

# OFFICE OF PATIENTS' RIGHTS

Protection & Advocacy, Inc.

100 Howe Avenue, Suite 210N

Sacramento, CA 95825-8202

Telephone (916) 575-1610

Toll Free (800) 254-5166

FAX (916) 575-1613

## MEMORANDUM

TO: Interested Persons

FROM: Office of Patients' Rights

RE: ACCESS TO MENTAL HEALTH RECORDS

DATE: March 26, 1999



You contacted the Office of Patients' Rights (OPR) for information regarding your right to obtain copies of your mental health records. As outlined below, a patient, or his or her authorized representative has a right to see and/or receive copies of his or her mental and physical health records. This memorandum also discusses certain limitations on that right.

Please call OPR if you have a question that is not answered in this memorandum or if you need additional information.

### **1. Does a patient have a right to see his or her mental health records?**

Yes. A patient or his/her authorized representative is entitled to have access to the patient's mental and/or physical health records held by a health care provider. The patient/authorized representative may be accompanied to the inspection of records by one other person of his or her choosing. HSC § 123110(a).

### **2. How can a patient obtain access to his or her records?**

A patient or patient's representative must make a written request to inspect and/or receive copies of the patient's records. HSC § 123110(a),(b). A request for copies must specify the records to be copied. HSC § 123110(b).

**3. Is there a time limit for compliance with a request to review and/or receive copies of health records?**

Yes. If a patient or representative makes a written request for inspection of records, the health care provider must allow access to the records during regular business hours within five (5) working days after receiving the request. HSC § 123110(a). If a patient or representative makes a request for copies of or part of a file, the health care provider must transmit the copies within fifteen (15) days after receiving the request HSC §123110(b). If a summary is provided it must be within ten (10) working days unless the record is of extraordinary length or because the patient was discharged from a facility within the last ten (10) days. The health care provider must notify the patient of this fact and the date that the summary will be completed. This must be within thirty (30) days of the request. HSC § 123130(2).

**4. Is there any limitation on a patient's right to access his or her mental health records?**

Yes. There is a narrow exception to the right of access to complete information regarding a health care condition and care provided. The health care provider may decline to permit inspection or provide copies of mental health records to a patient if the health care provider determines there is a "substantial risk of significant adverse or detrimental consequences to the patient in seeing or receiving" such records. HSC § 123115(b). However, such a refusal is subject to the following four conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying permitted.

(2) The health care provider shall permit inspection by, or provide copies of the mental health records to a licensed physician, licensed surgeon, licensed psychologist, licensed marriage, family, child counselor, or licensed clinical social worker to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage, family, and

child counselor, or licensed clinical social worker designated by written authorization of the patient.

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(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2). HSC § 123115(b)(1)-(4)

**5. Are there any limitations on a parent's right to access his or her minor child's mental health records?**

Yes. A parent is not entitled to inspect or obtain copies of a minor's patient records if the minor patient is authorized by law to consent to medical treatment. HSC § 123115(a)(1). Also, a parent is not entitled access to a minor's patient records if the provider determines that access to the records requested by the parent would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well being. HSC § 123115(a)(2).

**6. Does a health care provider have discretion to provide a summary of, rather than direct access to, a patient's medical records?**

A health care provider may prepare a summary of the record, according to the requirements of this section for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record, the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to following:

- (1) Chief complaint or complaints including pertinent history.
- (2) Findings from consultations and referrals to other health care providers.
- (3) Diagnosis, where determined.

(4) Treatment plan and regimen including medications prescribed.

(5) Progress of the treatment.

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(6) Prognosis including significant continuing problems or conditions.

(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.

(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) Not essential.

(d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider. HSC §123130(b)(1)-(8)

**7. Can a provider withhold records or summaries of a patient's records because of unpaid bills?**

No. A health care provider is prohibited from withholding a patient's records or summaries of patients' records because of unpaid bills for services. Any health care provider who willfully withholds records because of unpaid bills is subject to sanctions. HSC § 123110(g).

**8. Can a provider require a fee for copying or summarizing records before releasing the records or summary?**

Yes. Before giving copies of records to the requester, a provider may require the requester to pay: copying costs, not to exceed twenty-five cents (\$.25) per page or fifty cents (\$.50) per page for records that are copied from microfilm, and any additional reasonable clerical costs incurred in making the records available. HSC § 123110(b).

Additionally, the health care provider may charge a "reasonable fee" based on actual time and cost for preparation of a summary pursuant to a patient's request for access to his or her records. HSC § 123130(f).

**9. What can a patient or a patient's representative do if he or she is denied access to the patient's records?**

A health care provider who willfully violates this statute may be subject to penalties, including but not limited to a \$100 fine and licensure suspension or revocation. HSC § 123110(f), 123120.

The information provided is the opinion of OPR and not necessarily that of the Department of Mental Health (DMH). You may also want to consult DMH or local county resources and policy statements.

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**PROVIDING PATIENTS' RIGHTS ADVOCACY AND INVESTIGATIVE SERVICES  
THROUGH CONTRACT #98-78002 WITH THE  
CALIFORNIA DEPARTMENT OF MENTAL HEALTH**