

POLICY SUBJECT: CONFIDENTIALITY POLICY AND PROCEDURES	POLICY NUMBER: 550.0
--	---------------------------------

Policy Source	Approval Dates	COA Reference
Board Committee:	Initial Date: 9/27/94	All of G1.5, G1.6, G1.7.01, G1.702, G9.5.01, G9.5.07, G11.4.04, G11.4.05, all of G11.5
Administrative: X	Review Date: 2/12/04	
Archdiocese	Board Approval Date: 3/15/04	

This policy sets forth the Agency’s commitment to its Clients’ right to privacy, the right to informed consent regarding services and/or treatment, and rights in relation to the use and disclosure of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 and accompanying regulations (“HIPAA”) (“protected health information” or “PHI”). Client privacy is to be safeguarded by establishing and implementing sound practices and procedures that protect the confidentiality of Client Records.

All Records are the property of the Agency and are kept in strict confidence. No information is released except in accordance with the provisions of the Agency’s Notice of Privacy Practices.

All employees of the Agency – professional and support staff – as well as volunteers are bound by this policy to protect Clients’ privacy to the fullest extent allowed by law. The following procedures are based on standards developed by the American Medical Records Association, the requirements set forth in the Federal Right to Privacy Act of 1974, the Family Education Rights and Privacy Act, HIPAA and other applicable State and Federal laws. The Agency will comply with these laws. **The additional attached policies and procedures have been adopted to ensure compliance with the requirements of HIPAA. All Agencies must review and follow the additional attached policies and procedures in conjunction with this policy, with the understanding that the Agencies must continue to comply with other existing State and Federal laws whenever possible. When other State or Federal laws conflict with HIPAA, contact legal counsel for guidance.**

I. DEFINITIONS

- A. “Agency” means organization that is a member of the Catholic Charities Federation of the Archdiocese of St. Louis.
- B. “Client” means any individual, family, consumer or resident for whom the Agency provides services, including those persons requesting information or an appointment for services.
- C. “Record” means all written or electronic Records concerning a Client including, without limitation, audio/visual tape Recordings of Client sessions, photographs, and any and all information that may be contained in a Client’ Medical, Billing, or Educational Record.

- D. “Agency Staff” means the professional, para-professional or support staff who is providing services to the Client, including volunteers and student trainees or interns enrolled in an educational program requiring clinical field experience prior to the receipt of a degree in psychology, professional counseling or social work.
- E. “Privacy Officer” serves as the designated official responsible for the Agency’s HIPAA compliance program.
- F. “Notice of Privacy Practices” is a document detailing the Agency’s policies on the use and disclosure of protected health information. The Agency is required to adopt such a document to comply with the requirements of HIPAA.

II. LEGAL COUNSEL

At anytime in the Agency’s discretion and at all times required by law or the standards of any accreditation organization involved in the accreditation of the Agency’s members, the Agency may consult its legal counsel regarding any policy questions that may arise relating to confidentiality.

III. INFORMED CONSENT

Informed Consent is the process of disclosing to the Client and/or the Client’s guardian information regarding their treatment and their consumer rights. Informed Consent shall be acknowledged by the Client or the Client’s legal representative prior to the provision of services. A Notice of Privacy Practices will be included as part of the process of obtaining informed consent.

A. SERVICE/TREATMENT

Informed Consent as it applies to a service or treatment means that the Client/consumer has been given enough information about the recommended service or treatment to make a reasoned decision about accepting or rejecting the recommended service or treatment.

In the case of medical treatment, informed consent includes information provided to the Client or the Client’s legal representative regarding: (i) the need for the proposed treatment; (ii) the risks and benefits of the proposed treatment; and (iii) information regarding available alternative treatments.

Agencies will develop and implement the appropriate Agency specific procedures based on the type of services provided. All Agencies will include the use of a Notice of Privacy Practices and a statement of Client Rights and Responsibilities.

IV. CONFIDENTIALITY: RECORDS

All Client Records are confidential. Client Records shall not be released to any individual or entity except in accordance with written Agency procedure, including its Notice of Privacy Practices. All services provided to the Client must be documented in the Record, dated and signed by the Staff person responsible.

