

## **CONFIDENTIALITY OF CLIENT INFORMATION**

The purpose of this section is to address the confidentiality of client health information and disclosure of this information relative to existing state and federal laws. Although the Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law established to improve privacy and security of confidential or protected health information, it does not supersede state laws that are more restrictive. Please note that education records covered by the Family Educational Rights and Privacy Act (FERPA) are excluded from the definition of protected health information under HIPAA. State agencies are now required by federal law to have policies and procedures in place to protect the privacy of health information and to provide guidelines regarding accessibility and disclosure. It is important that case managers adhere to the policies and procedures of their employing agency.

### **INTRODUCTION**

Protecting the confidentiality of health information has always been an integral part of the health care system. During the assessment process and subsequent case management activities, the case manager gains access to confidential information relating to the client's personal, financial and medical conditions. Since the handling of confidential information is routine for case managers, it is crucial that case managers protect and safeguard all confidential information at all times in accordance with state and federal rules and regulations.

The Health Insurance Portability and Accountability Act of 1996 is a federal law which establishes standards to improve privacy and security of individually identifiable health information. Under HIPAA, privacy is an individual's right to control access and disclosure of his or her protected health information (PHI). Privacy defines who can access, use and disclose PHI. Security is an organization's responsibility to control the means by which such information remains confidential. Security protects from unauthorized access and involves the storage and transmission of PHI. HIPAA sets forth a Privacy Rule and Security Standards to which covered entities such as health care providers and health plans (Medicaid, Medicare, etc) must comply.

### **PRIVACY**

In general, the Privacy Rule:

- provides clients more control over their health information
- provides guidelines regarding the accessibility, disclosure and use of health information
- establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information
- Holds violators accountable, with civil and criminal penalties that can be imposed if they violate client privacy rights

Each agency is required to publish and post its own privacy practices. Case managers need to insure that clients are informed of these practices. If the client or client's representative believes the agency is not complying with its privacy practices or that his/her rights under HIPAA have been violated, the case manager should inform the client or client's representative of the agency's procedure for filing a complaint.

### **Protected Health Information (PHI)**

Protected health information exists when the individual's health/medical information (including payment for healthcare) is combined with information that identifies that individual. There are three major categories which include:

- personal information such as name, date of birth, social security number, vehicle identifiers, license numbers;
- demographic information such as address, telephone number, fax numbers, e-mail addresses, internet address number; and,
- information related to health status, services received or healthcare payment such as medical record number, diagnosis, dates of service, device serial numbers, health plan beneficiary numbers, account numbers, full face photographic images, and finger and voice prints

Examples of PHI include Enrollment and Eligibility Information, Medical Reports and Records, Billing Records, Pharmacy Records, Prior Authorization Information, and any information that contains an individual's identifier combined with any healthcare condition, service and/or payment.

Education records covered by the Family Education Rights and Privacy Act (FERPA) including records designated as education records under Part B, C, and D of the IDEA Amendments 1997 are excluded from the definition of protected health information.

The use and disclosure of PHI must be limited to the minimum necessary to accomplish the intended purpose. All uses and disclosures of PHI by case managers must be in accordance with state and federal HIPAA regulations. **HIPAA regulations do not supersede state laws that are more restrictive in regards to safeguarding PHI.** <sup>1</sup>

Individuals who can gain access to PHI without written authorization include:

- Employees directly involved in the evaluation and treatment of clients, or the processing of information for payment and/or healthcare operations activities
- Health Department Officials (Such as reporting of information on communicable diseases and/or vital statistics collection)
- Law Enforcement Officials (Such as reporting of suspected abuse, neglect or exploitation of children or adults, judicial proceedings and other law enforcement purposes)

## **Mandatory Reporting**

Code of Alabama 1975 § 26-14-1 provides for the mandatory and permissive reporting of child abuse/neglect to a “duly constituted authority,” primarily DHR and law enforcement, when any person suspects children are being abused or neglected, and §26-14-9 provides for immunity from any liability, civil or criminal, that might otherwise be incurred or imposed when any person makes a report in good faith.

