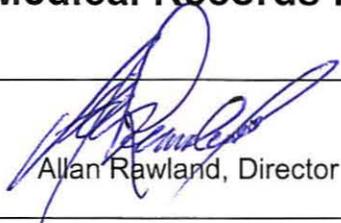


**County of San Bernardino  
Department of Behavioral Health**

**Unauthorized Access of Confidential Medical Records Policy**

**Effective Date** 04/30/2009  
**Approval Date** 04/30/2009

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Allan Rawland, Director

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**Policy** It is the policy of the Department of Behavioral Health (DBH) to protect against the unauthorized or unlawful access, use, or disclosure of confidential medical information in accordance with the Confidentiality of Medical Information Act (CMIA).

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**Purpose** To implement Assembly Bill 211 (**AB 211**) and Senate Bill 541 (**SB 541**) for the assurance of compliance with CMIA by:

- Establishing and implementing appropriate administrative, technical and physical safeguards that protect the privacy of a client's medical information.
- Reasonably safeguarding confidential medical information from any unauthorized or unlawful access, use, or disclosure.
- Providing training to all staff that is impacted by the implementation of this policy.
- Informing any provider of health care of the imposition of administrative fines for violating unauthorized access penalties, for violating immediate jeopardy deficiencies, and for deficiencies not causing immediate jeopardy.
- Implementing reporting procedures to be followed when violation of this policy has been identified.
- Enforcing appropriate sanctions that will be applied to employees who violate the requirements of CMIA and/or DBH's Unauthorized Access of Confidential Medical Records Policy.

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**Definitions** **Unauthorized Access:** inappropriate access, review or viewing of client medical information without direct need for medical diagnosis, treatment or other unlawful use not permitted by either CMIA, or by other statutes or regulations governing the lawful access, use or disclosure of medical information.

**Medical Information:** any individually identifiable information, in electronic or physical form, in possession of, or derived from a provider of health care regarding the client's medical history, mental or physical condition, or treatment. Individually identifiable information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the person's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals that individual's identity.

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**County of San Bernardino  
Department of Behavioral Health**

**Unauthorized Access of Confidential Medical Records Policy,**  
Continued

**Definitions**  
(continued)

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**Provider of Health Care:** any person licensed or certified pursuant to the Business and Professions Code or certified pursuant to the Health and Safety code or any clinic, or health facility licensed pursuant to the Health and Safety Code.

**Willfully:** simply a purpose or willingness to commit an act, or make the omission referred to and does not require any intent to violate law, or to injure another, or to acquire any advantage.

**Knowingly:** a knowledge that the facts exist which brings about the act or omission and does not require any knowledge of the unlawfulness of such act or omission.

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**Violations,  
Penalties, and  
Recommended  
Disciplinary  
Actions**

Any violation of unauthorized or unlawful access, use, or disclosure of confidential medical information may result in any one of or a combination of the following:

- Any violation that results in economic loss or personal injury to a client is punishable as a misdemeanor.
  - The injured party may bring personal action for negligent violation and may recover nominal damages of \$1,000 and any actual damages sustained.
  - Any person or entity that is not permitted to receive confidential medical information who does receive that information and knowingly and/or willfully obtains, discloses, or uses confidential medical information without written authorization from the patient, shall be assessed a penalty not to exceed \$250,000 per violation.
  - Appropriate reporting to California Department of Public Health (CDPH) and California Health and Human Services Agency, Office of Health Information Integrity (CalOHII) which may result in the imposition of administrative penalties.
  - Fines and penalties imposed by CalOHII are dependent on whether a licensed or non-licensed professional has committed the violation.
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# County of San Bernardino Department of Behavioral Health

## Unauthorized Access of Confidential Medical Records Policy, Continued

**Violations,  
Penalties, and  
Recommended  
Disciplinary  
Actions**  
(continued)

Listed below are the types of violations, possible resulting penalty impositions, and recommended DBH disciplinary actions. The following recommended disciplinary actions are identified in order to provide guidance in policy enforcement and are not meant to be all-inclusive. If formal discipline is deemed necessary, DBH shall consult with the Human Resources Officer prior to taking action. When appropriate, progressive disciplinary action steps shall be followed allowing the employee to correct the behavior which caused the disciplinary action. Depending on the severity of the violation, any single act may result in disciplinary action up to and including termination of employment or contract with DBH.