A. CLIENT ACCESS TO THEIR RECORD

1. The Client may inspect a copy of his or her Record or have read to him or her with an Agency Staff present. The Privacy Officer/Designee must authorize such inspection prior to its occurrence. The inspection must be made on Agency premises and in the presence of Agency Staff.
2. Prior to inspection, the Privacy Officer/Designee must copy the Record and modify such copy to protect the confidentiality of other persons referred to in the Record.
3. The Client may challenge the accuracy or completeness of the Record and if desired, prepare a written amendment to be added to the Record.

In such a situation, Agency Staff will make a note in the Record of the Client's disagreement with the Record. Agency Staff must inform the Client that if the Client wishes, the Client may write a statement of disagreement into the Record. In such instances of disagreement, the Agency Staff may not further amend the challenged entry without the Client's knowledge.

4. In those instances where the Privacy Officer/Designee in consultation with the Agency Staff determines that reading the Record would be harmful to the Client; the Privacy Officer/Designee may deny a Client access to his or her Record. The Agency reserves the right to deny a Client access to his or her Record if it is determined that such access would be (i) inconsistent with the Client's condition or (ii) therapeutically inappropriate.

If the Client insists upon access, and the Privacy Officer/Designee in consultation with the Agency Staff determines that such access would jeopardize the Client's condition or would be therapeutically inappropriate the Client may bring a duly qualified and credentialed professional representative from the field of psychiatry, psychology, social work or counseling to assist the Client with review of his or her Record. The Privacy Officer/Designee should verify the credential/qualifications of such representative before such representative reviews Client information. Such representative will assume responsibility for reviewing the Record content with the Client.

5. Although the information in the Record is the property of the Client, the Record itself is the property of the Agency. The Client may not remove his or her Record from Agency premises except in copied form. The Client may take

notes or obtain a duplicate of the Record at a reasonable cost after releasing the Agency in writing from potential breaches of confidentiality and any liability that may arise from the Client's use of his or her own Record.

6. In case of family, conjoint or marital or group treatment, an individual must have the consent of all treatment/service participants involved if the total Record is to be examined. Otherwise, upon written request, Staff will read to the requesting Client that portion of the Record pertaining to that Client or copy and modify the copied Record for the Client inspection as provided in #2 above.
7. Records of individuals seen in treatment groups will be maintained only in individual Records.

No permanent group files will be maintained other than in a form, which identifies dates of group sessions and numbers of Clients in attendance. Rosters and treatment/service notes in which Clients are identified may be kept while the group is active, but not retained as a permanent group Record. Attendee's individual Records must be separated from group notes and files and archived individually.

B. RELEASE OF INFORMATION TO DESIGNATED PERSONS WITH THE CLIENTS AUTHORIZATION

The Agency may release a Client's Records to any person designated in the Client's Authorization for the Use and Disclosure of Individually Identifiable Health Information form. (Attached)

Privacy Officer/Designee will prepare and provide Client reports. The signed original of the Client's Authorization for the Use and Disclosure of Individually Identifiable Health Information form is retained in the Client Record.

C. RELEASE OF INFORMATION TO DESIGNATED PERSONS WITHOUT THE CLIENTS AUTHORIZATION

In the following special circumstances the Agency may release Records to third parties without the Client's informed written consent (The Privacy Officer/ Designee will review the circumstances and determine if it is appropriate):

1. Court Order or Subpoena Duces Tecum. The Agency must review and comply with the HIPAA policy and procedure entitled Disclosing PHI for Judicial and Administrative Release (P&P No. 550.28)
 - a. When appropriate, the Agency may assert the therapeutic privilege if subpoenaed to produce Records or to provide testimony in a deposition or in court.

- b. The Agency may seek a protective order for any Records subpoenaed.
 - c. Anytime the Agency receives a court order or subpoena duces tecum requiring release of Records, the Center/Program Director and Chief Operating Officer must be informed in order to decide whether to consult legal counsel.
- 2. To Agency employees when their duties require access to Records.
 - 3. To a licensed physician in a medical emergency.
 - 4. To a facility which is to receive a Client who is involuntarily committed.
 - 5. To a Client's legal counselor or guardian ad litem in order to prepare for involuntary commitment proceedings or other actions relating to civil detention, admission or commitment.

D. RELEASE OF INFORMATION PERTAINING TO MINORS

- 1. Authorization to Release Information.

Upon verification of guardianship by the Privacy Officer/Designee the parent or guardian of a minor Client may consent to the release of the Client's Record. Such consent shall be provided to the Agency in writing by an Authorization for the Use and Disclosure of Individually Identifiable Health Information form.

