



State of New Jersey

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DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES ADMINISTRATIVE BULLETIN TRANSMITTAL MEMORANDUM

March 13, 2015

Subject: Administrative Bulletin 3:27 – Access to Consumer and Division Information by Protection and Advocacy for Mentally Ill Individuals Acts (PAMII) AGENCIES

Administrative Bulletin 3:39 - Patient Access by Non-Staff Visitors

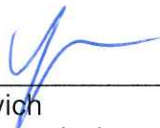
Attached please find a new Administrative Bulletin defining the protocol that allows individuals who are lawfully present on the grounds of a State Psychiatric Hospital, specifically representatives from the Office of the Public Defender (OPD), Disability Rights of New Jersey (DRNJ), County Counsel, and provider agencies of the Division of Mental Health and Addiction Services (DMHAS), hereinafter known as "non-staff visitors," to access patients in a safe manner. Please review the Bulletin and this memo and take any policy action necessary to bring your hospital into compliance with the Bulletin and please distribute to all staff.

This Bulletin provides a means of facilitating constructive working relationships between non-staff visitors, hospital staff and administration in order to ensure the safety and security of staff, patients and visitors at the State Psychiatric Facilities. This Bulletin establishes and confirms that non-staff visitors must: (1) undergo a training course provided by the state psychiatric hospitals in hospital policy and protocols; (2) provide their credentials to State Psychiatric Hospital CEOs and wear identification badges so that hospital staff can recognize them; (3) present themselves at a designated check-in entity to ensure so that they are aware of the specific patient's current clinical condition before any interaction and interview and to receive keys or swipe card and return same at the end of the visit; and (4) follow the protocols in the Bulletin should a patient's condition require the termination of an interview or intervention and observation of the interview by staff.

The Bulletin is intended to balance the privacy and confidentiality needs of the patient and non-staff visitor with the safety and secure functioning of the hospital community. This memo is also utilized in conjunction with the updated policy AB 3:27, which recognizes the protection and advocacy functions of both OPD and DRNJ. AB 3:27 is utilized when OPD and DRNJ are

seeking access to patients and records for protection and advocacy purposes. AB 3:39 is utilized for access to patients for purposes of preparation and representation before civil commitment hearings and other general forms of routine access.

If OPD and DRNJ are exercising their respective authority for protection and advocacy purposes, hospital staff should be aware the rights to patient and record access are different than the routine access granted under AB: 3:39. As such, both policies must be reviewed carefully to ensure. OPD and DRNJ have proper access for their recognized protection and advocacy functions. If there are any questions as to access to patient and records under either of these policies, please refer all questions to the Office of Legal and Regulatory Affairs for assistance.



Lynn A. Kovich
Assistant Commissioner

Attachments

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

ADMINISTRATIVE BULLETIN 3:27

EFFECTIVE DATE: May 24, 2004

REVISED: March 23, 2015

SUBJECT: ACCESS TO CONSUMER AND DIVISION INFORMATION BY PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ACT (PAMII) AGENCIES

I. PURPOSE

To provide a standardized guideline consistent with federal and State laws and regulations, Administrative Orders and advice from the Division of Law concerning the disclosure of information to the State's PAMII agencies. The purpose of this Bulletin is set forth the standards concerning the obligations of the PAMII organizations in their role in monitoring the care and treatment of patients according to their federal and state roles and the facilities to provide proper care and treatment in a safe environment. The purpose of this Bulletin is to facilitate a constructive working relationship between the PAMII agencies and the state facilities as defined in this Bulletin.

II. SCOPE

This bulletin applies to all Division of Mental Health and Addiction Services (Division) staff who are responsible for the creation, receipt, or retention of consumer records, incident reports, peer review documents, licensing and accreditation documents, or other information that reflects the Division's response to possible abuse or neglect of consumers of mental health services

III. AUTHORITY

42 U.S.C. 10802(4) and 10805(4)

42 CFR §51.41, 51.42

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996, codified at 42 U.S.C. 1320d, et seq. , and implementing privacy regulations at 45 CFR Part 164.

NJSA 30:4-3.25

NJSA 30:4-24,3

NJSA 52:27EE-29

NJSA 47:1A-1 et seq. (Open Public Records Act/OPRA)

Slocum v. Altman (Docket No. MRS-L-3750, June 19, 2000 order of Reginald Stanton, A.J.S.C.)

Administrative Order 2:01

Administrative Bulletin 3:28

IV. DEFINITIONS

FACILITY - for purposes of this policy "facility" shall mean the Department of Human Services, and the Central and Regional Offices of the Division of Mental Health and Addiction Services, the regional psychiatric hospitals and the Ann Klein Forensic Center (AKFC), including all areas which are used by consumers, are accessible to consumers, and all programs and their clients.

