

## ORGANIZATION POLICY

POLICY TITLE: DISCLOSURE OF PROTECTED HEALTH INFORMATION ABOUT VICTIMS OF ABUSE, NEGLECT, OR DOMESTIC VIOLENCE

POLICY NUMBER: 1314

**I. DEFINITIONS:** Certain terms having specific definitions are used in this Policy, and these terms and definitions are as follows:

- A. Individually identifiable health information means information that is a subset of health information, including demographic information collected from an individual, and:
1. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and
  2. Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
    - a. That identifies the individual; or
    - b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- B. Protected health information means individually identifiable health information:
1. Except as provided in paragraph (ii), that is:
    - a. Transmitted by electronic media;
    - b. Maintained in any medium described of *electronic media* at 45 CFR § 162.103; or
    - c. Transmitted or maintained in any other form or medium.
  2. Protected health information excludes individually identifiable information in:
    - a. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
    - b. Records described at 20 U.S.C 1232g(a)(4)(B)(iv).

**II. PURPOSE AND APPLICABLE LAW:** The purpose of this Policy is to establish the OMH's policy regarding disclosure of protected health information with respect to victims of abuse, neglect, or domestic violence.

Except for the reports of child abuse or neglect, OMH may, to the extent permitted by this procedure, disclose protected health information about an individual that OMH reasonably believes is a victim of abuse, neglect, or domestic violence to a

government authority, including a social service or protective services agency authorized by law to receive such reports.

### III. PROCEDURE:

#### A. General.

1. "Individual" or "victim" as used in this Procedure means the individual that OMH believes to be a victim of abuse, neglect or domestic violence.
2. Disclosure under paragraphs B(1) or B(3) of this Article may be made without the individual's authorization and without giving the individual an opportunity to agree or object.
3. Disclosure under this Article need not comply with an agreement with an individual to restrict uses or disclosures of protected health information.
4. Disclosures that are "authorized by law" (as opposed to "required by law") must comply with The "Minimum Necessary" Standard (OMH Organization Policy 1301).
5. Refer also to OMH's policy regarding disclosures to Personal Representatives (OMH Organization Policy 1302), for guidance on using or disclosing information about an incapacitated victim who is unable to agree or object to those types of disclosures.

B. Disclosure Procedure: An employee of OMH, who, in his or her professional judgment, reasonably believes that an individual has been a victim of abuse, neglect, or domestic violence, can disclose protected health information about the victim to a government authority that is authorized by law to receive reports of such abuse, neglect, or domestic violence (e.g., juvenile or disabled adult protective or social service agencies, ombudsmen for the aging, law enforcement or oversight agencies, etc.) in the following circumstances:

1. When required by law: If the disclosure is required by law, disclosure is permitted to the extent it is required by law and limited to the requirements of that law.

*"Required by law" means that there is some mandate of the law, enforceable in court, that compels OMH to make the disclosure. For example, "required by law" includes statutes and regulations that require the disclosure; court orders and warrants; and subpoenas issued by a court, grand jury or administrative body authorized to require the productions of information.*

*Example: If a disclosure about a victim of abuse, neglect or domestic violence is made in response to a court order, permitted disclosures are*

*limited to the protected health information required to be disclosed by the face of the court order.*

2. When the victim agrees: Disclosure is permitted if the victim agrees to the disclosure. The agreement can be written or verbal; if verbal, OMH should make a notation in the Patient's record about the victim's agreement.
3. When authorized by law: Disclosure is permitted to the extent the disclosure is expressly authorized by statute or regulation and:
  - a. OMH, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the victim or other potential victims; or
  - b. If the victim cannot agree because he or she is incapacitated, when a law enforcement or other public official authorized to receive the report represents to OMH that:
    - a. The victim's protected health information will not be used against the victim, and
    - b. An immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the victim is no longer incapacitated.

***Important Note:*** *When a law enforcement official or other public official asks OMH to disclose information about a victim, and that disclosure is permitted-but not required-by law, OMH maintains discretion, consistent with professional judgment about the victim's best interest, in deciding whether or not to make the requested disclosure.*

### C. Informing the individual.

1. At the time of the disclosure. When OMH makes a disclosure permitted by this Procedure it must promptly inform the victim, in writing or orally, that such a report has been or will be made, *except if, in the exercise of professional judgment*:
  - a. OMH believes that informing the victim would place him or her at risk of serious harm (*e.g., potential physical or emotional harm from learning that a report was made*); or
  - b. OMH would be informing a personal representative, and OMH reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interest of the victim as determined by OMH.

2. Upon request for an accounting.

- a. To be provided to the victim. If the victim subsequently requests an accounting of disclosures of protected health information, OMH must include an accounting of a disclosure made under this Procedure.

*Note that if OMH believes that informing the victim would place him or her at risk of harm, OMH may warn the victim of the potential danger. If he or she still desires the information, OMH must honor the request. Thus, although it may have been appropriate to delay informing the victim at the time of the disclosure (refer to part 3(a) above), an accounting of disclosures under this procedure cannot be denied on the basis of the sensitivity of the information or on potential for causing emotional or psychological harm. OMH may, however, deny disclosure if a licensed healthcare professional determines that the victim exhibits suicidal or homicidal tendencies, and that permitting the victim to inspect or copy the information is reasonably likely to result in the victim committing suicide, homicide, or other physical violence.*

- b. To be provided to a personal representative. If the request for an accounting is made by the victim's personal representative and OMH: (i) reasonably believes that the person is responsible for the abuse, neglect, or other injury, or that treating that person as a personal representative could endanger the victim; and (ii) in the exercise of professional judgment, decides that informing that person about a report under this Procedure would not be in the best interest of the victim, then OMH does not have to treat the person as the personal representative and should not provide an accounting of a disclosure under this procedure to that person.

D. Verification and Documentation. OMH shall document in the patient record, as soon as reasonably practicable after any disclosure under this procedure, as much of the following information as reasonably possible and applicable under the circumstances:

1. Date and time of the disclosure, and whether the disclosure was made orally or in writing (a copy of any writing should be kept in the patient record);
2. Description of the information disclosed;
3. Name, title, and government affiliation of the person(s):
  - a. Representing that disclosure is necessary under this procedure;
  - b. Requesting disclosure under this procedure; and
  - c. Receiving the information disclosed under this procedure;
4. The factual basis for the belief that disclosure is necessary, including:

- a. The representations made by the third party that caused OMH to believe that disclosure was necessary;
- b. OMH's basis for believing that the person making the representations had knowledge about the situation; and
- c. OMH's basis for believing that the person making the request and/or receiving the information had the authority to request and/or receive it.

This documentation must be kept in the patient's record for six years, in accordance with the policy and procedure Accounting of Disclosures (OMH Organization Policy 1313).

EFFECTIVE DATE: August 2013

REVISION DATE: August 2016

APPROVED BY:

\_\_\_\_\_  
Penney Burlingame Deal, DHA, RN, FACHE  
President and Chief Executive Officer

\_\_\_\_\_  
Regina Lanier, MAEd, BSN, RN  
Senior VP Chief Nursing Officer

\_\_\_\_\_  
Scott Johnston, M.D.  
Chief of Staff