Purpose

Records of substance abuse (drugs or alcohol) treatment (whether prepared and maintained by a federally funded treatment program and/or by a New Jersey licensed facility) are highly protected and enjoy enhanced privacy protections under the law. The privacy protection follows the medical record even once it is removed from/disclosed by the facility that created it. Unless otherwise required or permitted by law, as set forth in this policy, use or disclosure of such information may not be made without the patient’s (or personal representative’s) prior written permission or a court order. Depending on the intended use/disclosure, the permission will take the form of either the “Consent to Use or Disclose for Treatment, Payment or Health Operations” (the “Consent Form”) or an “Authorization.”

Policy

Youth Consultation Service, Inc. (“YCS”) will use and disclose substance abuse treatment records only pursuant to the Consent Form, an “Authorization,” a court order or
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as otherwise required or permitted by law, as set forth in this policy, and consistent with applicable “minimum necessary” standards.

Procedure

1. YCS will obtain written permission from the child (or the child’s authorized personal representative, if the child is too young legally to give consent) prior to using that patient’s substance abuse health information for the purpose of YCS’s and other health providers’ and health plans’ treatment, payment and health operations (TPO). The permission will be documented using the Consent Form which expressly references substance abuse treatment records (see FORM D and POLICY 29).

2. The use or disclosure of substance abuse treatment records for reasons other than YCS’s and other health providers’ and plans’ treatment, payment and certain health operations activities (if applicable), shall be made only upon receipt of and pursuant to the terms of a valid Authorization (see FORM E), or as shall be approved by YCS’s Privacy Officer when required or permitted by law. As a general matter, disclosure without Authorization may be permissible under the following situations:
   a. pursuant to a court order (not merely a subpoena signed by any attorney), issued with appropriate safeguards, but only after applicable showing of good cause therefor, including, but not limited to, the need to avert a substantial risk of death or serious bodily harm, weighing the public interest and the need for disclosure against the injury to the patient;
   b. to medical personnel in a medical emergency; or
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(c) in connection with state reporting requirements for suspected child abuse or neglect; or

(d) the disclosure is of de-identified health information (see POLICY 13), provided under certain circumstances to qualified personnel for research, audit or program evaluation, in accordance with express prior permission by YCS’s Privacy Officer, upon review with legal counsel, as required.

3. Any disclosure of records that relate to a federally funded treatment program must be accompanied by or marked with the following (or substantially similar) statement:

   The information has been disclosed to you from records whose confidentiality is protected by federal law. Federal regulations (42 C.F.R. Part 2) prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical information is not sufficient for this purpose.

4. Other limited exceptions permitting use/disclosure may apply. Therefore, any use or disclosure of substance abuse treatment records sought without either the Consent or Authorization of the person to which it relates, shall be referred to the Privacy Officer for evaluation of the appropriateness of the request/disclosure.

5. Regardless of whether the drug abuse program is federally funded, New Jersey law provides that New Jersey drug abuse treatment facilities (whether offered in an ambulatory care facility or in a residential drug treatment facility) are subject to certain additional rules concerning the treatment records of such drug abuse. N.J.A.C. 8:43A-13.5; 8:42A-19.5. First, the YCS program must establish rules prohibiting the removal from the facility of original medical records (unless by court order or in an emergency). Second, YCS must permit patient (or personal representative) access, limited only to the extent necessary to protect the patient as
determined by a physician, in which case the record shall be made available to a legally authorized representative of the patient or the patient’s physician. Third, there are specific rules on copying charges which provide that the fee for copying a patient’s drug abuse records by any of YCS’s drug abuse facilities must not exceed $1.00 per page or $100.00 per record for the first 100 pages. For records which contain more than 100 pages, a copying fee of no more than $0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of $200.00 for the entire record. In addition to per page costs, the following charges (but no others) are permitted: (a) A search fee of no more than $10.00 per patient per request; and (b) A postage charge of actual costs for mailing, not to exceed $5.00. YCS must also establish a policy assuring access to copies of medical records for patients who do not have the ability to pay; and YCS must establish a fee policy providing an incentive for use of abstracts or summaries of medical records (although the patient or his or her authorized representative has the right to receive a full or certified copy of the medical record).

6. The medical records of all patients that include substance abuse treatment records should be conspicuously marked to ensure no inappropriate disclosure of them is made.

AUTHORITY -- 42 C.F.R. Part 2; N.J.A.C. 8:43A-13.5; N.J.A.C. 8:42A-19.5