Persons and institutions mandated by § 26-14-3 to report child abuse/neglect include all hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, school teachers and officials, peace officers, law enforcement officials, pharmacists, social workers, day care workers or employees, mental health professional or any other person called upon to render aid or medical assistance to any child when such child is known or suspected to be a victim of child abuse or neglect.

Alabama’s Adult Protective Services Act deals specifically with abuse, neglect, and exploitation of adults who are incapable of protecting themselves. The law outlines the responsibilities of the Department of Human Resources, law enforcement authorities, physicians, caregivers, individuals, and agencies in reporting and investigating such cases, and in providing necessary services. The law generally identifies an adult in need of protective services as someone 18 years or older who is mentally or physically incapable of protecting himself from abuse, neglect, exploitation, or sexual or emotional abuse, and who has no one able and willing to assume proper care and supervision.

Physicians, osteopaths, chiropractors, and caregivers are required by law to report instances of suspected abuse, neglect or exploitation, sexual abuse, or emotional abuse. A caregiver is an individual who has the responsibility for the care of a protected person by virtue of family relationship, voluntary arrangement, contract, or friendship. Any concerned individual should make a report if he or she has reason to think that an adult is in danger of abuse, neglect, or exploitation.

Those required to report must do so immediately on finding reasonable cause to believe that an adult has been subjected to abuse, neglect, or exploitation. Reports must be made either to the chief of police or sheriff, or the county Department of Human Resources. An oral report, either by telephone or in person, must be made first. It must be followed by a written report. Anyone reporting suspected abuse, neglect, or exploitation is presumed to be acting in good faith and is, by law, immune from legal action that might otherwise be incurred or imposed. This immunity extends to all persons making reports and participating in judicial proceeding concerning those reports.

## **Duty to Warn**

“As a result of a number of court decisions, mental health practitioners have become increasingly aware of and concerned about their double duty: to protect other people

from potentially dangerous clients and to protect clients from themselves. These court decisions have mandated that practitioners have a responsibility to protect the public from potentially dangerous clients. This responsibility entails liability for civil damages when practitioners neglect this duty by failing to diagnose or predict dangerousness, failing to warn potential victims of violent behavior, failing to commit dangerous individuals, and prematurely discharging dangerous clients from the hospital.

Practitioners have an obligation not only to warn and to protect others from the acts of dangerous people but also to protect suicidal clients. There are definite limitations to confidentiality when the counselor (practitioner) determines that a client is a suicide risk. First, it is essential to make a decision about the seriousness of the situation. Second, if therapist (practitioners) judge that a foreseeable risk does exist, they are expected to use direct intervention that is consistent with the standard practice common to their profession. The client's right to confidentiality assumes secondary importance when his or her life is at risk." <sup>2</sup>

**If a case manager has reason to believe that a client poses a serious danger to others or to himself, the case manager is expected to follow policies and procedures addressing Duty to Warn as approved by his employing agency. While confidentiality is secondary to protecting the safety of the client, generally speaking the case manager should only release information to the minimum extent necessary to secure protection and assistance to parties in danger. For example, instead of saying, "The client is suicidal because she found out she is pregnant" say "the client is suicidal because she received distressing news about her health."**

### **Emergency Situations**

Disclaimer: HIPAA regulations do not supersede state laws that are more restrictive in safeguarding PHI. Case managers should refer to the policies and procedures of their employing agency in regards to the use and disclosure of PHI.

HIPAA establishes rules for how, when and to whom information can be released and allows for exceptions to those rules in emergency situations in order to address the immediate needs of individuals and society. Often those exceptions rely on the exercise of professional judgment and good faith on the part of the health care provider, in this instance, the case manager. In the Privacy Rule, the provider is presumed to have acted in good faith if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

In an emergency situation the case manager may in the exercise of professional judgment determine whether a disclosure of health information is in the best interests of the individual and if so, disclose only the health information that is **directly relevant** to others involved with that individual's care. A case manager is allowed to use or disclose health information to notify, identify or locate a family member, personal representative of a client or another person responsible for the care of the client to give the responsible representative information on the location, general condition or death of the client.

