

Children's Mental Health Services
Policies and Procedures Manual

Category: Administration and Human Resources

Subject:

Privacy of Personal Health Information

Policy Number: **1-8-130**

CMHO Standard(s):

Approved: **September 27, 2010**

Revised:

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Policy:

Children's Mental Health Services (CMHS) recognizes the sensitivity of an individual's personal health information and therefore is committed to respecting, safeguarding and protecting client's personal health information in compliance with the *Personal Health Information Protection Act, 2004*. This Act requires that all personal health information be kept private and secure. As a children's mental health centre CMHS collects, uses, and discloses personal health information and must therefore comply with the Act.

Definitions:

Within this policy, the law is referred to as "PHIPA", Personal Health Information Protection Act. Personal Health Information is referred to as "PHI" or "information". This is identifying information that relates to a client's physical or mental health, including his or her health history as well as his or her family's health history.

Within the Act, health professionals, institutions and agencies that hold personal health information are referred to as "Health Information Custodians", abbreviated to "HIC's" or "custodians". CMHS is a HIC and is responsible for the PHI that is collected, used, disclosed and stored, as set out in this policy.

"Express Consent" means permission that must be specifically obtained from the client. "Implied Consent" means that staff of the agency may conclude from the surrounding circumstances that the client would agree to the collection, use or disclosure of his or her PHI. CMHS requires Express Consent when sharing or receiving PHI from third party individuals or organizations. Implied Consent for CMHS is defined as internal PHI sharing within the agency.

Procedure:

A brochure briefly describing how CMHS accesses, shares and utilizes PHI will be included in a package of information that is mailed to the client confirming their involvement with the agency. This package is sent to the client after the intake process is completed.

The CMHS Policy regarding Privacy and Personal Health Information will be made accessible in the waiting area of each office location. The brochure will also be made available.

Children's Mental Health Services will maintain personal health information in a secure and confidential manner in accordance with the Personal Health Information Protection Act (PHIPA), 2004.

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What Information is Collected from the Client?

Clients may be asked to provide whatever information about themselves or their families that is needed in order for CMHS to assess their needs and provide the necessary treatment intervention. The information collected by CMHS will be used for the purpose of assessment, treatment planning, and treatment provision. The information collected will typically include the clients/families' relevant health history as well as relevant information about the care and treatment the client/family has previously received or is presently receiving.

Unless the Client/Family provides informed written consent for their PHI to be used in another capacity, the information that is collected by CMHS will be used exclusively for the following internal case procedures.

- assessment
- treatment planning
- treatment provision (a comprehensive and flexible range of services from prevention and early intervention to treatment programs for children, youth and their families)

The PHI may also be used for quality assurance, evaluation, accreditation and licensing processes.

Information will only be collected and shared indirectly, that is, from or to other organizations, or individuals, if it is necessary to assess the client/family's needs, to plan for and implement a collaborative case plan or ensure that other individuals or organizations providing service to the client/family have information relevant to their role with the client/family. The client's informed and signed consent for disclosure is required for CMHS to disclose PHI with a third party. A third party also requires a signed consent for CMHS to access PHI from them. In some situations CMHS does not require consent for disclosure forms to be signed for CMHS employees to disclose information to other organizations or individuals. The law requires CMHS to report to the appropriate individual and organizations when a client is presenting a risk to themselves or others. In situations like this the client's parents/guardians and/or the police will be informed. If a worker is privy to information indicating that a child under the age of sixteen is at risk of or is being abused, the appropriate child welfare agency will be informed.

How is the Information Used?

Unless specifically directed not to do so by the client, PHI may be disclosed to individuals or organizations within the client's "Circle of Care" provided the correctly completed consent to disclosure forms have been completed. PHI is shared within the Circle of Care when an individual or organization requires the information in order to provide the appropriate care or treatment.

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Obtaining Consent

Consent may be Implied or Expressed.

Express (verbal and written) Consent will be obtained when disclosing client information to someone who is not an employee, consultant or individual/organization with access to client information such as accreditor, Ministry personnel or Ministry contracted organization. (e.g., school, employer, lawyer, etc.). Express Consent means specific verbal or written authorization for the collection, use or disclosure. In situations where the client has provided verbal consent to share PHI the details of the verbal consent will be documented in the case file.

Where the agency is receiving a referral from a third party the law permits CMHS to rely on Implied Consent when the surrounding circumstances allow the agency to make a reasonable determination that the client would agree to the collection of information.

A client may withhold or withdraw consent at any time. If it is believed that the withholding or withdrawing of consent may compromise client care, the client will be so advised. The client will also be told if others within the Circle of Care cannot be provided with that information when it is requested.

Clients may provide an express written instruction that information not be used or disclosed. Staff of the agency, or the Privacy Officer, will assist any client with this process.

The agency may collect, use or disclose PHI without client consent in limited circumstances that are required or permitted by law.