E. RELEASE OF INFORMATION PERTAINING TO ALCOHOL/CHEMICAL DEPENDENCY TREATMENT

Information pertaining to: (i) the identity of any Client seeking services from, participating in, or who has participated in an alcohol or drug treatment program or, (ii) the release of information pertaining to a Client evaluation, diagnosis, or treatment for alcohol or chemical dependency shall be released or disclosed in strict compliance with federal regulations set for in 42C.F.R. Part 2. Advice of legal counsel should be obtained for any issue related to the release or disclosure of such information.

F. RELEASE OF INFORMATION PERTAINING TO VULNERABLE CLIENTS

Clients who are particularly vulnerable (persons who have a developmental disability, frail elderly Clients or functionally illiterate persons), have a right to privacy and dignity. Upon verification of guardianship by the Privacy

Officer/Designee the guardian of a person who has a developmental disability, or a person who has been adjudged incompetent may consent to the release of the Client's Record. Such consent shall be provided to the Agency in writing by an Authorization for the Use and Disclosure of Individually Identifiable Health Information form (or other similar form).

V. CONFIDENTIALITY: INFORMATION

All communication with and information regarding the Client, whether obtained from the Client or any other source, is confidential and must be maintained, stored and used in a responsible manner so as to ensure safety and confidentiality.

- A. Authorization for the Use and Disclosure of Individually Identifiable Health Information form (subject to exceptions stated below) must be obtained from the Client before any information is divulged to any person not employed by the Agency.
- B. Confidentiality is not absolute. The following exceptions to confidentiality apply.
 - 1. In the following situations duty to inform overrides confidentiality.
 - a. A serious threat or possibility of suicide.
 - b. A serious threat or possibility of homicide.
 - c. Any situation where the Agency Staff knows or believes a child, elderly person, a person who has developmental disability or a person who has been adjudged incompetent to protect him or her self has been or is being abused or neglected.

When there is a clear and immediate danger to the Client or to an identifiable potential victim, the Agency Staff has a duty to take all appropriate therapeutic measures in an attempt to ensure the safety of the Client (in the case of threatened suicide) or the identifiable potential victim (in the case of threatened violence against a third party).

Such measures may include the following: (i) initiation of involuntary civil commitment of the Client, and/or (ii) warning(s) provided to the identifiable potential victim, law enforcement authorities and any other individuals who may be in a position to protect the identification of the appropriate action(s) to be taken will depend on the facts and circumstances of each case, and will be determined by the exercise of sound professional judgment. In such cases, the Agency Staff must consult with his or her supervisor at the earliest possible opportunity or, if no supervisor is available, with the Center/program Director.

- 2. In any other situation required by law or court order.

3. Situations listed above and any responsive actions taken by the Agency Staff must be documented in the case Record for review by the Privacy Officer/Designee.

VI. USE OF RECORDS FOR RESEARCH, TRAINING, TEACHING AND PUBLIC RELATIONS

Case Records used for research, training, teaching, or public relations purposes outside of the Agency shall be copied, such copies shall be modified to conceal and remove all Client identifying information. Authorization for such use must first be obtained from the Privacy Officer/Designee. All such releases must comply with HIPAA.

A. CLIENT PARTICIPATION IN PUBLIC RELATIONS

A specific Release for Client Participation in Public Relations form must be obtained by the Client or his/her representative in the following circumstances:

1. Photographs or video images of Client or client groups are used in any manner including on the internet. This applies whether or not the Client's name is attached.
2. Client interviews or inclusion of client in media, newsletters, or other literature. The preservation of client anonymity during these activities shall be the sole decision of the Client or his/her representative.
3. Creative writing, artwork, thank you notes or other representations of a "Client's story" which contains specific identifying information. The specific parameters of what constitutes identifying information will vary across programs based on number of potential individuals with similar circumstances. Efforts will be taken to conceal as much identifying information as possible.
4. Clients who are requested to attend or speak at conferences, fund raising events, or media. Prior to the event, staff must explain the organization's confidentiality policy and the confidential nature of client information and then obtain a signed statement from the Client that he or she has been informed of and understands the confidential nature of client information. The Client must also sign a consent form that releases Catholic Charities from any liability that may arise from the client's disclosure of personal information.

Catholic Charities strictly prohibits:

1. The involuntary participation of any client in a public performance;
2. The required or coerced use of public statements by clients that express gratitude toward Catholic Charities.

