

# MENTAL HEALTH DATA

Revised 03-04-02

## I. STATUTORY REFERENCES AND DEFINITIONS

Minn. Stat. § [13.46](#), subd. 1(d) - Mental Health Data Defined

Minn. Stat. § [13.46](#), subd. 2(d) - Mental Health Data and Responsible Authority

Minn. Stat. § [13.46](#), subd. (7), (8), and (9) - Access to Mental Health Data

Some but not all mental health providers are part of the welfare system. Community mental health center boards, for example, are part of the welfare system. [Minn. Stat. § 13.46, subd. 1\(c\)](#) Mental health units of counties are part of the county welfare agencies, and county welfare agencies are also part of the welfare system. However, providers under contract to deliver mental health services are only members of the welfare system to the extent specified in the contract. Unless indicated otherwise, the term "mental health provider" refers to all three of these entities. There may be other mental health providers that are not part of the welfare system. All mental health providers must comply with the data practices provisions of [Minn. Stat. § 13.46, subs. 7, 8, and 9](#), regardless of whether they're a part of the welfare system.

## II. CLASSIFICATION

Under Minnesota law, the privacy of persons in the welfare system receives much protection; for persons receiving mental health services, the protections are even greater. Mental health data is generally classified as private data on individuals and can be disclosed only in accordance with [Minn. Stat. § 13.46, subd. 7](#), a court order, other applicable laws, or the individual's written informed consent.

Generally speaking, agencies of the welfare system may disseminate welfare data to mental health providers if the agencies have provided the data subject with a [Notice of Privacy Practices](#). Mental health providers, however, must get informed consent of the individual to provide mental health data to other agencies in the welfare system; giving the individual a [Notice of Privacy Practices](#) is not sufficient. Even if another agency in the welfare system needs access to mental health data for the administration and management of programs, the mental health provider must first obtain the individuals' informed consent or find a specific statute allowing disclosure of the information.

County employees who are not employees of the mental health unit are not to have access to the mental health data unless the responsible authority determines that a statute authorizes access. The responsible authority of the mental health unit, which is usually also the director of the county human services agency, is required to determine who has the right to access mental health data pursuant to this statute.

## III. ADDITIONAL CONSIDERATIONS

**A. RELEASE OF INFORMATION** – Mental health data may be released as follows:

1. As necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. [Minn. Stat. § 13.05, subd. 3](#)
2. With written consent of the data subject. [Minn. Stat. § 13.05, subd. 4\(d\)](#)
3. With permission from the Commissioner of Administration to use data in a new way. [Minn. Stat. § 13.05, subd. 4\(c\)](#)
4. Under the authority of a new statute passed after the data was collected and when the [Notice of Privacy Practices](#) is given. [Minn. Stat. § 13.05, subd. 4\(b\)](#)
5. If the data was collected and disseminated in a certain way before August 1, 1975, it may continue to be used in that way. [Minn. Stat. § 13.05, subd. 4\(a\)](#)
6. If the data is summary data. [Minn. Stat. § 13.05, subd. 7](#)
7. Pursuant to court order. [Minn. Stat. § 13.46, subd. 7](#)
8. Pursuant to a statute specifically authorizing access or disclosure. [Minn. Stat. § 13.46, subd. 7](#)

**B. FAMILY/GROUP THERAPY CASE FILES** - In family or group therapy, a number of different individuals receive therapy together and information about them is often grouped together in one file. When one therapy client requests information from the file, it is important that the privacy of information about the other clients in the group or family therapy be protected.

To protect the other clients' privacy, the provider may wish to offer a summary of the information that the data subject requests. See [Minn. Stat. § 144.335, subd. 2\(b\)](#). If the individual does not want a summary, the provider must give the data to the requester, but must black out all data about other data subjects. If the requester is the parent of a minor data subject, data about the minor does not need to be removed before granting the parent access unless the minor has requested that the data not be shown to the parent and the agency has decided to honor that request. See [Minors](#)

**C. STATUTORY RELEASES** - Various laws specifically allow for or mandate the release of or access to mental health data. Below are a few examples:

**1. Child Abuse Or Neglect Reporting** - Suspected child abuse must be reported to the local community entry point. [Minn. Stat. § 626.556](#)

**2. Vulnerable Adult Abuse Reporting Act** - Suspected abuse of a vulnerable adult must be reported to the local community entry point. [Minn. Stat. § 626.557](#)

**3. Pre-Commitment Screening Team** - has access to all relevant medical records of proposed patients currently in treatment facilities. [Minn. Stat. § 253B.07](#)

**4. Medical Assistance (MA) and General Assistance Medical Care (GAMC)**- With the patient's consent, the Commissioner of Human Services may access all medical records of patients receiving Medical Assistance (MA) and General Assistance Medical Care (GAMC). [Minn. Stat. § 256B.27](#)