PAMII AGENCY - the designated New Jersey PAMII agencies in New Jersey are Disability Rights New Jersey, Inc. and the Division of Mental Health and Guardianship Advocacy in the Office of the Public Defender.

PROPERLY IDENTIFIED - means a person who has signed in at a central location in the facility and who displays during his or her entire visit an identification card issued by a PAMII agency or who carries a written designation as an authorized agent of a PAMII agency.

RECORDS

1. For purposes of this bulletin only, facility records include:
 - a. a state psychiatric hospital or AKFC patient's medical records and financial records; reports about that patient or that patient's treatment prepared or received by a member of the staff of the facility, including records stored or maintained in locations other than the facility. Facility records may be written or in another medium, and include handwritten notes, electronic files, photographs, or video or audio tape records;
 - b. discharge planning records;
 - c. surveillance video from a facility;
 - d. pictures, narratives, and reports prepared by any staff of a state psychiatric hospital or AKFC;
 - e. reports in the possession of staff prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for the hospital by its staff, contractors, or related entities, except that utilization review committee proceedings or reports, and reports created pursuant to the Patient Safety Act are not to be disclosed by any hospital or AKFC employee. Any person who withholds such records shall notify the Legal Liaison of the request and the records withheld.
 - f. reports prepared by the Patient Services Compliance Unit in the process of investigating reports of incidents of abuse, neglect, and injury that describe such incidents or the steps taken to investigate such incidents.
2. For purposes of this Bulletin only, community consumer records include:
 - a. the record of any investigation done by Division staff,

- b. supporting information as well as client and staff records altered or produced pursuant to a neglect or abuse investigation performed at the direction of the Division or Department, and
- c. reports in the possession of Department or Division staff prepared by individuals and entities performing certification or licensure reviews. The Department or Division staff shall require the PAMII agency to give assurances that such records, if not public, will not be disclosed to any third party except as required by law.

UNACCOMPANIED ACCESS - unit means that once a properly identified PAMII representative is admitted to the locked unit s/he shall have the opportunity to enter any area to which consumers normally have access, and to speak with any consumer who asks for or consents to an interview without staff present in the room or area where the interview occurs.

V. POLICY

The primary responsibility of facility staff is the provision of treatment to consumers. Staff will cooperate with the monitoring and advocacy functions of the PAMII staff to the extent that to do so does not compromise treatment.

A. Access to facilities and consumers:

1. A properly identified PAMII staff person who asserts that either
 - a. An incident was reported or a complaint was made to the PAMII agency;
 - b. The PAMII agency has determined there is probable cause to believe that an incident has or may have occurred; or
 - c. The PAMII agency has determined that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness shall have reasonable unaccompanied access to facilities at whatever times are necessary to resolve the issue.
2. In the absence of an assertion of abuse or neglect, the PAMII agency shall have reasonable unaccompanied access to facilities at reasonable times, which at a minimum shall include working hours (8-4:30 Monday through Friday) plus visiting hours.
3. All consumers shall have reasonable access to a telephone to call a PAMII agency or representative without permission from or monitoring by facility staff. Consumers are permitted to schedule appointments with PAMII representatives at time agreeable to both, but not during scheduled therapeutic activities except in an emergency.
4. Access to a consumer by a PAMII representative shall be at the discretion of the consumer. If there are clinical precautions that would normally preclude unaccompanied access, they shall be fully explained to the PAMII representative

before the consumer is made available, and reasonable efforts acceptable to the representative shall be made to assure the safety of the consumer, representative, and staff.

B. Access to records

1. Consumers who are alive or who died more than seven (7) days after discharge from a facility:
 - a. All requests for hospital records of current and former consumers delivered to any staff of the Division shall be promptly directed to the CEO of the appropriate hospital(s). Requests for community consumer records or Division records shall be directed to the Assistant Director for Prevention, Early Intervention and Community Services. Requests for Department records shall be directed to the Office of Program Integrity and Accountability
 - b. Upon the receipt of a request for records that relate to an investigation into abuse or neglect being conducted by a PAMII agency that conforms to the standards in 42 CFR §51.41 (see attached request form), Department, Division, or facility staff shall make available for inspection the records of a consumer made or maintained by a Department or Division office, in a timely manner and in accordance with this Bulletin. Staff shall be present whenever a record is inspected or copied by a PAMII representative. A copy of the request shall be forwarded to Risk Management and another copy shall be placed in the consumer's record.
2. Consumers who die at a facility or within seven (7) days of discharge from a facility: The CEO shall report a death at a facility to both PAMII agencies by the end of the next business day after the death. If a consumer dies within seven (7) days of discharge from any facility, the Legal Liaison shall notify the facility and the PAMII agencies. The facility shall notify the family or next of kin that they have 15 days to object to disclosure and shall include the name and contact information for the staff person who can accept any objection, and that after that time, unless they object, records may be disclosed to the PAMII agencies.
3. Records available pursuant to OPRA (NJSA 47:1A-1 et seq.) shall be made available for inspection by PAMII representatives without a formal OPRA request (e.g., policies, staff salaries). Any questions should be referred to the OPRA custodian before inspection is permitted.