Conversely, a case manager may withhold information from a family member or personal representative if there is reason to believe that action is in the best interest of the client.

A case manager may use or disclose health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts. For example, in the event of a natural disaster, a case manager is permitted to give **relevant** health information about a client to agencies like the American Red Cross or local law enforcement for disaster relief.

A disclosure may be made if the case manager believes the disclosure is necessary to prevent serious harm to the individual or other potential victims AND the disclosure is to persons or entities reasonably able to prevent or lessen the threat. If a client is unable to agree to a disclosure due to incapacity, the case manager may make the disclosure to a law enforcement or other authorized public official if the information will not be used against the client AND an immediate enforcement activity would be adversely affected by waiting until the client is able to agree to the disclosure.

Generally a client should be told of any disclosure made in an emergency situation as soon as practically possible unless, in the professional judgment of the case manager, such information would place the individual at risk of serious harm. <sup>3</sup>

### **Tips on Safeguarding Protected Health Information**

- Do not talk about protected health information with or about client/patients in public while in public places (i.e. in elevators, hallways, stairwells).
- Close the door to the room or pull the curtains when discussing health information with clients/patients when possible.
- Never leave messages on answering machines regarding a client's/patient's condition or test results.
- Never disclose a client's/patient's health information to unauthorized persons, including family and friends, unless the patient has given permission. Always verify the identity and the need to know prior to discussing or disclosing personal information.
- When receiving and/or releasing health information by fax:
  - Dial fax numbers carefully to avoid sending information to the wrong party.
  - Use a fax transmission sheet with a confidentiality statement when faxing outside your agency or organization.
  - Send faxes containing protected health information to known sources only.
  - Make sure the recipient is near the receiving fax machine when the information is sent.

- Always file or properly dispose of faxed information before unauthorized persons see it.

## **SECURITY**

Patient health information stored on the computer is just as confidential as information stored in paper files and should be accessed on a need-to-know basis as it directly relates to the care of that patient. Again, the use and disclosure of PHI must be limited to the minimum necessary to accomplish the intended purpose.

When securing electronic patient health information, you should:

- Change your computer password regularly.
- Never post your computer password on your monitor, bulletin board or walls.
- Never share your computer passwords with others
- Always log off the system before walking away from your computer or use a password protected screen saver
- Position your computer monitor away from visitors or people walking by
- Never leave patient records in the computer printer
- Only send or receive e-mails containing protected health information to/from known and authorized sources.

Case managers conducting home visits or carrying out other case management responsibilities must maintain the confidentiality of client's protected health information. Case managers must be knowledgeable of and adhere to all agency policies and procedures regarding safeguarding protected health information transported outside the agency.

## **References**

<sup>1</sup>Federal Register 45CFR Parts 160 and 164

<sup>2</sup>Corey, Gerald. (Fifth Edition). *Theory and Practice of Counseling and Psychotherapy*. Pacific Grove, CA: Brooks/Cole, Chapter 3, p. 62, 63.

<sup>3</sup>Federal Register 45CFR Parts 160 and 164

## **CLIENT RIGHTS AND RESPONSIBILITIES**

### **Introduction**

Each state agency has its own grievance or due process procedures. Case managers should adhere to the due process procedure of their employing agency. For purposes of

this training program, information regarding the due process procedure provided by the Alabama Medicaid Agency under 42 CFR part 431, subpart E is presented.

The Alabama Medicaid Agency (AMA) will provide an opportunity for a fair hearing, under 42 CFR part 431, subpart E, to individuals whose Medicaid services have been denied, suspended, terminated or reduced. Denial and termination of Medicaid services are based on a client's medical and financial eligibility. The Social Security Administration and the Alabama Medicaid Agency (AMA) are certifying agencies that are responsible for determining financial eligibility. If a client does not agree with the decision to deny or terminate services based on a financial evaluation and wishes to appeal the decision, the case manager should refer the client to the appropriate certifying agencies. If the certifying agency determines that the client does not meet the medical criteria and denies or terminates Medicaid services, the client should be referred to the appropriate agency.