**5. Food and Drug Administration (FDA)**- Data may be disclosed to the FDA, if the mental health center distributes medicine to clients, and the FDA needs access to the information to warn clients about health hazards of the drug. [Minn. Stat. § 256B.27](#)

**6. Workers' Compensation** - Access to client data may be allowed to verify payment of worker's compensation. [Minn. Stat. § 176.138](#)

**7. Court Services Via A Court Order** - The court can require disclosure of information through use of a court order. [Minn. Stat. §13.84](#)

**8. Coroners/Medical examiners** - Data may be disclosed if it is about a decedent whose death is being investigated by the coroner/medical examiner. [Minn. Stat. §§ 383B.225, subd. 6\(b\); 390.11, subd. 7\(b\); and 390.32, subd. 6\(b\)](#).

**9. Various Ombudsman's Offices** including the Ombudsman for Mental Health and Mental Retardation may have access to the data. [Minn. Stat. § 245.92](#) See [Ombudsman for Mental Health and Mental Retardation](#)

#### **D. CONTRACTS**

**1. Welfare System Contracts** - Mental health providers under contract to an agency of the welfare system must ([Minn. Stat. §13.46, subd. 5](#)):

- a. Maintain the data on individuals obtained under the contract under the private classification;
- b. Comply with [Minn. Stat. § 144.335](#) which relates to patient access of medical records; and
- c. Notify the welfare system agency in writing of any data that needs to be withheld from the patient pursuant to [Minn. Stat. § 144.335, subd. 2\(c\)](#) when such data is being shared with the welfare system agency

An agency of the welfare system cannot require the mental health provider to obtain client consent for the release of private client data: 1) as a condition for receiving services from the mental health provider, or 2) for reimbursement for services provided by the mental health provider. An agency may request that the provider try to obtain client consent for the release of data. The welfare system agency may request the client to sign a consent before making a referral to a mental health provider.

**2. Other Contracts** - Contracts between mental health providers and other government agencies such as public schools; Department of Children, Families, and Learning; Department of Corrections; and Department of Economic Security may require the mental health provider to protect the privacy of individuals in accordance with the Government Data Practices Act ([Minn. Stat. §13.05, subd. 5](#)). The contracts may require the mental health provider to obtain the client's consent before sharing data with the government agency.

**E. COURT SERVICES DATA** - A court may order a mental health provider to deliver a psychological evaluation or a report about a specific individual which the court will use in deciding a case, deciding custody matters, or assisting an individual with personal conflicts or difficulties. The classification of this data is private and may be released to the court without client consent, but only if the client has received notice via the [Notice of Privacy Practices](#). [Minn. Stat. §13.84, subd. 2](#)

A distinction must be made between an order issued by the court for: 1) the specific mental health provider to report on an individual's diagnosis or treatment, and 2) the specific individual to obtain treatment from a non-specified mental health provider. In situation #1, the mental health provider must provide the report to the court. In situation #2, the individual ordered to obtain treatment is responsible for providing the report to the court unless the court directs otherwise. The mental health center may provide the report, in situation #2, to the court only with the client's consent.

**F. OWNERSHIP OF RECORDS** - The security of records provisions in the Data Practices Act and licensing provisions for psychologists can create a potential problem for the disposition of records if the psychologist or social worker leaves employment with the mental health agency. In order to avoid that conflict, psychologists or social workers who are independent contractors and intend to take their clients when terminating employment should get client consent in order to take the records from the mental health agency. The provider must maintain a copy of the client record for legal purposes. It is also recommended that the ownership of records be clarified in the employment contract.

**G. Notice of Privacy Practices** - Other agencies in the welfare system may list on their [Notice of Privacy Practices](#) that the mental health providers are agencies with whom they share data. This dissemination of data is provided for in [Minn. Stat. § 13.46, subd. 2\(a\)\(6\)](#) as well as others. Mental health providers, however, cannot use the Notice of Privacy Practices to release information about their clients to other agencies; they must get specific consent from the clients to release mental health data. See Classification above.

**H. AUDITORS** - Auditors of federal, state, and local governments who must audit mental health providers shall not be given data which identifies individuals. These types of auditors would include those hired by the mental health provider, auditors hired by the local welfare department to audit compliance with programs under the Community Social Services Act, and others. [Minn. Stat. §13.46, subd. 8](#) Federal and state auditors who monitor the Medical Assistance (MA) and General Assistance Medical Care Programs (GAMC), however, have specific authority to access data on individuals. The legislative auditor also has a right to access client-identifying data. [Minn. Stat. §13.46, subd. 8](#) It is always good policy to require an auditor to identify legal authority to examine private data on an individual. [See Auditors](#)

**I. RULE 29 CERTIFICATION ACCESS** - Access by the DHS Certifier for Rule 29 certification does not constitute a program audit. Therefore, the prohibitions of [Minn. Stat. §13.46, subd. 8](#), as discussed above in item "F," do not apply. The certifier has the right to access client records in order to determine compliance with the rule. Eliminating client-identifying data from the case file before granting the certifier access to the case file is not necessary.