Consent is only valid when obtained from a "capable" person. To be capable of consenting, the individual must be able to understand the information relevant to the decision and the consequences of giving, withholding or withdrawing consent. If an individual is deemed to be incapable of making decisions about the PHI, the agency will obtain consent from a substitute decision-maker, as determined by law. Agency staff will discuss the implications of giving, withholding or withdrawing consent with the client or substitute decision-maker and will allow opportunity for any questions to be resolved. This process will be noted in the client file.

Retaining and Disposing of PHI

The agency will retain client information in a secure manner and keep it for as long as necessary to fulfill the purposes for which it was collected, or as required by law. After that, records will be destroyed in a secure manner, such as cross-cut shredding.

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Accuracy of PHI

Agency staff will take all reasonable steps to ensure that information collected is accurate, complete and up-to-date at the time of collection. Information will be routinely updated as it is available to fulfill the purposes for which it is collected. Reasonable steps will be taken to ensure that information disclosed to others under this policy is accurate, complete and up-to-date and will be so indicated at the time of use or disclosure.

Security of PHI

PHI in the custody of this agency is protected by security measures and safeguards designed to protect client information against loss, theft or unauthorized access, disclosure, copying, use or modification. Some of the steps taken to protect that information include:

a) Administrative measures

- creating and maintaining internal operational procedures regarding security;
- ensuring that access to PHI is restricted to only those staff who need it in order to provide the necessary care or treatment;
- training staff regarding privacy responsibilities;
- monitoring printers and fax machines to ensure they are kept in secure areas;
- auditing information and security practices to ensure staff compliance with this privacy policy; and,

b) Technological measures

- requiring individualized passwords to access computers;
- ensuring a high level of security for PHI stored in electronic format; and,
- ensuring that anti-virus, firewall and security measures are current and implemented on all computers that maintain PHI.

All employees, directors, volunteers, students and other professional staff members are aware of the importance of keeping client information confidential. As a condition of employment or association with this agency, they are all required to sign a Confidentiality Agreement.

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Responding to Privacy Breaches

If a privacy breach occurs, the agency will make every reasonable effort to contain the breach, which includes locating and retrieving all PHI outside of our control, as well as ascertaining whether other PHI is at risk of exposure. Clients will be notified at the first reasonable opportunity if their information is lost, stolen, or subject to unauthorized access, disclosure, copying, use or modification. The agency will then take any steps necessary to minimize the chances of a similar future breach.

Clients Access to Their Information:

Clients may request access to any records in CMHS custody or control that contain information about them by writing to their primary worker or to the agency's Privacy Officer. The client will receive at least a preliminary response from the Privacy Officer within *thirty* days and a full response within *sixty* days.

Right of access to information is not absolute. Access may be denied when:

- denial of access is required or authorized by law; or,
- the request is frivolous or vexatious or in bad faith.

If access is denied, the Privacy Officer will provide the reason(s) why and will also provide information for the client to complain to the Information Privacy Commissioner of Ontario (IPC).

Clients may be charged a reasonable fee (based on cost recovery) for copies of information in the client record. Clients will be advised of any fees before copies are made.

Corrections to PHI:

Depending on the circumstances, clients have the right to request corrections to a record of PHI within this agency's custody or control. Such a request is to be made by providing a written request to the Privacy Officer who will respond to all written requests within thirty days. If agreed, every effort will be made to correct the record by recording the correct information and cross out the incorrect information, without obliterating it. Any changes will be initialled and/or noted by the Privacy Officer. Requests may be denied if:

- staff are not satisfied that the record is incomplete or inaccurate for the purposes for which the information was recorded;
- the request consists of a record that was not originally created by staff of this agency and this agency does not have sufficient knowledge, expertise or authority to correct the record;
- the request consists of a professional opinion or observation that a staff member made in good faith; or,
- the request is frivolous or vexatious or made in bad faith.

Written reasons will be provided for any refusal to correct a client record.

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Internal Operational Procedures:

The agency will periodically establish or revise various operational procedures to give effect to this policy. These may include, for example, procedures regarding access or correction requests.

Compliance With this Policy:

All staff of CMHS are required to know and comply with this policy. Annual confirmation of compliance is required. Any breach of this policy may result in significant action up to, and including, termination of employment or, in the case of other professionals or organizations, termination of the working agreement. Staff members may only use client information as permitted by the agency and within legal limitations. All staff members must notify the Privacy Officer at the first reasonable opportunity if client information is lost, stolen or accessed without authorization.

Clients are advised to direct any questions or concerns respecting the information contained in this policy or the agency's privacy practices to the Privacy Officer. Every effort will be made to answer all questions and to promptly investigate any concerns that may be raised regarding this policy or a potential privacy breach. If an issue is found to have merit, all appropriate measures will be taken, including disciplinary measures and amending these information practices.

CMHS Privacy Officer

Richard Bellamy
Children's Mental Health Services
3 Applewood Drive
Belleville, ON K8P 4E3
Phone: 613-966-3100 Ext: 224

Ontario's Information and Privacy Commissioner

While every effort will be made to provide a resolution to all privacy concerns, clients may also contact the Information and Privacy Commissioner of Ontario at:

Dr. Ann Cavoukian
Suite 1400,
2 Bloor St. West
Toronto, Ont.
M4W 1A8