C. Access to staff:

1. Upon receipt of a request that conforms to the standards in 42 CFR §51.41. Facility staff is encouraged to talk openly with PAMII representatives in connection with a PAMII investigation.

2. Staff are not required to speak with PAMII representatives, and are not to discuss matters in litigation or likely to lead to litigation without notice to the Legal Liaison. They are not to disrupt their work schedules or neglect their responsibilities to consumers, and may ask that the PAMII representative make an appointment in advance.
- D. Law enforcement: If a criminal investigation is being conducted by law enforcement authorities and the Division is advised by the law enforcement agency not to disclose records, a court order must be obtained by the PAMII agency before the records may be released. If a court order is presented to facility staff, the Legal Liaison shall make the disclosure after reviewing the court order, the request, and the records to be disclosed.

VI. RESPONSIBILITY

- A. All employees are responsible for assuring that requests from a PAMII agency are promptly routed to either the CEO of a facility that maintains the records or the Assistant Director for the Office of Prevention, Early Intervention and Community Services.
- B. The Assistant Director of the Office of Prevention, Early Intervention and Community Services or CEO or his or her designee is responsible for the receipt and acknowledgment of requests for records of consumers who are living (or if deceased did not expire while a patient in a state psychiatric hospital or within 7 days of discharge from a state psychiatric hospital), the gathering of the requested information, and forwarding that information and the request to the Office of the Legal Liaison.
- C. The Legal Liaison is responsible for redacting information about consumers who have not authorized disclosure to the PAMII agency (assigning a unique identifier as needed for clarity) and for securing the approval, where needed of the Division of Law for documents to be disclosed, as well as any protective orders necessary to comply with confidentiality or other concerns.
- D. Health Information Managers are responsible for receiving and processing requests for information from a PAMII agency in the case of a patient death at a hospital. The Legal Liaison will coordinate all other requests.



Lynn A. Kovich, Assistant Commissioner
Division of Mental Health and Addiction Services

Date: 3/13/15

**REQUEST FOR RECORDS OF OR RELATING TO THE TREATMENT OF AN INDIVIDUAL/
CONSUMER OF NEW JERSEY PUBLIC MENTAL HEALTH SERVICES**

TO:

- _____, CEO, Ann Klein Forensic Center
- _____, CEO, Trenton Psychiatric Hospital
- _____, CEO, Greystone Park Psychiatric Hospital
- _____, CEO, Ancora Psychiatric Hospital
- _____, DMHAS Assistant Director for Community Services
- _____, DHS Office of Program Integrity and Accountability

Date: _____

Individual whose records are requested:
(Include name and any other identifying information)

I, _____, as a representative of New Jersey's designated PAIMI
agency,

___ DRNJ
___ Mental Health and Guardianship Services, Office of the Public Defender

Certify that one of the following conditions exists:

___ the named individual is a client of the agency, and s/he or a legal representative has
authorized the disclosure, as evidenced by the attached authorization and, if a representative,
the court order or other document that memorializes the representation.

or

___ the named individual is unable to authorize disclosure and has no legal guardian and in
relation to the requested records in this matter, I have reasonable grounds to believe that the
individual(s) whose records are requested qualifies for protection under 42 U.S.C. §10801 et
seq. and has been, or may be, subject to abuse or neglect.¹

¹ The PAMII agency has based this determination on reasonable inferences drawn from experience or
training regarding similar incidents, conditions or problems that are usually associated with abuse or
neglect, or from monitoring or other activities including observation by agency personnel and reviews of
monitoring or other reports prepared by others whether pertaining to individuals qualifying under 42
U.S.C. §10801 et seq. or to general conditions affecting their health or safety, or from other sources as
authorized in 42 U.S.C. §10801 et seq..

or

____ a complaint or report has been received by the agency and I have reasonable grounds to believe that the health or safety of the individual is in serious and immediate jeopardy. I further certify that the named individual has a legal representative and although I have made a good faith effort to contact the representative and to offer assistance to the representative to resolve the situation, the representative has failed or refused to act on behalf of the individual.

Signed by: _____

Title: _____

Phone number or email address: _____
