

March 31, 2009

# Health Information Security and Privacy Collaboration

## Massachusetts Legal Inventory for Sensitive Health Information, Analyses, and Findings and Companion Consumer Education Documents

Prepared for

**RTI International**  
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Chicago, IL 60606

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Prepared by

Consumer Education and Engagement Collaborative  
Massachusetts

Health Information Security & Privacy  
**COLLABORATION**



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# Contents

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<b>Section</b>	<b>Page</b>
<b>1. Introduction</b>	<b>1-1</b>
<b>2. Process</b>	<b>2-1</b>
<b>3. Legal Inventory</b>	<b>3-1</b>
3.1 Name and Citation of Statute or Regulation: HIV-AIDS Test Results (Providers) .....	3-1
3.2 Name and Citation of Statute or Regulation: Psychologist Records.....	3-2
3.3 Name and Citation of Statute or Regulation: Psychologist Privilege .....	3-3
3.4 Name and Citation of Statute or Regulation: Social Worker Records .....	3-4
3.5 Name and Citation of Statute or Regulation: Social Worker Privilege.....	3-6
3.6 Name and Citation of Statute or Regulation: Psychotherapist Records/Privilege .....	3-7
3.7 Name and Citation of Statute or Regulation: Substance Abuse Treatment Facilities .....	3-8
3.8 Name and Citation of Statute or Regulation: Alcohol Treatment Facilities .....	3-10
3.9 Name and Citation of Statute or Regulation: Hospitals Licensed Under the Department of Mental Health.....	3-11
3.10 Name and Citation of Statute or Regulation: Records of Mammography Facilities .....	3-12
3.11 Name and Citation of Statute or Regulation: Mental Health Information Held by Medical Service Corporations .....	3-13
3.12 Name and Citation of Statute or Regulation: Mental Health Information Held by Hospital Service Corporations .....	3-15
3.13 Name and Citation of Statute or Regulation: AIDS-Related Health Information Held by Licensed Insurance Companies .....	3-16
3.14 Name and Citation of Statute or Regulation: Records of Emancipated Minor and Minors Being Treated for Dangerous Diseases .....	3-17
3.15 Name and Citation of Statute or Regulation: Fair Information Practices Act....	3-19
3.16 Name and Citation of Statute or Regulation: Genetic Testing and Privacy Protection .....	3-20

<b>4. Plain Language Consumer Education Documents (Legal Inventory Translations)</b>	<b>4-1</b>
4.1 Release of the Results of HIV/AIDS Tests (Mass. Gen. Laws ch. 111, § 70F).....	4-1
4.2 Psychologist Privilege (Mass. Gen. Laws ch. 112, § 129A) and Psychologist Records (251 CMR 1.10).....	4-1
4.3 Social Worker Privilege (Mass. Gen. Laws ch. 112, §§ 135–135B) and Social Worker Records (258 CMR 22.01 through 258 CMR 22.06).....	4-3
4.4 Psychotherapist Records/Privilege (Mass. Gen. Laws ch. 233, § 20B).....	4-6
4.5 Substance Abuse Treatment Facilities (105 CMR 160.303 through 105 CMR 160.305).....	4-7
4.6 Alcohol Treatment Facilities (105 CMR 165.560 and 105 CMR 166.053).....	4-9
4.7 Mental Health Information Held by Hospital Service Corporations (Mass. Gen. Laws ch. 176A, § 14B).....	4-10
4.8 Records of Mammography Facilities (105 CMR 127.020).....	4-12
4.9 Mental Health Information Held by Medical Service Corporations (Mass. Gen. Laws ch. 176B, § 20).....	4-13
4.10 Mental Health Information Held by Hospital Service Corporations (Mass. Gen. Laws ch. 176A, § 14B).....	4-15
4.11 Aids-Related Health Information Held by Licensed Insurance Companies (211 CMR 36.04 through 211 CMR 36.08).....	4-16
4.12 Records of Emancipated Minors and Minors Being Treated for Dangerous Diseases (Mass. Gen. Laws ch. 112, § 12F).....	4-18
4.13 Fair Information Practices Act (Mass. Gen. Laws ch. 66A, § 2).....	4-20
4.14 Genetic Testing and Privacy Protection (Mass. Gen. Laws ch. 111, § 70G).....	4-21
<b>5. Conclusion</b>	<b>5-1</b>

# Figures

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Number	Page
1. Process from Legal Document to Consumer Information Sheet.....	2-1

## **1. INTRODUCTION**

Patient health information held by doctors, hospitals, other health care providers, and insurance companies is required to be protected under both federal and state law. In Massachusetts, health information can generally be shared for treatment and payment purposes (e.g., with other health care providers for consultation purposes or for billing purposes). There are a few exceptions, however, when patient health information may not be disclosed without the express consent of the patient. In those cases, such consent must be in writing. This requirement is due to the Massachusetts privacy statute, laws governing health care providers and insurers, and case law resulting from court decisions.