**J. FRAUD** - If an agency of the welfare system believes that a mental health provider is committing fraud, the county board or the prosecuting authority of the agency may refer the matter to the Commissioner of Human Services. The Commissioner or the designated agent may access patient-identifying data for the purpose of investigating the alleged fraud. If there is reason to prosecute, the commissioner may release relevant data from the investigation to the appropriate legal authorities for prosecution. [Minn. Stat. § 13.46, subd. 9](#)

#### **K. DATA HELD BY MENTAL HEALTH PROVIDERS**

Mental health data on individuals in the possession of mental health providers who are approved pursuant to [Minn. Stat. §245.69](#), is private data. [Minn. Stat. §245.69, subd. 2\(f\)](#) Mental health data is also generally classified as private pursuant to [Minn. Stat. § 13.46, subd. 7](#). The contract between the government agency and mental health provider determines which provisions of the Data Practices Act apply to a private mental health provider. If the provider's contract is with an agency of the welfare system, dissemination of the data is covered by [Minn. Stat. §13.46](#). If the provider's contract is with a school, the dissemination of data is governed by [Minn. Stat. § 13.32](#). There are several other types of data maintained by mental health centers which may be classified by other statutes:

- 1. Mental Health Data** maintained on students in public schools is private data. [Minn. Stat. §13.32](#)
- 2. Personnel Records** maintained by community mental health providers and units of counties must be maintained in accordance with [Minn. Stat. §13.43](#) Much information in personnel records is public. Private providers under contract are not required to maintain their personnel records in accordance with the Data Practices Act, unless required by the contract.
- 3. Sexual Assault Communications** are private data. [Minn. Stat. §13.822](#)
- 4. Data On Social And Recreational Programs** pertaining to the health or medical condition, family and living arrangements, and opinions as to the emotional makeup and behavior of participants are private data (conducted by mental health providers which are city or county subdivisions or have contracts with political subdivisions). [Minn. Stat. §13.57](#)
- 5. Chemical Dependency Treatment** data is classified as confidential. Federal regulations classify the data as confidential but do not prohibit the data subject from having access, therefore, the data is classified as private. [42 C.F.R. § 2.23](#); [Minn. Rules, part 1205.0200, subp. 9](#) The data, furthermore, can only be released pursuant to the federal regulations. [42 C.F.R. § 2.21](#)
- 6. The Written Report of Child Abuse Or Neglect** is confidential as is the name of the reporter. An individual subject of the report may obtain access to the original report. [Minn. Stat. §626.556, subs. 7 and 11](#)
- 7. The Written Report of Vulnerable Adult Maltreatment** is private data. [Minn. Stat. §626.557, subd. 12](#) The name of the reporter of vulnerable adult maltreatment is classified as confidential.
- 8. Data Necessary For Administration And Management of Programs** Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals is limited to that necessary for the administration and management of programs, for example, name and address; but details of the therapy generally cannot be considered data necessary for administration and management. [Minn. Stat. § 13.05, subd. 3](#) The responsible authority of the mental health center or provider ultimately makes the decision as to which data will be shared with the mental health facility and another agency.
- 9. Other Agencies of the Welfare System-** Generally, a mental health provider cannot routinely share information, particularly details of the treatment or therapy, with other agencies of the welfare system without client consent. [Minn. Stat., § 13.46, subd. 2 \(d\)](#)
- 10. The Community Social Services Act (CSSA)** requires each county to submit to the Commissioner of Human Services reports regarding the effectiveness of social service programs in the county. The local welfare department must solicit information from local service providers who receive Community Social Services Act funding, including mental health providers. Mental health provider staff are required to ask the patient to give consent to the release of the data for these reports, but if the client refuses to give consent to the release of these data, the provider must use summary data instead.
- 11. Case Managers-** Persons with serious and persistent mental illness may have a case manager either because the client has requested one or because the court has appointed one. Unless the court has specifically ordered the release of information or if the assessment is done by the case manager's agency, the client must consent in order for the case manager to obtain a copy of the client's diagnostic assessment. However, once the case manager obtains a copy of the assessment, the assessment and other client data may be shared with the client's family, the advocate, service providers, and significant others in order to develop and implement the individual community support plan. [Minn. Stat. §245.4711, subd. 4 and 5](#) The consent of the client is not necessary to disseminate the information to these people if the client has been provided a [Notice of Privacy Practices](#) in which these people have been identified as potential recipients of the data.

#### **IV. CROSS REFERENCES WITH OTHER SECTIONS OF THE MANUAL**

[Chemical Dependency](#)

[Maltreatment of Vulnerable Adults](#)

[Nursing Homes](#)

[Regional Treatment Centers](#)