

REQUEST FOR CLARIFICATION/INTERPRETATION

TO:	Name and Title: Jannis Conselyea	FROM:	Name and Title: Jennifer Henson / Case Manager
	Organizational Unit: DDP Program Support Bureau Chief		Organizational Unit: ORI
	Address: 111 Sanders, Helena, Mt		Address: Kalispell, MT

1. TYPE OF REQUEST: Follow-up to Verbal Request - Date of Verbal Request: Written Request

2. STATEMENT OF QUESTION OR ISSUE: Clarification regarding client information, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and ARM 37.34.106.

A) Is a contractor that employs case managers considered a “covered entity” or a “business associate” under HIPAA?

B) What, if any, client information can be disclosed without written consent between:

1. A client’s case manager and the client’s care provider staff
2. A client’s direct care staff and other care provider staff (care provider management, non-direct care staff, staff that does not typically work directly with client, etc.)
3. A client’s case manager and other case managers within the same agency/contractor
4. The Office of Public Assistance

C) If a client’s case manager cannot disclose client information to other case managers within the same agency/contractor without written consent, does HIPAA and DDP policy permit case managers to have clients sign a release of information to allow their case manager to freely consult/staff cases with all other case managers within the same agency/contractor?

D) What is the DDP’s interpretation of “minimum necessary” information concerning HIPAA and disclosing client information?

E) What is the definition of the term “legally competent adult” in ARM 37.34.106?

F) What is the definition of the term “legally competent adult” according to the Montana Codes Annotated?

G) What is the DDP’s interpretation of “serious threat to health and safety” concerning HIPAA and disclosing client information?

H) Is there exposure to liability for case managers for not disclosing client information when they believe it is necessary to prevent or lessen a serious and/or imminent threat to a person or the public or is the liability solely with the case manager’s agency/contractor, client’s care provider, DDP, etc.?

I) What is the DDP’s policy concerning the disclosure of information (e.g. risk level, supervision needs, history, target group) regarding clients with sexual behavior problems being comingled with other clients in care provider services (residential or work/day services); does a responsibility to notify clients and guardians/family members exist so an informed decision can be made regarding living or working with such clients?

J) There seems to be some confusion regarding sharing a client’s public record of criminal offenses with other clients and/or guardians/family members to assist with their protection. Some individuals working in this field believe sharing public record information violates HIPAA or is a “breach in HIPAA compliance.” Can you provide clarification regarding this?

3. ANSWER: Below you will find the answers to the questions listed above. These answers were provided by the Montana State Department of Public Health and Human Services. Agencies may wish to review the responses with their own attorney's as interpretations in the law may vary between legal representatives.

- A. All health care providers are covered entities, and can therefore share and receive protected health information (PHI) in carrying out treatment, payment, and health care operations.
- B. Generally, any client information can be disclosed without written consent if it is for the purposes above. DPHHS, as a whole, is a covered entity, so PHI can be shared within the agency.
- C. As mentioned, PHI can be disclosed to other covered entities.
- D. HIPAA defines minimum necessary as a disclosure of protected health information limited to the amount reasonably necessary to achieve the purpose of the disclosure.
- E. This term is not specifically defined in the MCA or ARM. I would assume it is a non-minor who has not been deemed legally incompetent by a court or judicial authority.
- F. See above.
- G. I believe this term is purposefully not explicitly interpreted to allow providers to use their professional judgment in determining what may constitute a serious threat to health and safety. Certainly, any act that could cause actual physical injury or adversely affect an individual's health would apply.
- H. This question must be addressed by legal counsel.
- I. This question must be addressed by legal counsel.
- J. A client's criminal record is not subject to HIPAA regulations, as it is not health-related information.

Mike Mahoney, HIPAA Program Officer, 12/10/13

Approved and Issued by: _____ /s/ _____ Program Director

Date: 12/13/13

STATE USE ONLY	<p>4: DISTRIBUTION:</p> <p>One Copy: _____ Requestor One Copy: _____ Manual Coordinator One Copy: _____ Division Files Additional Copies: _____ 9 _____</p>	<p>5: FOLLOW-UP:</p> <p>9 To be issued as Bulletin to: _____ _____ (Division Administrator) Manual. Expected Date of Issuance: _____ _____ 9 A.R.M. Change 9 State Plan Change</p>
----------------	--	---