Certain kinds of "sensitive" health information, including behavioral health information, genetic test results, and HIV test results, are subject to additional legal protections in Massachusetts. These protections may include a requirement that express written consent be obtained for each release of sensitive health information. Other requirements may relate to the form of the consent or additional information that must be provided to the patient at the time of consent.

In very limited circumstances, disclosures of sensitive health information are still permitted without patient consent. For example, health information revealed to psychologists, psychotherapists, or social workers during the course of their examinations may be disclosed to others in certain situations (when necessary to prevent serious harm to the patient or others). Additionally, health care providers are often allowed to release a patient's sensitive health information in the event of an emergency, when obtaining a patient's consent is not practical.

Communications made by a patient to a behavioral health care provider, such as a social worker, psychologist, or psychotherapist, are also privileged, which means that they cannot be disclosed in a court proceeding without the consent of the patient. Exceptions exist, however, to allow disclosures in certain situations where the patient's emotional status has been raised or brought into question or in cases in which a judge rules that the need for the sensitive health information in a legal proceeding outweighs the privacy rights of the patient.

The purpose of this project was to develop a state inventory that describes the Massachusetts statutes and regulations for specific components of sensitive health information.

The sensitive health information topics included are as follows:

1. HIV-AIDS Test Results
2. Psychologist Records
3. Psychologist Privilege

4. Social Worker Records
5. Social Worker Privilege
6. Psychotherapist Records/Privilege
7. Substance Abuse Treatment Facilities
8. Alcohol Treatment Facilities
9. Hospitals Licensed Under the Department of Mental Health
10. Records of Mammography Facilities
11. Mental Health Information Held by Medical Service Corporations
12. Mental Health Information Held by Hospital Service Corporations
13. AIDS-Related Health Information Held by Licensed Insurance Companies
14. Records of Emancipated Minor and Minors Being Treated for Dangerous Diseases
15. Fair Information Practices Act
16. Genetic Testing and Privacy Protection

The description and categorization of laws were developed, in part, using the earlier work of Georgetown University privacy law and policy attorney Joy Pritts, JD.<sup>1,2</sup>

Categories for this inventory include the following:

- type of information
- brief summary of statute
- legal citation
- entities or persons regulated by the statute
- disclosure description
- permitted recipient
- consent requirements including media
- exceptions for consent requirements
- restrictions for disclosure
- electronic transmission requirements

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<sup>1</sup> Pritts J. *Your Medical Record Rights (A Guide to Consumer Rights under HIPAA)*; July 2005. <http://hpi.georgetown.edu/privacy/records.html>. Accessed April 14, 2009.

<sup>2</sup> Pritts J, Choy A, Emmart L, Hustead J. *The State of Health Privacy, Second Edition, A Survey of State Health Privacy Statutes*; June 2003. <http://hpi.georgetown.edu/privacy/publications.html>. Accessed April 14, 2009.

After compiling the legal inventory, the project team recognized that it was not a practical tool for consumers and providers and decided to produce plain language consumer/provider documents by following the process described in Section 2.

## 2. PROCESS

The process of creating plain language consumer documents regarding the legal statutes and regulations surrounding sensitive health information in Massachusetts began with the statutes and regulations described in Section 3. The documents were then translated for patient and provider use by a psychologist, and, when appropriate, documents were combined. These draft consumer information sheets were then reviewed by a literacy expert, and the recommendations were integrated. The revised, literacy-controlled consumer documents were then reviewed by a legal expert to ensure that the interpreted information contained in each document was accurate. Although many of the legal nuances present in the original descriptive inventory may not be preserved in the final consumer information sheets, they are consumer-friendly, understandable (at an 8th- to 12th-grade reading level), and correct.

