

**DISCLOSURE OF PROTECTED HEALTH
INFORMATION FOR LAW ENFORCEMENT
PURPOSES POLICY**

RESPONSIBILITY: Designated Attorney or Designee(s)

BACKGROUND:

Disclosure of protected health information to law enforcement officials is limited to that which is required by law, court order, or, in certain circumstances, to permit identification or location of someone, or to report a crime.

POLICY:

BHHF may disclose protected health information (PHI) for a law enforcement purpose to a law enforcement official, without the written authorization of the person to whom the information pertains, if the conditions of this policy are met. The minimum necessary standard applies.

Mental Health PHI

Mental Health Information, including whether a patient is or was a mental health patient of BHHF, may not be disclosed to law enforcement persons except:

1. When authorized by the patient or representative.
2. In involuntary commitment proceedings or proceedings to determine whether a criminal defendant is competent to stand trial or not guilty by reason of mental illness.
3. Pursuant to a court order finding the information is sufficiently relevant to a case before the court to outweigh the need to protect this information.
4. To protect against a clear and substantial danger to the patient or others.
5. For treatment and internal review purposes.
6. To comply with state and federal legal and regulatory requirements, which requires such disclosure. This includes but is not limited to:
 - Death due to criminal conduct
 - Disclosure of PHI to report child abuse, or other abuse, neglect, or domestic violence policy
 - Medical examiner
 - Escapee
 - Pursuant to DHHR Policy regarding criminal conduct of patients.

Required by law: Non Mental Health PHI

BHHF may disclose non mental health protected health information:

- 1.1. As required by law, including laws that require the reporting of certain types of wounds or other physical injuries.
 - 1.1.1. Exception for abuse, neglect, and domestic violence: Disclosures required by laws regarding the reporting of abuse, neglect and

domestic violence (including child abuse reporting) must be made in accordance with the BHHF policy regarding abuse reporting. See DISCLOSURE OF PROTECTED HEALTH INFORMATION TO REPORT CHILD ABUSE, OR OTHER ABUSE, NEGLECT, OR DOMESTIC VIOLENCE.

- 1.2. In compliance with:
 - 1.2.1. A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer,
 - 1.2.2. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that the following criteria are evident:
 - 1.2.2.1. The information sought is relevant and material to a legitimate law enforcement inquiry,
 - 1.2.2.2. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.
 - 1.2.3. See SUBPOENAS, COURT ORDERS, DISCOVERY REQUESTS, AND OTHER LEGAL PROCESSES, AND THE DISCLOSURE OF PROTECTED HEALTH INFORMATION

For Identification

BHHF may disclose only the following protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person:

- 1.2. Name and address
- 1.3. Date and place of birth
- 1.4. Social security number
- 1.5. ABO blood type and rh factor
- 1.6. Type of injury
- 1.7. Date and time of treatment
- 1.8. Date and time of death, if applicable
- 1.9. A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.
- 1.10. The following may NOT be disclosed in response to such a request without a court order or judicial authorization: any protected health information related to the individual's DNA or DNA analysis, dental

records, or typing, samples or analysis of body fluids or tissue (other than ABO blood type and rh factor).

NOTES

- This restriction does not limit disclosures that are necessary in a disaster. See BHHF policy: DISCLOSURE OF PROTECTED HEALTH INFORMATION IN A DISASTER.
- This restriction does not apply to the disclosure of the PHI of decedents to coroners and medical examiners. See EXTENSION OF PRIVACY PROTECTION TO DECEASED INDIVIDUALS.

Crime victim

BHHF may disclose protected health information in response to a law enforcement official's request for such information about an individual who is, or is suspected to be, a victim of a crime, but only in the following circumstances:

- 1.11. The disclosure is required by law (including laws regarding reporting abuse, or actual abuse, neglect, or domestic violence directed at children or adults), or
- 1.12. The individual has agreed that the information may be disclosed to the law enforcement official, or
- 1.13. When the individual cannot agree to the disclosure because of incapacity or emergency circumstances, if:
 - 1.0 The law enforcement official represents that the requested information is needed to determine whether a violation of law has occurred by a person other than the victim, and such information is not intended to be used against the victim, and
 - 2.0 The law enforcement official represents that immediate law enforcement activity depends upon the disclosure and would be materially and adversely affected by waiting until the individual is able to agree to the disclosure, and
 - 3.0 The disclosure is in the best interests of the individual as determined by an BHHF worker in the exercise of professional judgment.

