

GentleBrook
HIPPA Privacy
Use & Disclosure of Health Information

GentleBrook respects the importance of its clients' personal privacy, and understands the sensitive nature of its clients' health information. GentleBrook also recognizes that Federal and State laws require that individually identifiable health information must be safeguarded against improper use or disclosure. It is GentleBrook's policy not to use or disclose a client's health information except as permitted by law, and to adopt safeguards to protect the confidentiality of its clients' health information.

DEFINITIONS

- (A) **Health Information.** As used in this policy, "health information" shall mean information that is created or received by GentleBrook that (1) relates to the past, present, or future physical or mental health condition of a client; the provision of health care to a client; or the past, present, or future payment for the provision of health care to a client; and (2) that identifies the client, or with respect to which there is a reasonable basis to believe that information can be used to identify the client.
- (B) **Disclosure.** The release, transfer, provision of access to, or divulging in any other manner of health information outside of GentleBrook.
- (C) **Use.** The sharing, employment, application, utilization, examination, or analysis of client health information within GentleBrook.
- (D) **Treatment.** The provision, coordination, or management of health care and related services by GentleBrook, including the coordination or management of health care by GentleBrook with a third party; consultation with other health care providers relating to a client; or the referral of a client for health care between GentleBrook and another health care provider.
- (E) **Payment.** The activities undertaken by GentleBrook to obtain reimbursement for the provision of health care.
- (F) **Health Care Operations.** Any of the following activities of GentleBrook.
 - (1) Conducting quality assessment and improvement activities, provided that the obtaining of general knowledge is not the primary purpose of any studies resulting from such activities; protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
 - (2) Reviewing the competence or qualifications of health care professionals, evaluating employee and GentleBrook performance, conducting training

programs under supervision to practice or improve skills, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

- (3) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
- (4) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating GentleBrook; and
- (5) Business management and general administrative activities of GentleBrook, including, but not limited to:
 - (i) Customer service.
 - (ii) Resolution of internal grievances;
 - (iii) Due diligence in connection with the sale or transfer of assets to a potential successor in interest; and
 - (iv) Creating de-identified health information, fundraising for the benefit of GentleBrook, and marketing for which an individual authorization is not required.

(G) Workforce. GentleBrook's workforce includes its employees, agents and volunteers.

(H) Business Associate. A "business associate" is a person or entity who on behalf of GentleBrook performs, or assists in the performance of, a function or activity involving the use of a client's health information, or who provides services to GentleBrook that require the disclosure of a client's health information. Members of GentleBrook's workforce are not business associates. Examples of business associates are persons or entities that perform the following services to or on behalf of GentleBrook; claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

PROCEDURE

(A) General.

- (1) Verification. When implementing the procedures noted in this policy, GentleBrook shall take reasonable steps to verify the identity and authority of the person or entity requesting access to a client's health information. Reasonable verification procedures include, but are not limited to: reviewing an identification badge or license; a written statement on letterhead; personal knowledge of the requestor; or knowledge of the place of business, address, telephone number, etc. For purposes of notification of family or friends, GentleBrook shall assume a person's involvement in the client's care based on the circumstances, such as the

fact that they visit the client or sign necessary paperwork during the admission process.

- (2) Minimum Necessary. When implementing the procedures noted in the policy, GentleBrook shall make reasonable efforts to ensure that only the minimum amount of information necessary to satisfy the particular purpose of the use or disclosure is provided. Unless the circumstances indicate otherwise, GentleBrook shall presume that requests from public officials, health care providers, plans and clearinghouses, professional members of GentleBrook's workforce, business associates, requests for research, requests from the client, and request pursuant to a valid authorization are for the minimum amount of information necessary for the stated purpose.
- (3) Release of Entire Medical Record. In general, GentleBrook will not release a client's entire medical record unless the release of the whole record is justified as reasonably necessary to accomplish the purpose of the requested use or disclosure. Unless the circumstances indicate otherwise, GentleBrook shall presume that requests from public officials, health care providers, plans and clearinghouses, professional members of GentleBrook' workforce, business associates, requests for research, requests from the client, and requests pursuant to a valid authorization for the entire medical record are reasonable.

- (B) Workforce access to medical record. The following classes of GentleBrook' workforce shall have access to a client's entire medical record, as needed, in order to accomplish their job duties: administration, nursing, dietary, social service, admission, therapy, and program services. In addition, the following classes of business associates and health care professionals covered by a consent for treatment, and their employees and agents, shall have access to the entire medical record, as needed, to accomplish their duties; ambulance providers, laboratories, pharmacies, radiology providers, physicians, podiatrists, dentists, therapists, oxygen suppliers, audiologists, dialysis providers, hospice providers, optometrists, ophthalmologists, psychiatrists, psychologists. The Administrator may grant permission for other persons or classes of persons/entities to access a client's medical record for the purposes of treatment. All persons, classes of persons, or entities that are not listed above in this policy and who do not have specific permission from the Administrator shall not access a client's medical record.

