

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH)

RULE IDENTIFIER: ERLID 1160

REGULATION TITLE: Rules and Regulations Disclosure of Information to Family Members or Other Co-Habitant Caregivers

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice: May 2, 2018

End of Comment Period: June 1, 2018

SUMMARY OF PROPOSED RULE:

These regulations were promulgated before the enactment of the Health Insurance Portability and Accountability Act (HIPAA) on August 21, 1996. This set of regulations has become outdated because it outlines procedures that may be partly or wholly in violation of HIPAA.

COMMENTS INVITED:

All interested parties are invited to submit written comments concerning the proposed regulations by the end of comment period, 30 days from publication of this notice to the address listed below.

Gail Theriault, Esq., BHDDH, 41 West Road, Cranston, RI 02920

Email Address: gail.theriault@ohhs.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

A copy of the proposed repeal will be available from 5/2/18 through 6/1/18 to view in person by request, or by email at the addresses below. Electronic copies of the

proposed repeal will also be available on the BHDDH website at www.bhddh.ri.gov and Secretary of State's at <http://sos.ri.gov/ProposedRules/>.

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Email Address: gail.theriault@ohhs.ri.gov

PUBLIC HEARING INFORMATION:

In accordance with R.I. Gen. Laws § 42-35-2.8, an opportunity to present oral comments will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. Any request for a public hearing must be received by BHDDH within ten (10) days of this notice.

FOR FURTHER INFORMATION CONTACT:

Gail Theriault, Esq., at (401) 462-2401, or at the email or mailing address listed above.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

This is a full repeal. These regulations were promulgated before the enactment of the Health Insurance Portability and Accountability Act (HIPAA) on August 21, 1996. This set of regulations has become outdated because it outlines procedures that may be partly or wholly in violation of HIPAA. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: R.I. Gen. Laws §42-35-1 et seq.

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:

The Department of Behavioral Healthcare, Developmental Disabilities and Hospitals proposes to repeal the “Rules and Regulations Disclosure of Information to Family Members or Other Co-Habitant Caregivers” as follows:

~~RULES AND REGULATIONS DISCLOSURE OF INFORMATION TO FAMILY MEMBERS OR OTHER CO-HABITANT CAREGIVERS~~

Pursuant to The General Laws of Rhode Island, Chapter 40.1-5-27.1, “Mental Health Law”, Disclosure by mental health professional. the following rules and regulations apply:

1. ~~Organizations:~~

1.1 ~~These rules and regulations apply to Community Mental Health Centers, hospitals or facilities having “facility status” under the Mental Health Law, or other organizations licensed by and contracted with the Department of Mental Health, Retardation and Hospitals (the Department) to provide mental health care and treatment to persons who are mentally disabled and to the mental health professionals employed or contracted with by said organizations.~~

1.2 ~~Organizations affected by these rules and regulations shall make reasonable efforts to inform staff, affected clients and family members or other persons living with and providing direct care to the mentally disabled person (cohabitant caregiver) regarding these rules and regulations.~~

2. ~~Disclosure of Confidential Information:~~

2.1 ~~A mental health professional, working for an organization listed under 1.1 above, may provide certain information to a family member or other person if this family member or co-habitant caregiver lives with and provides direct care to the mentally disabled person, and without such~~

~~direct care there would be a significant deterioration in the mentally disabled person's daily functioning, and such disclosure would directly assist in the care of the mentally disabled person.~~

~~2.2 Community Mental Health Centers, hospitals or facilities having "facility status" under the Mental Health Law, or other organizations licensed by and contracted with the Department of Mental Health, Retardation and Hospitals should make available and provide information regarding a release of information or limited release of information (as defined in 2.3 below) which allows the organization or facility to share confidential information with the family member or other co-habitant caregiver.~~

~~2.3 Pursuant to 40.1-5-27.1, limited disclosure of confidential information to family members or other co-habitant caregivers shall include no more than the following: information regarding diagnosis, admission to or discharge from a treatment facility, the name of medication prescribed, the side effects of such prescribed medication.~~

~~2.4 These rules and regulations do not limit or restrict a mental health professional's rights to disclose confidential information in accordance with R.I.G.L. 40.1-5-26 (e.g. medical emergencies) and R.I.G.L. 40.1-5-27 (e.g. information to family that the patient is presently a patient in a facility). These~~

~~rules and regulations do not allow disclosure if such disclosure would violate 42 C.F.R., Part 2 or R.I.G.L. 23-617.~~

~~2.5 Disclosure of Confidential information pursuant to these rules and regulations can only be made on the written request of the family member or other cohabitant caregiver.~~

~~2.5.1 The written request for information from the family member or other cohabitant caregiver shall contain, at minimum, the name of the caregiver, their relationship to the mentally disabled person, their address, the name of the mentally disabled person about whom confidential information is sought, the specific confidential information sought and the reason for seeking this information. The request shall contain a statement by the~~

~~family member that they live with and provide direct care to the mentally disabled person and that without such care there would be a serious deterioration in the mentally disabled person's level of functioning. The statement should also include how the information sought would assist in providing direct care. Identifying information regarding the mentally disabled person such as date of birth should be provided if this information is available. Use of the attached form for requesting release of limited confidential information shall constitute compliance with 2.5.1. Such forms shall be made readily available to family members or co-habitant caregivers, however, an organizational form shall not be required and a letter from the family member or cohabitant caregiver, that includes the information listed above, shall substitute for the organizational form in requesting the release of confidential information.~~

~~2.5.2 Upon receipt of a request for disclosure of limited confidential information the mentally disabled person or their legally appointed guardian shall be informed in writing of the request, the name of the person making the request and the specific information requested. Upon receipt of a request for disclosure of limited confidential information, the mentally disabled person or their legally appointed guardian shall be provided the opportunity to give or withhold consent.~~

~~2.5.3 If the mentally disabled person withholds consent, confidential information shall not be disclosed, except as provided for in Paragraphs 3 or 4.~~

~~3.1 In the event that the mentally disabled person withholds consent for the release of confidential information, the family member or other co-habitant caregiver shall have the right to reconsideration. They shall be informed of the decision to withhold information by the mentally disabled person within three business days and shall have an additional three business days within which they may request reconsideration. The mentally disabled person shall be informed of the family member or other co-habitant caregiver's decision regarding reconsideration.~~

~~3.2 Organizations and facilities shall hear and attempt to achieve resolution of reconsideration requests within ten (10) business days.~~

~~3.3 The agency Executive Director or Chief Operating Officer or their designee shall hear reconsideration requests. Such designees shall be selected from quality assurance staff or the organization's human rights officer or other staff charged with protecting the rights of clients or ensuring the organization's due process procedures, but shall in no event be staff responsible for providing direct care to the mentally disabled person.~~

~~3.4 Those charged with hearing a reconsideration request shall speak with both the family member or other co-habitant care giver and the mentally disabled person. The person(s) charged with hearing the reconsideration will elicit information to determine why the mentally disabled person does not wish to disclose limited confidential information. They shall also interview the family member or other co-habitant caregiver to ask why the information sought would aid in providing direct care to the mentally disabled person. The mentally disabled person, at their option, shall have the right to hear all information presented and to have all parties meet together. The mentally disabled person, at their option, may be accompanied by persons (e.g. their case manager, other staff, an advocate) in support of their position.~~

~~3.5 A finding in favor of releasing limited confidential information can be made only if, in the judgement of the person(s) charged with hearing the reconsideration, the release of limited confidential information would aid the family member or other co-habitant caregiver in providing direct care to the mentally disabled person and the benefit to the mentally disabled person resulting from such release exceeds any likely detrimental effects taking into account information presented by the mentally disabled person.~~

~~3.6 The decision to release or not to release limited confidential information shall be provided to both parties and either party shall be informed regarding their right to appeal. All decisions shall be rendered in written form and a copy of all decisions shall be forwarded to the Department. A form is attached that provides a means for notifying affected individuals regarding the decision and their right to appeal. All~~

~~appeals must be filed with The Department within ten (10) business days from the date of issuance of written notification. No release of limited confidential information shall be made prior to the expiration of the appeal period or if an appeal is filed. The Department shall give immediate notification to the agency upon the filing of an appeal.~~

