

§ 33.13 Clinical records; confidentiality.

(a) A clinical record for each patient or client shall be maintained at each facility licensed or operated by the office of mental health or the office for people with developmental disabilities, hereinafter referred to as the offices. For the purposes of this section, the term "facility" shall mean "facility" as such term is defined in section 1.03 of this chapter, provided, however, such term shall also include any provider of services for individuals with mental illness or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices, including any such provider which is exempt from the requirement for an operating certificate under article sixteen or article thirty-one of this chapter. The record shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client. The commissioners of such offices, by regulation, each shall determine the scope and method of recording information, including data pertaining to admission, legal matters affecting the patient or client, records and notation of course of care and treatment, therapies, restrictions on patient's or client's rights, periodic examinations, and such other information as he or she may require.

* (b) The commissioners may require that statistical information about patients or clients be reported to the offices.

* NB Effective until June 30, 2027

* (b) The commissioners may require that statistical information about patients or clients be reported to the offices. Names of patients treated at out-patient or non-residential facilities shall not be required as part of any such reports. Hospitals licensed by the office of mental health and general hospitals shall provide to the office of mental health, upon request, records relating to persons described in subdivision (j) of section 7.09 of this chapter who may be disqualified from possessing a firearm pursuant to 18 USC 422(4)(d).

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(c) Such information about patients or clients reported to the offices, including the identification of patients or clients, clinical

records or clinical information tending to identify patients or clients, and records and information concerning persons under consideration for proceedings pursuant to article ten of this chapter, at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

1. pursuant to an order of a court of record requiring disclosure upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality, provided, however, that nothing herein shall be construed to affect existing rights of employees in disciplinary proceedings.

2. to the mental hygiene legal service.

3. to attorneys representing patients or clients in proceedings in which the patients' or clients' involuntary hospitalization or assisted outpatient treatment is at issue.

4. to the justice center for the protection of people with special needs.

5. to the medical review board of the state commission of correction when such board has requested such information with respect to the death of a named person, or, with the consent of a patient or client when such board has requested information about the patient or client providing that such board requires such information in the exercise of its statutory functions, powers and duties. Information, books, records or data which are confidential as provided by law shall be kept confidential by the state commission and any limitation on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the medical review board.

6. to an endangered individual and a law enforcement agency when a treating psychiatrist or psychologist has determined that a patient or client presents a serious and imminent danger to that individual. The reasons for any such disclosures shall be fully documented in the

clinical record. Nothing in this paragraph shall be construed to impose an obligation upon a treating psychiatrist or psychologist to release information pursuant to this paragraph.

7. with the consent of the patient or client or of someone authorized to act on the patient's or client's behalf, to persons and entities who have a demonstrable need for such information and who have obtained such consent, provided that disclosure will not reasonably be expected to be detrimental to the patient, client or another provided, however, that release of such information to a patient or client shall not be governed by this subdivision.

8. to the state board for professional medical conduct or the office of professional discipline or their respective representatives when such persons or entities request such information in the exercise of their statutory function, power and duties provided, however, that no such information shall be released when it concerns the subject of an inquiry who is also a patient or client, except pursuant to paragraph one of this subdivision.

9. with the consent of the appropriate commissioner, to:

(i) governmental agencies, insurance companies licensed pursuant to the insurance law and other third parties requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, such information to be kept confidential and limited to the information required.

(ii) persons and agencies needing information to locate missing persons or to governmental agencies in connection with criminal investigations, such information to be limited to identifying data concerning hospitalization.

(iii) qualified researchers upon the approval of the institutional review board or other committee specially constituted for the approval of research projects at the facility, provided that the researcher shall in no event disclose information tending to identify a patient or client.

(iv) a coroner, a county medical examiner, or the chief medical examiner for New York city upon the request of a facility director that

an investigation be conducted into the death of a patient or client for whom such record is maintained.

(v) appropriate persons and entities when necessary to prevent imminent serious harm to the patient or client or another person, provided, however, nothing in this subparagraph shall be construed to impose an obligation to release information pursuant to this subparagraph.

(vi) a district attorney when such request for information is in connection with and necessary to the furtherance of a criminal investigation of patient or client abuse.

(vii) appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under article ten of this chapter.

(viii) to the attorney general, case review panel, or psychiatric examiners described in article ten of this chapter, when such persons or entities request such information in the exercise of their statutory functions, powers and duties under article ten of this chapter.

10. to a correctional facility, when the chief administrative officer has requested such information with respect to a named incarcerated individual of such correctional facility as defined by subdivision three of section forty of the correction law or to the department of corrections and community supervision, when the department has requested such information with respect to a person under its jurisdiction or an incarcerated individual of a state correctional facility, when such incarcerated individual is within four weeks of release from such institution to community supervision. Information released pursuant to this paragraph may be limited to a summary of the record, including but not limited to: the basis for referral to the facility; the diagnosis upon admission and discharge; a diagnosis and description of the patient's or client's current mental condition; the current course of treatment, medication and therapies; and the facility's recommendation for future mental hygiene services, if any. Such information may be forwarded to the department of corrections and community supervision staff in need of such information for the purpose of making a determination regarding an incarcerated individual's health care, security, safety or ability to participate in programs. In the event an

incarcerated individual is transferred, the sending correctional facility shall forward, upon request, such summaries to the chief administrative officer of any correctional facility to which the incarcerated individual is subsequently incarcerated. The office of mental health and the office for people with developmental disabilities, in consultation with the commission of correction and the department of corrections and community supervision, shall promulgate rules and regulations to implement the provisions of this paragraph.