Accounting of disclosures. GentleBrook does not need to keep an accounting of any disclosures made for treatment, payment or health care operations.

- (C) Notice with Opportunity to Agree/Object.

- (1) General. GentleBrook may use or disclose health information without the written consent or authorization of the client for use in a facility directory or for notification purposes to family members or friends provided that the client is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the disclosure or use.

- (2) Family and others involved in care. Subject to the conditions below, GentleBrook may disclose to a family member, or other relative, close personal friend, or any other person identified by the client, health information (i) that is directly relevant to that person's involvement with the client's care or payment for that care; and (ii) to notify such person of the client's location, general condition, or death.
- (a) Conditions if the client is present. If the client is present for, or otherwise available prior to, a permitted disclosure, GentleBrook may use or disclose the health information if it: (i) obtains the client's agreement; (ii) provides the client with an opportunity to object to the disclosure, and the client does not express an objection; or (iii) reasonably infers from the circumstances, based on the exercise of professional judgment, that the client does not object to the disclosure.
- (b) Conditions if the client is not present or is incapacitated. If the client is not present, in an emergency, or the opportunity to agree/object to the use or disclosure cannot practicably be provided because of the client's incapacity, GentleBrook may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the client, and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the client's health care.
- (c) Verification. GentleBrook does not need to verify the identity of relatives or other individuals involved in the client's care. GentleBrook may rely on the circumstances as verification of involvement in care. For example, the fact that a person admits a client to GentleBrook and visits regularly is verification of involvement in the client's care.
- (3) Facility directory.
- (a) Permissible use. Except when an objection is expressed, GentleBrook may use the following information to maintain a directory of clients in the facility:
- (i) The client's name.
- (ii) The client's location in the facility.
- (iii) The client's condition described in general terms that does not communicate specific medical information about the client, e.g., fair, critical, stable, etc.
- (iv) The client's religious affiliation.
- (b) Release upon request. GentleBrook may disclose any of the previous four elements to clergy, and may release all of the information except for religious affiliation to anyone else who inquires about the client by name. Note that the information in the facility directory may only be released

upon request, thus the directory may not be posted in a publicly viewed area.

- (c) Client incapacity or emergency. If the opportunity to agree or object cannot practicably be provided because of the client's incapacity or in an emergency, then GentleBrook may use some or all of the information permitted above in a facility directory, if such disclosure is: (i) consistent with a prior expressed desire of the client, if any, that is known to GentleBrook; or (ii) in the client's best interests as determined by GentleBrook in the exercise of professional judgment, GentleBrook must inform the client and provide an opportunity to object to any uses or disclosures when it becomes practicable to do so.
 - (d) Notice. GentleBrook shall notify clients that it will use a client's health information for GentleBrook's directory, and their right to object to such use, in the Notice of Information Practices.
- (4) Accounting of disclosures. GentleBrook does not need to keep an accounting of disclosures made to a facility directory or for notification purposes as noted above.
- (D) Authorization. All releases of a client's health information not permitted pursuant to a consent for treatment, payment and health care operations, allowed when notice to agree or object is provided, or otherwise permitted/required by law, shall require the client's authorization. The following protocol shall be followed with regard to client authorizations:
- (1) Authority to release health information. Only the Administrator or Privacy Officer may give permission for the release of a client's health information pursuant to an authorization by the client and/or his/her legal representative.
 - (2) Authorization form must be used. All requests for a client's health information must be made in writing, and must be made using the facility's approved "Authorization for the Release of Health Information" (hereinafter, "Authorization").
 - (3) Notify the Privacy Officer. The Privacy Officer is to be notified of the receipt of any completed Authorization or other request for health information.
 - (4) Review the Authorization for completeness. Upon the receipt of an Authorization, GentleBrook shall review it to ensure that all sections of the form have been filled out completely and accurately. Note that the spaces on the Authorization must be initialed by the requestor; check marks or other indicators are not acceptable. If the form is incomplete, the GentleBrook shall return it to the requestor noting the areas that need to be completed in order to process the records request.