Any individual applying for or receiving home and community-based waiver services has the right to request an appeal of any decision made by the state agency responsible for administering the waiver program if that decision adversely affects his or her eligibility status for receipt of waiver services and/or assistance. Administering state agencies (Alabama Department of Senior Services, Alabama Department of Rehabilitative Services, Alabama Department of Mental Health/Mental Retardation, and the Alabama Department of Public Health) for waiver programs have procedures in place that assure CMS and Medicaid that a potential client is explained at the time of application his rights to request a fair hearing if his request for waiver services is denied. A copy of the plan of care written by the case manager includes information on the appeal rights and the steps to appeal an adverse decision. A copy of this information is left in the client's home. The steps to appeal an adverse decision as provided under 42 CFR part 431, subpart E is outlined below.

### **Ten (10) Day Advance Notice**

When services have been reduced or terminated, the case manager should send a 10-day advance notice to the client prior to the reduction or termination of services. When the client receives this notice, they have 10 days following the effective date of action taken to request an informal conference.

### **Informal Conference**

The client has ten (10) days from the effective date of action to request an informal conference. The client may notify the AMA giving the reason for the dissatisfaction and ask for either an informal conference or a review of the case by the AMA. At the informal conference, the client may present the information and/or may be represented by a friend, relative, attorney, or other spokesperson of their choice.

### **A Fair Hearing Request**

If the client is still dissatisfied after the above procedure has been completed, a fair hearing may be requested. A written request for a hearing must be filed within sixty (60) days following the action with which he or she is dissatisfied. The client or legally appointed representative or other authorized person must request the hearing and give a correct mailing address to receive future correspondence. If the request for the hearing is made by someone other than the person who wishes to appeal, the person requesting the hearing must make a definite statement that he or she has been authorized to do so by the person for whom the hearing is being requested. Information about the hearings will be forwarded and a hearing date and place convenient to the person will be arranged.

If the person is satisfied before the hearing and wants to withdraw, the client or legally appointed representative or other authorized person should write the AMA that he or she wishes to do so and give the reason for withdrawing.

### **Complaints and Grievances**

Case managers are responsible for explaining the procedures to clients for filing complaints and grievances. Agencies responsible for administering waiver services must also have procedures in place that will assure AMA that direct service providers have explained to clients the process on how to register a complaint. If the client is dissatisfied with the action taken by the provider they should forward their complaint to appropriate agency and/or AMA.

### **Basic Rights**

Some other basic rights of all individuals receiving Medicaid services are as follows:

- The client has the right to confidentiality concerning his personal affairs
- The client has the right to be treated with dignity and respect
- The client has the right to maintain his/her independence to the degree possible
- The client has the right to quality services delivered in a consistent and stable manner.
- The client has the right to file grievances and to appeal decisions made by agencies.
- The client has the right to be informed of the resources available through the program.
- The client has the right to be informed of the limitations of the program.
- The client has the right to transfer to another provider.
- The client has the right to participate in the development of the Plan of Care.
- The client has the right to reject services and be informed of the consequences of such actions.

### **Responsibilities**

Some basic responsibilities of individuals receiving Medicaid services, their representatives and/or family members are as follows:



- The client and his family have the responsibility to advise the case manager of his Medicaid eligibility and furnish other information necessary to file a claim for services.
- The client and his family have the responsibility to cooperate with the case manager and the in-home workers and to treat them with respect.
- The client and his family have the responsibility to participate in the provision of care to the greatest extent possible.
- The client and his family have the responsibility to report changes in the client's situation to the case manager as soon as possible.
- The client and his family have the responsibility to be at home when services are scheduled or to notify the service provider prior to the service date.
- The client and his family have the responsibility to provide adequate food, personal and household supplies so that services may be performed.
- The client and his family have the responsibility to secure proper medical care to the extent possible.
- The client and his family have the responsibility to report inadequate services to the case manager.
- The client and his family have the responsibility to sign verification of services only after ascertaining their accuracy.

