

DISCLOSING INFORMATION IN A MEDICAL EMERGENCY

Policy Number: [Enter]

Effective Date: [Enter]

I. Policy

A. Purpose

This policy establishes guidelines to be followed by [Organization]'s workforce when using or disclosing patient information in an emergency situation.

B. Policy Implementation—General Rule

While HIPAA permits [Organization] to disclose protected health information for treatment purposes without patient authorization, Minnesota law generally requires [Organization] to obtain patient consent prior to releasing health information. However, [Organization] is permitted to disclose patient health information in an emergency situation without consent if:

- a. The patient is experiencing a Medical Emergency; and
- b. [Organization] is unable to obtain the patient's consent due to:
 - i. The patient's condition; or
 - ii. The nature of the Medical Emergency.

If these elements are satisfied, [Organization] and its staff may disclose patient information without consent. However, if these elements are not satisfied [Organization] must obtain patient consent prior to disclosing information.

Substance Use Disorder Patient Records. In addition to the above requirements, [Organization] may only disclose substance use disorder patient records without patient consent if the disclosure is to medical personnel and is necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained. Disclosures to medical personnel of the Food and Drug Administration (the "FDA") is also permitted without prior informed consent when such medical personnel states that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product that is regulated by the FDA, and that the disclosed information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers. All such disclosures must be limited to the information necessary to treat the condition/Medical Emergency.

Immediately following the disclosure, [Organization] must document the following in the patient's record:

1. The name of the medical personnel to whom the disclosure was made and their affiliation with any health care facility;

2. The name of the individual making the disclosure;
3. The date and time of the disclosure; and
4. The nature of the emergency or error if the report was to the FDA.

Re-Disclosure. [Organization] is permitted to re-disclose substance use disorder patient records without patient consent when treating a patient for a Medical Emergency. However, [Organization] staff must always limit disclosures to the information necessary to carry out the purpose of the disclosure.

If the above elements are not satisfied, other exceptions may apply that would permit a disclosure without patient consent. For example, [Organization] is required by law to report certain events, including but not limited to gunshot wounds, burns, and infectious diseases. These events may take place during an “emergency”. However, [Organization] is not required to obtain patient consent, or otherwise satisfy the emergency exception requirements, prior to disclosure.

C. Mental Health Records and Psychotherapy Notes

As with general health records, [Organization] can disclose general mental health records without patient consent if the patient is experiencing a Medical Emergency and the provider is unable to obtain the patient’s consent due to the patient’s condition or the nature of the Medical Emergency.

However, prior to disclosing psychotherapy notes [Organization] must either obtain patient authorization or satisfy an exception to the authorization requirement. [Organization] can disclose psychotherapy notes without patient authorization if [Organization], in good faith, believes the use or disclosure: (1) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (2) is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. If these elements are satisfied in an emergency situation, [Organization] may disclose psychotherapy notes without patient authorization.

D. Emergency Situation has Concluded

Once the emergency situation has concluded, [Organization] must obtain patient consent prior to disclosing information. Practically speaking, the patient may still be in a serious condition and/or in need of services from [Organization]—but if the patient’s condition or the nature of the Medical Emergency does not prevent [Organization] from obtaining consent, patient consent is required (unless a different exception to the consent requirement under Minnesota law is satisfied).

II. Procedure

- A. Prior to disclosing information in an emergency situation, [Organization] and its staff will:
1. Determine whether the situation otherwise permits disclosure without patient consent (e.g., [Organization] is required by law to report gunshot wounds).
 2. Assess the situation to determine whether a Medical Emergency exists;
 - i. If substance use disorder patient records are at issue: The treating provider is responsible for determining whether a bona fide medical emergency exists.
 3. Determine whether the patient is able to provide consent to the disclosure;
 - i. If the patient is able to provide consent, obtain such consent prior to any disclosures.
 - ii. If the patient is unable to provide consent due to either the patient's condition or the nature of the Medical Emergency, proceed to Step 4.
 4. Determine whether psychotherapy notes are involved;
 - i. If they are, staff must determine whether patient authorization is required;
 5. Determine the purpose of the disclosure;
 - i. If the disclosure is for treatment purposes and the above requirements are satisfied, the disclosure is permitted without patient consent.
 - ii. If the disclosure is for other purposes (e.g., marketing), patient authorization is required.
- B. Once disclosed, [Organization] must immediately document the disclosure and the nature of the medical emergency in the patient's record.
- C. If [Organization] staff are unsure whether the above requirements are satisfied, they must consult with [Organization]'s [compliance officer/privacy officer/other designee] prior to disclosing such information.