records; CFR Part 438 Managed Care; California Code of Regulations (CCR); the DMC Organized Delivery System (ODS) Special Terms and Conditions (STCs); Title 22 Drug Medical (DMC) superceded by DMC ODS & STCs CCR; Title 9 Counselor Certification; Health Insurance Portability and Accountability Act (HIPAA).

SCOPE

All ACBHCS county-operated programs in addition to entities, individuals and programs providing Substance Use Prevention and/or Treatment services under a contract or subcontract with ACBHCS.

POLICY

It is the legal and ethical responsibility of all ACBHCS employees, contracted providers, volunteers and subcontracted providers to use personal and confidential patient, client, employee and County business information (referred collectively as "confidential information") in accordance with the law and ACBHCS policy, and to preserve and protect the privacy rights of the subject of the information as they perform their duties.

PROCEDURE

These laws and regulations must not be used as barriers to provide coordinated and integrated care. Provided that the appropriate releases and/or consents for personal information including but not limited to patient/client treatment information are obtained, every effort should be made to share clinical information with relevant providers across the continuum of SUD care, and also across systems of care (physical and mental health, etc.)

Within the requirements of the laws and regulations governing confidentiality in the provision of health services, all providers within the specialty SUD system must cooperate with system-wide efforts to facilitate the sharing of pertinent clinical information for the purposes of improving the effectiveness, integration, and quality of health services.

ACBHCS requires a signed Oath of Confidentiality in order to ensure that all employees and contracted and/or subcontracted providers are informed and prepared to safe-guard privacy and confidentiality. ACBHCS requires a signed Oath of Confidentiality attesting that the signer has read, understands and acknowledges their obligations concerning Personal Information (PI) and Protected Health Information (PHI) and the Managed Health Care entity obligations within the SUD System of Care of Alameda County Behavioral Health Care Services (ACBHCS).

To demonstrate ACBHCS staff compliance and commitment to confidentiality, privacy and quality care, all employees, contracted providers, volunteers and subcontracted providers of ACBHCS will be asked to sign an Oath of Confidentiality upon hire. Thereafter the Oath of Confidentiality will be updated annually with their signature and date of signing.

- Annual monitoring to track compliance for contracted SUD Community Based Providers (CBOs) is conducted by the Network Office. The Network Office will review SUD provider personnel files to verify training and the signed and dated CBO Oath of Confidentiality.
- ACBHCS staff will receive e-training materials and the Oath of Confidentiality e-form. Upon completion of the training materials the signed and dated Oath of Confidentiality e-form will be submitted to staff supervisors.
- Access to client records will be blocked until evidence of training and the signed Oath of Confidentiality has been signed and submitted for the record.
- Quality Assurance BHCS will request copies of employee signed Oaths in response to DHCS and/or other monitoring and compliance activities.

THE BASICS

I. Information:

- a. *Personal Information (PI)* that identifies or describes an individual and the disclosure of which would constitute an unwarranted invasion of personal privacy. Examples of confidential employee and ACBHCS Business information include:

- Home address and telephone number
- Medical information;
- Birth date;
- Citizenship;
- Social Security Number;
- Spouse/Partner/Relative's Names;
- Income Tax Withholding data;
- Performance Evaluations; and,
- Proprietary/Trade Secret Information.

- b. *Protected Health Information (PHI)* includes:

- Medical and Psychiatric Records (paper printouts, photos, videotapes, diagnostic and therapeutic reports, x-rays, scans, laboratory and pathology samples)
- Client business Records (such as bills, for service or insurance information whether stored externally or on site, electronically stored or transmitted client information)
- Visual Observation of the Patient and/or Client receiving medical care or accessing SU or MH services (verbal information provided by or about a client)
- Peer Review/Risk Management Information and Activities
- Other Information the disclosure of which would constitute an unwarranted invasion of privacy.

II. Laws and Regulations

- a. 42 CFR Part 2 – Confidentiality of Alcohol and Drug Patient Records

Covers all records relating to the identity, diagnosis, and/or treatment of any patient in a SUD program that is conducted, regulated, and/or assisted in anyway by any federal agency.

- For a summary of 42 CFR Part 2, please see:
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A1.0.1.1.2>
- Subpart A includes an introduction to the statute (e.g., purpose, criminal penalty, reports of violations, etc.).

