

YOUR RIGHTS REGARDING AMENDING MENTAL HEALTH RECORDS IN MASSACHUSETTS

**Prepared by the Mental Health Legal Advisors Committee
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An individual has a right to confidentiality with respect to their own mental health records. This right provides that, in most cases, only the individual, the individual's personal representative and the individual's treatment providers may know the content of the record. In addition, an individual has rights regarding amend these records.

Rights under federal law

Federal standards, known as the "Privacy Rule," establishes national rules for the protection and dissemination of personal health information.¹ Because the Privacy Rule implements the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"),² the standards are often called HIPAA standards.

While an individual may not delete information in their mental health record, he or she may add information. Under the HIPAA Privacy Rule, an individual and the individual's personal representative have a right, in most instances, to amend the record.³

However, a covered entity may deny an individual's request for amendment for certain reasons,⁴ including a determination that the information already contained in the record is accurate and complete.⁵

If a covered entity refuses to accept an amendment, an individual may file a statement of disagreement.⁶ When a covered entity has denied a request for amendment, the entity must identify the information in the record that is the subject of dispute. The entity then must link or append the individual's request for an amendment, the denial of the request, the statement of disagreement, if any, and the covered entity's rebuttal, if any, to the record.⁷ Future disclosures must include these documents.⁸

Rights under Massachusetts law

Massachusetts law, enacted prior to the implementation of the HIPAA Privacy Rule, also provides for the amending of records. To the extent that the provisions conflict, the federal Privacy Rule controls. For example, the Privacy Rule provides more specifics about what rights an individual or the individual's personal representative has if a provider rejects an amendment proposed for inclusion in the record.

Agencies of the executive branch of government, such as the Department of Mental Health (DMH), are considered "holders . . . of personal data"⁹ and must allow an individual to correct or amend his or her record when the individual so requests.¹⁰ If the holder and the individual disagree as to whether a change should be made, the holder must ensure that the individual claim is noted and included as part of the individual's record and included in any subsequent disclosure

or dissemination of the record. Thus, DMH-operated inpatient facilities and community programs, and Department of Public Health (DPH)-operated facilities, must accept an individual's additions to the record and include them whenever forwarding the record.

Other kinds of "holders . . . of personal data" must also allow an individual to correct or amend his or her mental health record. If a facility has a contract or arrangement with one of the agencies covered by this law, the facility is considered a "holder" of those records which the facility maintains because of the contract or arrangement.¹¹ This law covers records held at DMH-licensed or contracted inpatient facilities and community programs, Intensive Residential Treatment Programs (IRTPs), Department of Early Education and Care-licensed group care facilities, and DPH licensed facilities.

Further, facilities and programs operated by, contracted for by, or licensed by DMH must allow for information to be added to an individual's inpatient record. Inpatient facilities are required to include in the individual's record, among other information, "any other information deemed necessary and significant to the care and treatment of the patient."¹² Community programs are required to maintain records containing "accurate, complete, timely, pertinent and relevant information. If an individual or legally authorized representative believes that the record contains inaccurate or misleading information, he or she may prepare with assistance, if requested, a statement of disagreement which shall be entered in the record."¹³

ENDNOTES

¹ 45 CFR Part 160 and Part 164, Subparts A and E. (final publication Aug. 14, 2002).

² Public Law 104-191 (enacted August 21, 1996).

³ 45 CFR 164.526(a)(1).

⁴ 45 CFR 164.526(a)(2).

⁵ 45 CFR 164.526(a)(2)(iv).

⁶ 45 CFR 164.526(d)(2).

⁷ 45 CFR 164.526(d)(4).

⁸ 45 CFR 164.526(d)(5).

⁹ Mass Gen. L. ch. 66A, § 1.

¹⁰ Mass Gen. L. ch. 66A, § 2(j)(2).

¹¹ Mass Gen. L. ch. 66A, § 1.

¹² 104 CMR 27.17(2)(s).

¹³ 104 CMR 28.09(5).