

## 18. Child Welfare Case Manager Asks an Inpatient Mental Health Facility for Information About a Child's Diagnosis and Progress



A 16-year-old girl is returning from a stay in an inpatient mental health facility to a group home in her home town. She is moving to the group home in part because her biological parents have been disengaged from her treatment, frequently not responding to outreach from mental health and child welfare professionals.

Because of the adolescent's mental health issues and her complex family situation, the child welfare case manager has asked the inpatient mental health facility for detailed documentation of the services it provided to the adolescent and her diagnosis and therapeutic progress, including the clinicians' therapeutic progress notes. The case manager explains that she needs this information to arrange placement and transitional services for the adolescent. The mental health facility, while cooperative in nature, refuses to provide the amount and depth of information that the case manager requests, stating that some of the information is confidential in nature.

### Who has the information?

The inpatient mental health facility.

### Who wants the information?

The child welfare case manager.

### What information does the requester want?

She wants documentation of the services the adolescent received and her diagnosis and progress, including the clinicians' progress notes.

### What does the requester want to do with the information?

The case manager wants to use it to arrange placement and transition services for the adolescent.

### Which laws are relevant in this situation?

HIPAA and state laws governing the disclosure of mental health records.

## What do the laws permit, and what do they prohibit?

In most cases, HIPAA permits the disclosure of medical and mental health information with the consent of the minor's parent. In cases of unemancipated minors, HIPAA states that if state law permits the minor to consent to his or her mental health treatment, the minor may consent to the release of that information.

Children in foster care have the same rights to consent to mental health treatment and the confidentiality of treatment records as children who remain with their parents. When a child is in the foster care system, nothing in HIPAA authorizes the child welfare agency or foster parent to control the release of health information. In practice, child welfare agencies must have the consent of a parent (or the consent of the minor, if the minor consented to the treatment or testing) or a court order to obtain protected health information.

If consent cannot be obtained, HIPAA permits disclosure of the information in response to a court order or subpoena. If the information is disclosed as a result of a subpoena, the individual seeking the subpoena must demonstrate that he or she has made reasonable efforts to notify the parent (or unemancipated minor) of the request for disclosure or has obtained a protective order prohibiting the use of information for a purpose other than the litigation for which it is being requested. A therapist's notes and impressions, however, cannot be disclosed in response to a subpoena or court order; such notes may only be disclosed with a signed authorization from the person who consented to the treatment or testing.

## How can the two organizations proceed legally to get the youth help?

### OBTAIN CONSENT

If state law permits the adolescent to consent to mental health treatment, she may also consent to the release of her mental health treatment information. The child welfare case manager should seek the adolescent's consent to release the mental health information. If the adolescent does not have the legal ability to consent to the release of her records, her parent's consent must be obtained. Under HIPAA, the consent must be signed and dated and must contain the following:

- A specific description of the protected health information to be released
- Who is authorized to disclose the information
- Who is authorized to receive the information
- How long the consent is valid
- A statement of the right to revoke consent and the process to do so
- A statement of the purpose of the disclosure

### OBTAIN A COURT ORDER

The child welfare case manager may also subpoena the mental health treatment records or seek a court order to obtain them. At the next hearing, in order to plan for the child's transition, the case manager may ask the court to order that the inpatient facility provide information regarding the adolescent's diagnosis and treatment and the services she received at the facility. The court may not, however, order the disclosure of privileged therapist notes and impressions, nor may these notes be released in response to a subpoena; such notes may only be disclosed with a signed authorization from the person who consented to the treatment or testing.