- (5) Verify the legal right of the requestor to the records. Health information regarding a client who is still living will only be released to the following persons:
- (a) The client.
 - (b) The client's attorney-in-fact under a Power of Attorney (POA). GentleBrook shall verify this assertion by reviewing a copy of the power of attorney. GentleBrook will not assume that the mere existence of a power of attorney grants a person the right to obtain medical information from the client's record. The power of attorney must grant the attorney-in-fact the power to obtain copies of the client's health information.
 - (c) The client's attorney-in-fact under a Durable Power of Attorney for Health Care (DPAHC). GentleBrook shall verify this assertion by reviewing a copy of an executed "State of Ohio Durable Power of Attorney for Health Care" form. Section 3(c) of that form states that the attorney-in-fact has the right to review facility medical records for the client named on the form when the form is effective, i.e., when the client has been determined by his/her attending physician to lack the capacity to make health care decisions for himself/herself and has documented that fact in the medical record.
 - (d) The client's legal guardian. Facility shall verify this assertion by reviewing a copy of the designation of guardianship from the probate court of the county in which the facility is located.
 - (e) A person who has been specifically authorized by the client or his/her legally authorized representative to obtain the health information. A client may grant a person access to their health information by signing and dating a document that specifically grants a person the right to access his/her health information. When reviewing such a document, Hartville Homes will make sure that there is not time limit to the authorization and that it was dated prior to any incompetency of the client. If a legal representative of the client has executed this form, then in addition GentleBrook shall review the underlying document providing the legal representative the legal right to the client's health information.
- (6) Release of a deceased client's health information.

All of the legal rights to the client's health information noted above cease on the client's death, and GentleBrook may only release such information to the client's estate. Thus, GentleBrook shall only release the health information of a deceased client to the executor or administrator of the client's estate after receiving a copy of a valid probate court appointment.

(7) Timeliness of access.

- (a) Records are on-site. If the requested information is maintained or accessible on-site at the facility, then GentleBrook will provide access to the requested information within thirty (30) days of receiving the request.
 - (b) Records are off-site. If the requested information is maintained or accessible off-site at the facility, then GentleBrook will provide access to the requested information within sixty (60) days of receiving the request.
 - (c) Extensions. GentleBrook may extend the time frame for release of information 30 days. The extension may be made only one time.
 - (d) Inspection and copying. GentleBrook will arrange for a convenient time and place to inspect or obtain a copy of the protected health information, or mail a copy of the protected health information requested. GentleBrook may discuss the scope, format, and other aspects of the request for access with the requestor as necessary to facilitate the timely provision of access.
 - (e) Payment of copying costs. GentleBrook shall charge a reasonable fee for paper copies as set forth in [State] law, the actual cost of making the copy for information that is stored electronically, and the actual cost of any postage incurred. No fee will be charged for collection and preparation of the copies.
 - (i) Copies are picked up. If a person picks up the copies of the health information that have been made at the facility, the he/she shall pay the copying costs at that time. GentleBrook shall obtain a signed receipt from the person as evidence that the records were delivered.
 - (ii) Copies are sent. If a person requests copies of the health information be made and sent to him/her, the GentleBrook shall determine the number of pages of medical records requested, and the shipping costs associated with sending the records to the requestor. GentleBrook shall notify the requestor of the cost for such records. Upon receipt of payment in full of the costs of copying and shipping the requested records, GentleBrook shall send the records to the requestor by certified mail, return receipt requested.
- (9) Maintenance of a copy of all records that leave facility. GentleBrook shall keep an exact copy of all records provided to the requestor along with the

Authorization requesting the records. The copies of the records shall be filed in a secure location accessible only to the Administrator and Privacy Officer.

- (10) Summary of information rather than access. GentleBrook may provide the requestor with a summary of the health information requested, in lieu of providing access to the protected health information or may provide an explanation of the health information to which access has been granted if:
 - (a) the requestor agrees in advance to such a summary or explanation; and
 - (b) the requestor agrees in advance to the fees imposed, if any, by GentleBrook for such summary or explanation.
 - (11) Accounting of Disclosures. GentleBrook shall keep an accounting of all disclosures made pursuant to an Authorization. Accounting of disclosures will be logged by the Privacy Officer and retained in the business office in locked files.
- (E) Business Associates. GentleBrook shall enter into a written agreement with a business associate prior to releasing any client's health information to the business associate. At a minimum, the agreement must provide that that business associate will:
- (1) Not use or further disclose the information other than as permitted or required by the agreement or as required by law.
 - (2) Use appropriate safeguards to prevent the use or disclosure of information other than as provided for by the agreement.
 - (3) Report to GentleBrook any use or disclosure of the information of which it becomes aware that is not covered by the agreement.
 - (4) Ensure that any agents of the business associate agree to the same restrictions and conditions that apply to the business associate.
 - (5) Make protected health information available for access and amendment as required by GentleBrook.
 - (6) Make protected health information available as required to provide an accounting of disclosures.
 - (7) Make its internal practices, books and records related to the use and disclosure of protected health information received from or created by or received by the business associate on behalf of GentleBrook available to the Secretary of the Department of Health and Human Services for

purposes of determining GentleBrook's compliance with the business associate agreement requirement of HIPAA.