VII. USE OF PROTECTED HEALTH INFORMATION

Client information should be used within the Agency by persons concerned with the particular case or Client, to persons in a training program or employees when the performance of their duties requires knowledge of such information. The principles of “need to know” and “minimum necessary” should apply. Written and oral reports should contain only information germane to the Client’s service or treatment. Opinions and speculations, when necessary or appropriate, should be clearly designated as such.

The Agency, by contractual agreement in certain purchase of service contracts, is required to permit the contracting organization (“Purchaser”) the right to review Client Records for Case Management and Utilization of service purposes in accordance with agreed upon time periods. The parties must enter into a Business Associate Agreement if the relationship constitutes a business associate relationship.

To enable such review while ensuring Client confidentiality, such review shall be limited to a Purchaser’s review of:

- (i) Records of individuals/families for whom payment of services were made by the Purchaser, and
- (ii) Information contained in such Client’s Record(s) that pertain to the management of the Client’s case and utilization of services by such Client.

Prior to Purchaser’s review of a Client’s Record, such Record shall be masked to permit a purchaser’s review only of Client information regarding:

- (i) Services/treatments ordered for or provided to the Client;
- (ii) Actual provision of such services/treatments;
- (iii) Identification of the care providers involved in rendering services/treatment to the Client;
- (iv) Statistical and financial information reasonably related to utilization of service.

For the purposes of this section, the Client is a Client of the Agency and Purchaser.

VIII. RECORD STORAGE AND HANDLING (security and electronic Records)

- A. All Client Records must be kept in locked files.
- B. Records may not be taken from the Agency by Agency Staff except with the written consent of the Privacy Officer/Designee.

- C. Records transported for routine purposes within the Agency must be transported by Agency Staff. Certified Mail, Return Receipt Requested, must be used when Records are mailed.
- D. Records must be checked out and in (within a center or program) using a formal check out system.
- E. Closed Records are transported to permanent files where they become the responsibility of the designated Records custodian who must follow written procedures for storing Records and maintaining a locator system.
- F. Extraneous content, including unsummarized notes and “working” documents, are not generally retained in client records. Depending on breadth of content, some files are “thinned out” by removing older documentation on a regular basis, as needed to reduce the volume of documentation in the current file. Older documentation is retained in a secure area in accordance with this policy. Upon client discharge, all content is merged into one file for the particular client.

IX. RECORD RETENTION AND DISPOSITION

- A. (1) Adoption Records must kept permanently.
- (2) Records of minors are maintained until the Client reaches the age of 23 or five to seven years following case closure, whichever is later.
- (3) Records of adult Clients are maintained through the date of case closure until the statutory period of limitations has expired. Typically, most records must be retained until five (5) to seven (7) years following case closure.

The Records Custodian of the Center/Program from which the Client received services is responsible for assigning destruction date to the Client Record folder at the time the Record is closed. In the event of the Client’s re-application for service, the Record Custodian will update the destruction date to correspond to the revised case closing date.

- B. Audio/video tape recordings of Client sessions will be erased in accordance with the agreement made with the Client.

It is the responsibility of Supervisory Personnel to assure that tapes are erased on schedule. Tapes retained for training purposes must be kept in locked files.

- C. Client Records are the property of the Agency and shall remain in the custody of the Agency upon a Staff member’s departure from employment.
- D. In the event the Agency discontinues operation, the Agency will arrange for storage and maintenance of clinical Records in accord with the above-referenced

time periods. Written notification to all appropriate parties of those arrangements shall be made within a reasonable time thereafter.

X. IMPLEMENTATION AND REVIEW

The Agency's confidentiality policies and procedures for their implementation shall be discussed with new employees and trainees by their immediate supervisor before such individuals' duties with the Agency begin. Professional Staff, support Staff, temporary employees and trainees must sign a statement of confidentiality at the beginning of their tenure in which they acknowledge that they have received instruction regarding the confidentiality policies of the Agency.

The Agency's confidentiality policies and implementation procedures shall be reviewed annually with all Staff for the purposes of re-familiarization and necessary revisions.

XI. RECORD OF DISCLOSURE

As required by HIPAA, the Agency will record disclosures of protected health information in the client record.

XII. DISCIPLINARY MEASURES

The agency will utilize the disciplinary process outlined in the Personnel Standards for any violation of these policies and procedures.