

REMOVE THIS 2-PAGE INSTRUCTION SHEET BEFORE DISTRIBUTING THE HIPAA PRIVACY NOTICE TO CLIENTS. This instruction sheet is to be used by mental health counselors to develop a Notice of Privacy Practices and is not intended for distribution to clients with the Notice of Privacy Practices.

## Instructions For Using The Notice of Privacy Practices

### **This Form May Require Modification**

The attached form meets the minimum HIPAA standards and has incorporated the ACA/AMHCA Codes of Ethics. The *Codes* require client consent in almost all instances before releasing confidential information. This is a stricter standard than the Privacy Rule, which allows the disclosure of PHI in many instances without client consent. This is noted in the Notice of Privacy Practices form. Modification may be required for compliance with stricter state law provisions, for voluntary use of stricter standards for the release of client records, and to provide sufficient detail of the actual privacy practices in use by your agency or work setting. Use of the Sample Notice of Privacy “as is” is not recommended. **The HIPAA Notice of Privacy Practices is intended to reflect the actual policies and practices of each practice setting in which it is used, to incorporate stricter state law standards, and to provide the information required by HIPAA. (Note: These forms have been reviewed by MA attorneys and MA legal standards are met in the forms.)**

The following language included below needs to be reviewed to conform this sample Notice of Privacy Practices to your specific practice setting and state law requirements. **(Note: MA legal standards are met in the forms)**

**Sample Notice of Privacy Practices.** It is recommended that mental health counselors remove this caption and delete the word “sample” after customizing the form to reflect the policies of the mental health counseling practice.

**How We May Use and Disclose Health Information About You.** This should be the section where the practitioner specifically addresses how information is used and disclosed. MaMHCA members will want to review this document to determine whether their state laws require disclosure without client authorization in situations not mentioned in this sample form (an example might be the reporting of elder abuse). Of course, you must also verify that any disclosure required by state law is also permitted by HIPAA. If so, those disclosures should be added to the Notice. Particular attention should be paid to the listing of examples of how information may be used for treatment, payment and healthcare operations purposes, and uses or disclosures permitted with or without written authorization. These sections should accurately reflect your practices.

This Sample Notice of Privacy Practices incorporates the ACA/AMHCA Codes of Ethics and standards for the release of confidential client information, which in many respects is more protective of privacy than HIPAA. Voluntary use of stricter standards for disclosure (such as the ACA/AMHCA Codes of Ethics) is permitted by HIPAA and encouraged by MaMHCA. Mental Health Counselors are encouraged to maintain the high standards of the social work profession and to obtain client consent in most instances when releasing client information.

**For Health Care Operations.** If you plan to use PHI for fundraising purposes or for facility directories and if doing so is permitted by applicable state law, the Notice of Privacy Practices must state so. **An opt-out provision is also required to be included in each solicitation for fundraising communications.**

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**Without Authorization.** The purpose of this Section is for the Covered Entity to provide a summary of all the types of uses and disclosures other than treatment, payment and health care operations that are possible without a patient's/client's authorization. Unlike the other parts of this Notice, which are generic enough so that they could be used in every state, this Section **MUST** be tailored to reflect the types of uses and disclosures permitted not only by the Privacy Standards but also by other applicable state and federal law.

The information in this section lists uses and disclosures permitted by HIPAA without an authorization. The current language in the Notice addresses these categories to the extent consistent with the *ACA/AMHCA Codes of Ethics* and HIPAA.

**NOTE:** State licensing regulations and other pertinent State laws or regulations should be checked to determine if state law is more stringent than HIPAA. If state law is more stringent, the applicable sections must be revised to reflect the more stringent state law

- Abuse and Neglect
- Judicial and Administrative Proceedings
- Deceased Persons
- Emergencies
- Family Involvement in Care
- Health Oversight
- Law Enforcement (where applicable)
- National Security
- Public Health
- Public Safety (Duty to Warn)
- Research

**YOUR RIGHTS REGARDING YOUR PHI.** In this Section the practitioner needs to insert the name and contact information for the person designated by the mental health counselor practice to receive HIPAA privacy complaints from clients. For solo practitioners, the individual mental health counselor may be designated as the HIPAA Privacy Officer.

**COMPLAINTS.** Insert the name and contact information for the HIPAA Privacy Officer, as in the Section above.

**EFFECTIVE DATE.** The date of the notice should reflect the date of any changes to the notice.

#### **DISCLAIMER**

All rights reserved. The individual MaMHCA member is authorized to use these forms and policies, modify or tailor such forms and policies solely for the MaMHCA member's use. Any distribution of such policies to other persons or organizations is strictly prohibited.

The information provided in these forms and policies is of a general nature and is provided as an example. It should not be considered legal advice or a comprehensive compilation of all legal requirements related to a practitioner's compliance with HIPAA. Readers should consult legal counsel for specific questions and proper completion of forms applicable to a particular practice setting. Use of this information does not create an attorney-client relationship between Popovits & Robinson and the user or between MaMHCA and the user, nor can the user rely upon these materials to create an attorney-client relationship. Each user shall retain full and complete responsibility for its

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compliance with the Health Insurance Portability and Accountability Act of 1996 and the applicable regulations issued under HIPAA.