- Subpart B covers general provisions (e.g., definitions, confidentiality restrictions and minor patients, etc.).
- Subpart C covers disclosures allowed with the patients' consent (e.g., prohibition on re-disclosure, disclosures permitted with written consent, disclosures to prevent multiple enrolments in detoxification and maintenance treatment programs, etc.).
- Subpart D covers disclosures that do not require patient consent (e.g., medical emergencies, research, evaluation and audit activities).
- Subpart E includes information on court orders around disclosure (e.g., legal effects of order, confidential communication, etc.).

b. HIPAA-Health Insurance Portability and Accountability Act

- Provides data privacy and security provisions for safeguarding medical information. A summary of the HIPAA privacy rule can be found here: <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>. For more general information on HIPAA, please see: <https://www.hhs.gov/hipaa/for-professionals/index.html>. For more specific information concerning covered entities, business associates, consumer information and health information technology, please see: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>

c. 42 CFR Part 438 – Managed Care

ACBHCS participation in the Drug Medi-Cal Organized Delivery System (DMC ODS) Waiver, the administrative entity that becomes a specialty managed care plan, is responsible for overseeing the specialty SUD system. As a component of becoming a managed care entity, ACBHCS and its specialty SUD network must abide by the 42 Code of Federal Regulation (CFR) Part 438 managed care requirements.

In general, one of the primary aims of 42 CFR Part 438 is to achieve delivery system and payment reforms by focusing on the following priorities:

- Network adequacy and access to care standards (e.g., timeliness of services, distance standards)

- Patient / Consumer protections
- Quality of Care

d. CCR Title 22 Drug Medi-Cal and the DMC ODS Special Terms and Conditions

CCR Title 22 specifies a framework for the expectations and requirements of services delivered through the Drug Medi-Cal (DMC) system. With implementation of the DMC ODS Waiver, the Special Terms and Conditions (STCs) of the DMC ODS specify the new requirements and expectations of the DMC system. Where there is conflict between Title 22 and the DMC ODS STCs, the DMC ODS STCs override Title 22. However, Title 22 remains as the regulatory requirements in all other areas that are not in conflict with and not addressed by the DMC ODS STCs.

e. CCR Title 9 Counselor Certification

CCR Title 9, section titled Counselor Certification provides minimum requirements on the level of credentials counseling staff secure prior to conducting services. The minimum standards are designed to ensure a baseline quality and effectiveness of treatment services, and an understanding of confidentiality and privileged communication. For more specific information concerning SUD Counselor requirements:

<http://www.dhcs.ca.gov/provgovpart/Pages/CounselorCertification.aspx>

f. Peer Support Specialist ACBHCS Training

Peer support services provided by Alameda County Behavioral Health Care Services (BHCS) will be part of a continuum of client care under DMC-ODS. Peer Support Specialists (PSS) serving BHCS clients will be housed under BHCS's contracted outpatient services programs. The minimum standards are designed to ensure a baseline quality and effectiveness of treatment services, and an understanding of confidentiality and privileged communication.

All SUD peer support staff embedded with BHCS' contracted outpatient service providers will be required to complete the DHCS approved BHCS

Peer Support Training plan will be coordinated through BCHS' existing Office of Consumer Empowerment (OCE). OCE provides training; technical assistance and support to its Mental Health Peer Support Specialists (MHPSS). All SUD peer support staff will be required to attend and graduate from a 7 week interactive Peer Support Specialist Program. Graduates are then required to complete a 6 month internship. OCE will maintain oversight of the program.

CONTACT

| BHCS Office | Current as of | Email |
|----------------------------|---------------|---------------------------|
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DISTRIBUTION

This policy will be distributed to the following:

- ACBHCS Staff
- ACBHCS County and Contract Providers
- Public

ISSUANCE AND REVISION HISTORY

Original Authors: Sharon Loveseth, LAADC; QA

Original Date of Approval:

Date of Revision: N/A

| Revise Author | Reason for Revise | Date of Approval by (Name) |
|---------------|--|----------------------------|
| N/A | Substance Abuse Block Grant (SABG) Requirement | |

ATTACHMENTS

- Oath of Confidentiality Community Based Providers (CBOs) form
- Oath of Confidentiality BHCS form

DEFINITIONS

| Term | Definition |
|-----------------------|---|
| Employee/Staff | Includes all current employees, quasi-employees (volunteers), or internship employees who provide direct, indirect and administrative services. |