### **SAFETY**

#### **Safety of the Person**

The safety of a person should always be maintained regardless of his/her situation. When a person you are serving brings up concerns about his/her safety the case manager should listen and explore the concerns and document them as well. Case managers should also inform or convey the person's concerns to the appropriate personnel, if applicable, and when appropriate.

When involved with suspected abuse and neglect of person you are working with, case managers should follow their agency's Abuse and Neglect Policy. Also remember that state law mandates the reporting of suspected abuse/neglect to a "duly constituted authority", primarily the Department of Human Resources and law enforcement.

#### **Case Manager Safety**

Case managers should always consider personal safety when providing services. Case managers may also want to consider wearing some form of identification or nametags when outside of the office providing services to the people they serve. Some general safety tips for case managers might include some of the following: being mindful of certain areas of town, dangerous pets in a neighborhood, securing your car, personnel items, keys and records. If working in settings that you feel uncomfortable with you may want to make sure another staff person is near. You may also want to consider not closing doors to a room/office or working with someone in a room/office that has windows or where there is a lot of foot traffic. Also, keep in mind to make sure that exits are not blocked.

### **Other Safety Procedures to Remember**

- Wear comfortable clothes when out in the field
- Women should wear low heel shoes
- Refrain from carrying a purse or paperwork into a client's home. In case you need to make a quick exit you don't need to be concerned about gathering these items together.
- Make sure when going to an unpredictable area that you have enough gas in the care to get you back and forth.
- Stand to the side of a door to knock rather than standing directly in front of the door.
- When doing home visits always let the client or family member come to the door to let you in rather than you entering someone's home after they have yelled to you to come in.
- While in a person's home, try to remain in their living room rather than going to rooms in the back of the house, and if possible sit in a chair or on a sofa close to the front door.
- Never talk in a controlling or threatening manner. People need to know that you are there to help them.
- If transporting someone who becomes inappropriate, don't hesitate to warn them about their behavior and, with your supervisor's approval, put them out of your car. Call a family member or the police to notify them of the person's whereabouts.
- Be aware of your body language when face to face with someone so as not to appear intimidating or threatening.
- Always make your supervisor aware of any known danger(s) and discuss your concerns with him/her.
- If possible carry a cellular phone/beeper not only to be reached but to call for assistance if an unsafe situation occurs.
- Always remember to : **Be Observant**  
**Trust Your Instincts**  
**Never Attempt To Be A Hero**

### **CASE MANAGEMENT RESOURCES REFERRAL**

Case management service includes linkage and advocacy. In order for a Case Manager to provide their services it's important to know the community and know what resources are available.

Some areas are fortunate enough to have a Community Resource Directory but other areas are not as fortunate. If you are from an area without such a directory, it would be to your advantage to develop one on your own. Make a list of the agencies that your are aware of and check the Yellow Pages in a phone book for others. Visit or call the agencies to find out what services they provide, the referral process, eligibility criteria, hour of service, location, and a contact person.

During conversations with agency personnel explain your role as a Case Manager and provide information about your program. To educate others at your agency about available resources, invite speakers from other agencies to come to your program.

Agencies to include on your resource list are:

- Social Security Administration (SSI, Social Security Disability ((SSDI)), Medicare, Medicaid)
- Department of Human Resources (Adult and Child Protective Services, Food Stamps, Aid to Dependent Children and Homemaker Services)
- Police Department (assist on dangerous referrals)
- Health Department (medical care)
- Local Hospitals (emergency room)
- Red Cross (utility payments, food, emergency funds)
- Vocational Rehabilitation (evaluation, employment training, job skills)
- Traveler's Aid (transportation)
- Local Churches (food, clothing, emergency funds for utility payments/medication)
- Probate Court (petition process)
- Transportation Services
- Local Support Groups (both family groups and consumer groups)
- Volunteer Services (clothes closets, sitters, to provide payee services, etc.)
- Chamber of Commerce (list of local resources)

It is necessary for all service providers to work together to assist the client in meeting their needs and enabling them to function as independently as possible in the community.