11. to a qualified person pursuant to section 33.16 of this chapter.

12. to a director of community services as defined in article nine of this chapter or his or her designee, provided that such director or his or her designee (i) requests such information in the exercise of his or her statutory functions, powers and duties pursuant to section 9.37, 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter; or (ii) the disclosure of information is required pursuant to section 9.46 of this chapter.

13. to the state division of criminal justice services for the sole purposes of:

(i) providing, facilitating, evaluating or auditing access by the commissioner of mental health to criminal history information pursuant to subdivision (i) of section 7.09 of this chapter; or

(ii) providing information to the criminal justice information services division of the federal bureau of investigation by the commissioner of mental health or the commissioner of developmental disabilities, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

14. to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system, regarding attempts to purchase or otherwise take possession of firearms, in accordance with applicable federal laws or regulations.

15. to the division of criminal justice services, names and other non-clinical identifying information for the sole purpose of implementing the division's responsibilities and duties under sections 400.00 and 400.02 of the penal law.

16. to a mental health incident review panel, or members thereof, established by the commissioner pursuant to section 31.37 of this title, in connection with incident reviews conducted by such panel.

17. to the agency designated by the governor pursuant to subdivision (b) of section 558 of the executive law to provide protection and advocacy services and administer the protection and advocacy system as provided for by federal law. Such agency shall not be charged any fee for copies of records obtained from a facility under this article.

18. to the board of correction of the city of New York when such board has requested such information with respect to the death of a named person, or, with the consent of a patient or client when such board has requested information about the patient or client providing that such board requires such information in the exercise of its functions, powers and duties. Information, books, records or data which are confidential as provided by law shall be kept confidential by the board of correction of the city of New York and any limitation on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the board of correction of the city of New York.

* (d) Nothing in this section shall prevent the electronic or other exchange of information concerning patients or clients, including identification, between and among (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one of this chapter, or pursuant to agreement with the department, and (ii) the department or any of its licensed or operated facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such

patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Furthermore, subject to the prior approval of the commissioner of mental health, hospital emergency services licensed pursuant to article twenty-eight of the public health law shall be authorized to exchange information concerning patients or clients electronically or otherwise with other hospital emergency services licensed pursuant to article twenty-eight of the public health law and/or hospitals licensed or operated by the office of mental health; provided that such exchange of information is consistent with standards, developed by the commissioner of mental health, which are designed to ensure confidentiality of such information. Additionally, information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

* NB Effective until June 30, 2027

* (d) Nothing in this section shall prevent the exchange of information concerning patients or clients, including identification, between (i) facilities or others providing services for such patients or clients pursuant to an approved local services plan, as defined in article forty-one, or pursuant to agreement with the department and (ii) the department or any of its facilities. Neither shall anything in this section prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 as amended, and any regulations promulgated thereunder. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information.

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(e) Clinical information tending to identify patients or clients and clinical records maintained at a facility not operated by the offices, shall not be a public record and shall not be released to any person or agency outside such facility except pursuant to subdivisions (b), (c) and (d) of this section. The director of such a facility may consent to the release of such information and records, subject to regulation by the commissioner, pursuant to the exceptions stated in subdivision (c) of this section; provided that, for the purpose of this subdivision, such consent shall be deemed to be the consent otherwise required of the commissioner pursuant to subdivision (c) of this section. Nothing in this subdivision shall be construed to limit, restrict or otherwise affect access to such clinical information or records by the mental hygiene legal service, the commission on quality of care for the mentally disabled or the offices when such access is authorized elsewhere in law.

(f) All records of identity, diagnosis, prognosis, treatment, care coordination or any other information contained in a patient or client's record shall be confidential unless disclosure is permitted under subdivision (c) of this section. Any disclosure made pursuant to this section shall be limited to that information necessary and required in light of the reason for disclosure. Information so disclosed shall be kept confidential by the party receiving such information and the limitations on disclosure in this section shall apply to such party. Except for disclosures made to the mental hygiene legal service, to persons reviewing information or records in the ordinary course of insuring that a facility is in compliance with applicable quality of care standards, or to governmental agents requiring information necessary for payments to be made to or on behalf of patients or clients pursuant to contract or in accordance with law, a notation of all such disclosures shall be placed in the clinical record of that individual who shall be informed of all such disclosures upon request; provided, however, that for disclosures made to insurance companies licensed pursuant to the insurance law, such a notation need only be entered at the time the disclosure is first made.