Violation	Possible Penalties and Recommended Disciplinary Action
Negligent access, use, and/or disclosure of confidential medical information	1. CDPH/CalOHII Penalty: <ul style="list-style-type: none"> <li>• assessment of penalty not to exceed \$2,500 per violation (applicable to licensed professionals as well as unlicensed persons or entities)</li> </ul> 2. County DBH Disciplinary Action: <ul style="list-style-type: none"> <li>• Verbal or written reprimand*</li> <li>• Retraining on safeguarding confidential medical information</li> </ul>
Knowing/willful access, use, and/or disclosure of confidential medical information	1. CDPH/CalOHII Penalty: <ul style="list-style-type: none"> <li>• Licensed Professionals               <ol style="list-style-type: none"> <li>1. 1<sup>st</sup> violation = \$2,500 per violation</li> <li>2. 2<sup>nd</sup> violation = \$10,000 per violation</li> <li>3. 3<sup>rd</sup> violation = \$25,000 per violation</li> </ol> </li> <li>• Persons or entities = not to exceed \$25,000</li> </ul> 2. County DBH Disciplinary Action: <ul style="list-style-type: none"> <li>• Letter of Reprimand; or suspension*</li> <li>• Retraining on safeguarding confidential medical information</li> </ul>

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# County of San Bernardino Department of Behavioral Health

## Unauthorized Access of Confidential Medical Records Policy, Continued

### Violations, Penalties, and Recommended Disciplinary Actions (continued)

Violation	Possible Penalties and Recommended Disciplinary Action
Knowing/Willful access, use, and/or disclosure of confidential medical information for financial gain	1. CHDP/CalOHII Penalty: <ul style="list-style-type: none"> <li>• Licensed Professionals               <ol style="list-style-type: none"> <li>1. 1<sup>st</sup> violation = \$5,000 per violation</li> <li>2. 2<sup>nd</sup> violation = \$25,000 per violation</li> <li>3. 3<sup>rd</sup> violation = \$250,000 per violation</li> </ol> </li> <li>• Persons or entities = not to exceed \$250,000</li> </ul> 2. County DBH Disciplinary Action: <ul style="list-style-type: none"> <li>• Dismissal of employee</li> <li>• Possible referral to authorities in cases where criminal conduct is suspected</li> </ul> All violations are subject to disgorgement of proceeds.
Failure of DBH to prevent access, use and/or disclosure of confidential medical information	\$25,000 per patient whose medical information was unlawfully accessed, used, and/or disclosed and up to \$17,500 per subsequent occurrence of unlawful access, use, and/or disclosure of that client's medical information.

Note: Disciplinary actions imposed by DBH are not conditional upon licensure.

\*The Letter of Reprimand must be reviewed by the Human Resources Officer before given to the employee.

#### **HIPAA Compliance**

While this policy to protect against unauthorized or unlawful access, use or disclosure of confidential medical records has been implemented to ensure compliance with state legislation, the HIPAA Violation Sanctions Policy was implemented to ensure compliance with federal legislation. This policy does not replace the requirements of HIPAA compliance and both policies are to be adhered to by all DBH employees.

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**County of San Bernardino  
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**Unauthorized Access of Confidential Medical Records Policy,**  
Continued

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**Reporting  
Responsibility**

It is the responsibility of each employee, regardless of job title and responsibilities, to report any unlawful or unauthorized access, use or disclosure of confidential medical information. Be advised that no adverse action will be taken against any person who reports a suspected or actual violation in accordance with the legislation so long as the report is made in good faith. Failure to report a known or suspected violation of this policy may result in disciplinary action up to and including termination.

DBH may, in some instances, report substantiated incidents of unlawful or unauthorized access to, use, or disclosure of confidential medical information to CalOHII no later than five (5) days after the unlawful or unauthorized access, use, or disclosure has been substantiated. This will be accomplished by:

- Immediately responding to all reports of alleged unlawful or unauthorized access, use, or disclosure of confidential medical information.
- Completing a thorough and timely investigation to determine whether unlawful or unauthorized access, use, or disclosure has occurred.
- Reporting the disclosure to the County of San Bernardino, Office of Compliance and Ethics who will track all reports that may be made to the appropriate state agency.

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**Reference**

California Civil Code, Section 56.36  
California Health and Safety Code, §130200-130205  
California Health and Safety Code, §1280.1-1280.15  
The Confidentiality of Medical Information Act (Part 2.6 commencing with Section 56 of Division 1 of the Civil Code)

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**Related  
Policies**

San Bernardino County Standard Practice 16-01SP1 [Information Breach](#)  
San Bernardino County Policy Manual 16-02 [Protection of Individually Identifiable Health Information](#)  
San Bernardino County Standard Practice 16-02SP [Protection of Individually Identifiable Health Information](#)  
DBH SPM COM 06-905 [Client Privacy and Confidentiality of Protected Health Information](#)  
DBH SPM COM 06-0926 [HIPAA Violation Sanctions Policy](#)  
DBH SPM COM 07-0901 [Sending Confidential Information by Facsimile Policy](#)  
DBH SPM COM 08-0904 [Medical Records Security Policy for Outpatient Services](#)

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