4. Appeal

4.1 ~~All appeals shall be heard by the Director of the Department or their designee, hereinafter referred to as the hearing officer.~~

4.2 ~~Every attempt shall be made to render appeal decisions within fifteen (15) business days.~~

4.3 ~~The hearing officer shall speak with both the family member or other cohabitant care giver as well as the mentally disabled person. The hearing officer will elicit information to determine why the mentally disabled person does not wish to disclose limited confidential information. They shall also interview the family member or other co-habitant caregiver to ask why the information sought would aid in providing direct care to the mentally disabled person. The mentally disabled person, at their option, shall have the right to hear all information presented and to have all parties meet together. The mentally disabled person, at their option, may be accompanied by persons~~

~~(e.g. their case manager, other staff, an advocate) in support of their position.~~

4.4 ~~A finding in favor of releasing limited confidential information can be made only if, in the judgement of the hearing officer, the release of limited confidential information would aid the family member or other co-habitant caregiver in providing direct care to the mentally disabled person and the benefit to the mentally disabled person resulting from such release exceeds any likely detrimental effects taking into account information presented by the mentally disabled person.~~

4.5 ~~The decision to authorize or not to authorize release of limited confidential information shall be provided in writing to both parties and to the organization or facility providing direct care to the mentally disabled person. The decision of the hearing officer shall be final.~~

ORGANIZATION NAME:

TELEPHONE NUMBER:

ORGANIZATION ADDRESS:

~~REQUEST FOR LIMITED DISCLOSURE OF CONFIDENTIAL INFORMATION~~

~~(To be completed by a family member or other co-habitant~~

~~caregiver of a mentally disabled person)~~ **Name of Mentally Disabled Person:**

Date of Birth, if known:

Telephone Number:

Name of Caregiver:

Address:

Telephone, if different from above:

~~Information sought:~~

- ~~Mental illness diagnosis~~
- ~~Treatment facility admission/discharge date~~
- ~~Medication prescribed~~
- ~~Side effects of prescribed medication~~

~~(No other information can be disclosed without the consent of the mentally disabled person or a duly appointed guardian.)~~

~~Reason for seeking disclosure of confidential information:~~ _____

~~What care do you provide to the mentally disabled person?~~ _____

~~Without this care, would there be a serious deterioration of the level of functioning of the mentally disabled person?~~

~~How would the information you seek assist you in providing direct care to the mentally disabled person?~~

~~This form, when completed, should be mailed or delivered to the address at the top of the form. If the mentally disabled person agrees to disclosure of information, it will be provided to you. If the mentally disabled person does not agree to disclosure the information you have requested, you will be notified, and will have an opportunity to request agency reconsideration and/or appeal to the Department of Mental Health, Retardation and Hospitals.~~

ORGANIZATION NAME:

ORGANIZATION ADDRESS:

TELEPHONE NUMBER:

DATE:

NOTICE OF DECISION REGARDING LIMITED DISCLOSURE OF CONFIDENTIAL INFORMATION

The Reconsideration decision regarding limited disclosure of confidential information relating to _____ is as follows:

~~limited confidential information (regarding diagnosis, admission to or discharge from a treatment facility, name of medication prescribed, and/or side effects of such medication) shall be disclosed to the family member(s) or other co-habitant caregiver(s).~~

~~Limited confidential information (as described above) shall NOT be disclosed to the family member(s) or other co-habitant caregiver(s).~~

(~~Organization Representative~~)

~~**NOTICE TO ALL PARTIES**~~

~~You may appeal this decision to the Department of Mental Health, Retardation and Hospitals by checking the box below, completing name/address information, and sending or delivering this form (or a copy) to:~~

~~Director, Department of MHRH 600 New London Avenue~~

~~Cranston, RI 02920~~

~~Any appeal must be received at the address above within ten days of the date of this notice. If an appeal is timely filed, no disclosure of confidential information will be made during the appeal.~~

~~**NOTICE OF APPEAL** I hereby appeal the decision in this case.~~

~~**Name:** _____~~

~~**Address:** _____~~

~~**Telephone Number:** _____~~