- (8) At termination of the agreement, if feasible, return or destroy all protected health information received from or created by or received by the business associate on behalf of GentleBrook that the business associate maintains in any form and retain no copies of such information; or if such return or destruction is not feasible, then extend the protections of the contract to the information and limit further uses or disclosures to those purposes that make the return or destruction of the information infeasible.
- (9) The agreement must authorize GentleBrook to terminate the agreement if GentleBrook determines that the business associate has violated a material term of the agreement.

GentleBrook shall use a standard business associate agreement that has been approved by the administrator. Any revisions to the standard business agreement must be approved by the administrator prior to execution of the agreement.

- (F) Other Uses or Disclosures. Any uses or disclosures of a client's health information that are not addressed in section (A) through (D) of this policy shall only occur with the approval of the Privacy Officer. Such other uses and disclosures may include, but are not limited to, uses and disclosures for the following purposes:
 - (1) As required by law
 - (2) For public health activities
 - (3) About victims of abuse, neglect or domestic violence, such as reports to ODH or DoDD
 - (4) For health oversight activities, such as complaint surveys
 - (5) For judicial and administrative proceedings, such as in response to subpoenas
 - (6) For law enforcement purposes
 - (7) Notification of coroners
 - (8) Notification of funeral directors
 - (9) For cadaveric organ, eye or tissue donation purposes
 - (10) For research purposes
 - (11) To avert a serious threat to health or safety
 - (12) For specialized government functions, such as releases for military or veteran's activities, national security or intelligence activities, or use by a prison
 - (13) For workers' compensation
 - (14) Disclosures of de-identified information
- (G) Denial of Access to Health Information. GentleBrook may restrict a client's right to inspect and obtain a copy of his/her health information in the instances

noted below. The Privacy Officer must authorize any denials of access to health information.

- (1) Denials without a right of review. GentleBrook may deny a client access to records that contain her/her health information without providing the client an opportunity for review, *i.e.*, without an appeal, when:
 - (a) The client requests copies of psychotherapy notes.
 - (b) The client requests information compiled in anticipation of use in a civil, criminal or administrative action or proceeding.
 - (c) The health information is subject to the Clinical Laboratory Improvement Amendments (CLIA) of 1988.
 - (d) The client agreed to a temporary denial of access when consenting to participate in research that includes treatment, and the research is not complete.
 - (e) The health information was obtained from someone other than a health care provider under the promise of confidentiality and access would likely reveal the source of the information.
- (2) Denials with a right of review. GentleBrook may deny a client access to records that contain his/her health information, but must provide the client the right to have such denials reviewed, in the following circumstances.
 - (a) GentleBrook has determined that the access is likely to endanger the life or physical safety of the client or another person.
 - (b) The health information makes reference to another person who is not a health care provider, such as another client, and a licensed health care professional has determined that the access requested is likely to cause substantial harm to such other person.
 - (c) The request for access is made by a client's personal representative, and a licensed health care professional has determined that access is likely to cause substantial harm to the client or another person.
- (3) Requirements if access is denied. If access is denied, in whole or in part, for one of the reasons noted in section (G)(2) above, then GentleBrook shall do the following:

- (a) To the extent possible, give the client access to any other health information requested, after excluding the health information as to which GentleBrook has a ground to deny access.
 - (b) Provide a timely, written denial to the client. The denial will be in plain language and contain: (i) the basis for the denial; (ii) if applicable, a statement of the client's review rights, including a description of how the client may exercise those rights; and (iii) a description of how the client may complain to GentleBrook or to DHHS. The description will contain the name, or title, telephone number or office of the designated privacy contact person for GentleBrook.
 - (c) If GentleBrook does not maintain the health information requested, and GentleBrook knows where the information is maintained, then inform the client where to direct his/her request.
 - (d) If the client has requested a review of the denial, GentleBrook will designate a licensed health care professional, who did not participate in the original decision to deny, to act as a reviewing official. GentleBrook will promptly refer a request for review to the reviewing official. The designated reviewing official will determine, in a reasonable amount of time, whether or not to deny the access based on the standards noted in this section (G). GentleBrook will promptly provide written notice to the client of the determination of the designated reviewing official, and take other action as is necessary to implement the designated reviewing official's determination.
- (H) Privacy Officer Responsibility. The administrator at each facility shall serve as the designated privacy officer.
- (1) Ensuring that the Notice of Information Practices adequately discusses GentleBrook's use and disclosure policies.
 - (2) Designing and updating, as appropriate, the Authorization form, as well as any standard forms developed to be used for the use and disclosure of health information.
 - (3) Reviewing any requests for a client's health information pursuant to an Authorization, determining whether to deny a client access to health information, and responding in the required time frames.
 - (4) Notifying the Administrator of any requests that he/she receives for a copy of the client's health information, and informing the Administrator of decisions to grant or deny access to health information.