Death due to criminal conduct

BHHF may disclose protected health information about an individual who has died, to law enforcement officials, for the purpose of alerting them of the death of the individual, if BHHF has a suspicion that such death may have resulted from criminal conduct. The BHHF General Counsel must approve any such disclosure.

Evidence of a crime on premises

A member of the BHHF workforce (worker) may disclose protected health information to a law enforcement official if he or she believes, in good faith, that the PHI constitutes evidence of criminal conduct that occurred on BHHF premises.

Evidence of a crime off premises

In addition to disclosing PHI that appears to be evidence of a crime on BHHF premises, a worker providing emergency health care in response to a medical emergency off the premises may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

- 1.14. The commission and nature of a crime,
- 1.15. The location of such crime,
- 1.16. The victim(s) of the crime, or
- 1.17. The identity, description, and location of the perpetrator of a crime.

Abuse, neglect, or domestic violence

If the worker believes that the criminal conduct constitutes abuse, neglect, or domestic violence, then this policy does not apply and any disclosures of PHI are governed by the BHHF policy: DISCLOSURE OF PROTECTED HEALTH INFORMATION TO REPORT CHILD ABUSE, OR OTHER ABUSE, NEGLECT, OR DOMESTIC VIOLENCE.

Bystander or victim

This policy does not limit a worker's ability to report the details of a suspected crime of which he or she becomes aware in the capacity of a bystander or a victim. It only applies to PHI that the worker acquires while acting in the capacity of a member of the BHHF workforce.

To apprehend a perpetrator

A health care professional or other worker may disclose protected health information to a law enforcement officer, as necessary, to identify or apprehend an individual who has admitted to a violent crime which the worker believes, in good faith, has resulted in serious physical harm to the victim.

1. Only the following information may be disclosed:
 - The statement that constitutes admission of the crime,
 - Name and address,
 - Date and place of birth,
 - Social security number,
 - ABO blood type and rh factor,
 - Type of injury, if any,

Date and time of treatment,

Date and time of death, if applicable, and

A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

2. **Exception:** The information about violent criminal conduct to which a patient has admitted, MAY NOT be disclosed:

If the information was obtained in the course of counseling or psychiatric or psychological therapy; or,

If the information was obtained in the course of other treatment (other than counseling or therapy), if the intent of that treatment was to affect the propensity to commit the criminal conduct that would be the basis for the disclosure, or

If the information was obtained as a result of a request by an individual to be referred for treatment (including counseling or therapy) to affect the propensity to commit the criminal conduct that would be the basis for the disclosure.

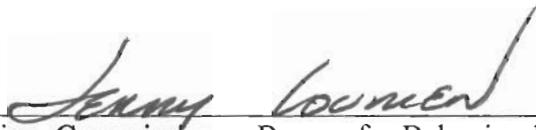
The reason for this exception is to avoid discouraging individuals from speaking accurately in the course of counseling or therapy sessions, or to discourage seeking other treatment to reduce the likelihood that someone who has acted violently in the past will do so again in the future. This prohibition of disclosure is triggered once an individual has made a request to initiate or be referred to treatment, therapy, or counseling for the propensity to commit the violent criminal conduct.

A health care professional's "duty to warn," in order to prevent a serious and imminent threat to the health or safety of another person or to the general public, may take precedence over this policy. See the DISCLOSURE OF PROTECTED HEALTH INFORMATION WITHOUT AUTHORIZATION, TO AVERT A SERIOUS THREAT TO HEALTH OR SAFETY policy.

Escapee

A worker may disclose protected health information to a law enforcement officer, as necessary, to identify or apprehend an individual who appears, from the circumstances, to have escaped from a correctional institution or other lawful custody. In this case, the limitations listed above do not apply.

Effective Date: 4/14/03
Dates Revised:

A handwritten signature in cursive script, reading "Jerome E. Lovrien". The signature is written in black ink and is positioned above a horizontal line.

Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities