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§4–307.

(a) (1) In this section the following words have the meanings indicated.

(2) "Case management" means an individualized recipient centered service designed to assist a recipient in obtaining effective mental health services through the assessing, planning, coordinating, and monitoring of services on behalf of the recipient.

(3) "Core service agency" means an organization approved by the Behavioral Health Administration to manage mental health resources and services in a designated area or to a designated target population.

(4) "Director" means the Director of the Behavioral Health Administration or the designee of the Director.

(5) "Mental health director" means the health care professional who performs the functions of a clinical director or the designee of that person in a health care, detention, or correctional facility.

(6) (i) "Personal note" means information that is:

1. The work product and personal property of a mental health provider; and

2. Except as provided in subsection (d)(3) of this section, not discoverable or admissible as evidence in any criminal, civil, or administrative action.

(ii) Except as provided in subsection (d)(2) of this section, a medical record does not include a personal note of a mental health care provider, if the mental health care provider:

1. Keeps the personal note in the mental health care provider's sole possession for the provider's own personal use;

2. Maintains the personal note separate from the recipient's medical records; and

3. Does not disclose the personal note to any other person except:

A. The mental health provider's supervising health care provider that maintains the confidentiality of the personal note;

B. A consulting health care provider that maintains the

confidentiality of the personal note; or

C. An attorney of the health care provider that maintains the confidentiality of the personal note.

(iii) "Personal note" does not include information concerning the patient's diagnosis, treatment plan, symptoms, prognosis, or progress notes.

(b) The disclosure of a medical record developed in connection with the provision of mental health services shall be governed by the provisions of this section in addition to the other provisions of this subtitle.

(c) When a medical record developed in connection with the provision of mental health services is disclosed without the authorization of a person in interest, only the information in the record relevant to the purpose for which disclosure is sought may be released.

(d) (1) To the extent a mental health care provider determines it necessary and appropriate, the mental health care provider may maintain a personal note regarding a recipient.

(2) A personal note shall be considered part of a recipient's medical records if, at any time, a mental health care provider discloses a personal note to a person other than:

(i) The provider's supervising health care provider;

(ii) A consulting health care provider;

(iii) An attorney of the health care provider; or

(iv) A recipient under paragraph (3) of this subsection.

(3) The provisions of this subsection do not prohibit the disclosure, discovery, or admissibility of a personal note regarding a recipient who has initiated an action for malpractice, an intentional tort, or professional negligence against the health care provider.

(e) (1) Except as otherwise provided in paragraphs (3), (4), and (5) of this subsection, if the disclosure of a portion of a medical record relating to a psychological test would compromise the objectivity or fairness of the test or the testing process, a mental health care provider may not disclose that portion of the medical record to any person, including a subject of the test.

(2) The raw test data relating to a psychological test is only discoverable or admissible as evidence in a criminal, civil, or administrative action on the determination by the court or administrative hearing officer that the expert witness for the party seeking the raw test data is qualified by the appropriate training,

education, or experience to interpret the results of that portion of the raw test data relating to the psychological test.

(3) (i) A recipient who has been the subject of a psychological test may designate a psychologist licensed under Title 18 of the Health Occupations Article or a psychiatrist licensed under Title 14 of the Health Occupations Article to whom a health care provider may disclose the medical record.

(ii) The recipient shall:

1. Request the disclosure authorized under this paragraph in writing; and

2. Comply with the provisions of § 4-304 of this subtitle.

(4) A health care provider may disclose a medical record relating to a psychological test as provided under § 4-305(b)(2)(i) of this subtitle.

(5) The provisions of this subsection may not restrict access to or affect the disclosure of a medical record which is also an education record under the federal Individuals with Disabilities Education Act, the federal Family Educational Rights and Privacy Act, or any federal and State regulations that have been adopted to implement those laws.

(f) Notwithstanding any other provision of this subtitle, a person in interest shall have the right to obtain a medical record of a recipient that is developed in conjunction with a mental health evaluation relating to obtaining or continuing employment, if the evaluation has been performed at the request of or on behalf of an employer or prospective employer:

(1) In connection with a civil action or U.S. Equal Employment Opportunity Commission complaint initiated by the person in interest; or

(2) On a written authorization of the employer or prospective employer.

(g) A health care provider may disclose a medical record that relates to and identifies more than one recipient in group or family therapy only:

(1) On the authorization of a person in interest for each recipient;

(2) As provided in this subtitle; or

(3) As otherwise provided by law.

(h) This section may not be construed to prevent the disclosure of a medical record that relates to the provision of mental health services between or among the health care providers that participate in the approved plan of a core service agency for the delivery of mental health services, if a recipient:

(1) Has received a current list of the participating providers; and

(2) Has signed a written agreement with the core service agency to participate in the client information system developed by the agency.

(i) If an individual given access to a medical record that relates to the provision of mental health services signs an acknowledgment of the duty under this Act not to redisclose personal identifying information about a recipient, this section may not be construed to prevent the disclosure of the medical record for rate review, auditing, health planning, licensure, approval, or accreditation of a facility by governmental or professional standard setting entities.

(j) (1) A health care provider may disclose a medical record without the authorization of a person in interest:

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility if:

1. The recipient has been involuntarily committed under State law or a court order to the detention or correctional facility requesting the medical record; and

2. After a review of the medical record, the health care provider who is the custodian of the record is satisfied that disclosure is necessary for the proper care and treatment of the recipient;

(ii) As provided in § 5-609 of the Courts and Judicial Proceedings Article;

(iii) 1. If a health care provider is a facility as defined in § 10-101 of this article, to a law enforcement agency concerning a recipient who:

A. Has been admitted involuntarily or by court order to the facility; and

B. Is on an unauthorized absence or has otherwise left the facility without being discharged or released;

2. The facility director may disclose to the law enforcement agency identifying information and only such further information that the director believes is necessary to aid the law enforcement agency in locating and apprehending the recipient for the purpose of:

A. Safely returning the recipient to custody; or

B. Fulfilling the provisions of subparagraph (ii) of this paragraph;

(iv) If a health care provider is a facility as defined in § 10-101 of this article, the facility director may confirm or deny the presence in the facility of a recipient to a parent, guardian, next of kin, or any individual who has a significant interest in the status of the recipient if that individual has filed a missing persons report regarding the recipient; and

(v) To allow for the service of process or a court order in a facility when appropriate arrangements have been made with the facility director so as to minimize loss of confidentiality.

(2) When a disclosure is made under this subsection, documentation of the disclosure shall be inserted in the medical record of the recipient.

(k) (1) A health care provider shall disclose a medical record without the authorization of a person in interest:

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility or to another inpatient provider of mental health services in connection with the transfer of a recipient from an inpatient provider, if:

1. The health care provider with the records has determined that disclosure is necessary for the continuing provision of mental health services; and

2. The recipient is transferred:

A. As an involuntary commitment or by court order to the provider;

B. Under State law to a juvenile or adult detention or correctional facility; or

C. To a provider that is required by law or regulation to admit the recipient;

(ii) To the State designated protection and advocacy system for mentally ill individuals under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, if:

1. The State designated protection and advocacy system has received a complaint regarding the recipient or the director of the system has certified in writing to the chief administrative officer of the health care provider that there is probable cause to believe that the recipient has been subject to abuse or neglect;

2. The recipient by reason of mental or physical condition is unable to authorize disclosure; and

3. A. The recipient does not have a legal guardian or other legal representative who has the authority to consent to the release of health care

information; or

B. The legal guardian of the recipient is a representative of a State agency;

(iii) To another health care provider or legal counsel to the other health care provider prior to and in connection with or for use in a commitment proceeding in accordance with Title 10, Subtitle 6 or Title 12 of this article;

(iv) In accordance with a court order, other than compulsory process compelling disclosure, as permitted under § 9–109(d), § 9–109.1(d), or § 9–121(d) of the Courts and Judicial Proceedings Article, or as otherwise provided by law, to:

1. A court;

2. An administrative law judge;

3. A health claims arbitrator; or

4. A party to a court, administrative, or arbitration proceeding;

(v) In accordance with a subpoena for medical records on specific recipients:

1. To health professional licensing and disciplinary boards for the sole purpose of an investigation regarding licensure, certification, or discipline of a health professional or the improper practice of a health profession; and

2. To grand juries, prosecution agencies, and law enforcement agencies under the supervision of prosecution agencies for the sole purposes of investigation and prosecution of a provider for theft and fraud, related offenses, obstruction of justice, perjury, unlawful distribution of controlled substances, and of any criminal assault, neglect, patient abuse or sexual offense committed by the provider against a recipient, provided that the prosecution or law enforcement agency shall:

A. Have written procedures which shall be developed in consultation with the Director to maintain the medical records in a secure manner so as to protect the confidentiality of the records; and

B. In a criminal proceeding against a provider, to the maximum extent possible, remove and protect recipient identifying information from the medical records used in the proceeding; or

(vi) In the event of the death of a recipient, to the office of the medical examiner as authorized under § 5–309 or § 10–713 of this article.

(2) If a recipient believes that a medical record has been inappropriately obtained, maintained, or disclosed under paragraph (1)(vi) of this subsection, the recipient may petition the State prosecutor for an investigation of the allegation.

(3) Except in a proceeding relating to payment for the health care of a recipient, the medical record of a recipient and any information obtained as a result of disclosure under paragraph (1)(vi) of this subsection is disclosable, notwithstanding any privilege in law, but may not be used in any proceeding against the recipient.

(4) A written request for disclosure or written confirmation of an oral request in an emergency that justifies the need for disclosure shall be inserted in the medical record of the recipient.

(5) Documentation of the disclosure shall be inserted in the medical record of the recipient.

(6) This subsection may not preclude a health care provider, a recipient, or person in interest from asserting in a motion to quash or a motion for a protective order any constitutional right or other legal authority in opposition to disclosure.

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