**Figure 1. Process from Legal Document to Consumer Information Sheet**



### 3. LEGAL INVENTORY

(Note: This section has not undergone literacy translation. Please see Section 4 for associated translated documents.)

#### 3.1 Name and Citation of Statute or Regulation: HIV-AIDS Test Results (Providers)

1. *Type of information covered by statute.* Disclosure of the results of HIV/AIDS tests.
2. *Brief summary of the statute.* No physician or health care provider shall disclose the results of an HIV/AIDS test to any person other than the subject of the test, or identify the subject of the test to any person, without first obtaining the subject's written consent.
3. *Legal citation.* Mass. Gen. Laws ch. 111, § 70F.
4. *Entities or persons regulated by the statute.* Health care facilities (as defined in section 70E), physicians, and health care providers.
5. *What disclosures are expressly permitted and for what purposes?* None, except with the written consent of the subject and solely for the purpose disclosed in the consent.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* No one, except with the written consent of the subject.
7. *Is the patient's express permission required for the release of information?* Yes.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* No.
9. *Are there other restrictions stated on the release of information?* No.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Written informed consent."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* "Written informed consent" shall mean a written consent form for each requested release of the results of an individual's test or for the release of medical records containing such information. Such written request form shall state the purpose for which the information is being requested and shall be distinguished from written consent for the release of other medical information.
12. *If there is an express permission requirement, are there exceptions?* No.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* Yes.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.

14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.2 Name and Citation of Statute or Regulation: Psychologist Records**

1. *Type of information covered by statute.* Maintenance and inspection of patients' records.
2. *Brief summary of the statute.* A psychologist shall maintain a record for each patient that meets the standards of usual and customary practice and is adequate to enable the psychologist to provide proper diagnosis and treatment and shall permit inspection of such records by the patient or his representative.
3. *Legal citation.* 251 CMR 1.10.
4. *Entities or persons regulated by the statute.* Psychologists.
5. *What disclosures are expressly permitted and for what purposes?* Inspection of the records by the patient or his representative, or, upon the request of the patient, the entire record should be made available to the patient's attorney or psychotherapist.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* The patient, the patient's representative, or, upon the request of the patient, the patient's attorney or psychotherapist. See also Mass. Gen. Laws ch. 112, § 129A.
7. *Is the patient's express permission required for the release of information?* Yes, except as provided under Mass. Gen. Laws ch. 112, § 129A. A psychologist may also disclose information, without the patient's consent, to another professional as part of a consultation that is intended to enhance the services provided to the client under 251 CMR 1.11.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* The patient, the patient's representative, or, upon the request of the patient, the patient's attorney or psychotherapist. But see also Mass. Gen. Laws ch. 112, § 129A.
9. *Are there other restrictions stated on the release of information?* If the psychologist believes that providing the entire record to the patient would adversely affect the patient's well-being, he may provide a summary to the patient. Additionally, if releasing information as part of a consultation under 251 CMR 1.11, the psychologist should use best efforts to safeguard the patient's privacy by not disclosing the client's name or any information that could identify him. But see also Mass. Gen. Laws ch. 112, § 129A.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "At the request of the patient."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* No.
12. *If there is an express permission requirement, are there exceptions?* No.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.

- a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.3 Name and Citation of Statute or Regulation: Psychologist Privilege**

1. *Type of information covered by statute.* Confidentiality of communications between psychologists and patients and the disclosure of such information.
2. *Brief summary of the statute.* All communications between psychologists and patients are confidential and may only be disclosed upon the express, written consent of the patient or in certain situations where the patient poses a clear and present danger to himself or a third party.
3. *Legal citation.* Mass. Gen. Laws ch. 112, § 129A.
4. *Entities or persons regulated by the statute.* Psychologists and colleagues, agents, or employees of any psychologist.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) pursuant to the provisions of Mass. Gen. Laws ch. 233, § 20B; (ii) with the express, written consent of the patient; and (iii) to protect the rights and safety of others.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* (i) Reasonably identified persons, to prevent death or serious bodily injury previously threatened by the patient; (ii) the appropriate law enforcement agency in the vicinity where the patient or potential victim resides, to prevent the same; and (iii) hospital staff in connection with involuntary hospitalization of the patient. Nonprofit hospital service and medical service corporations may also inspect any and all records relating to diagnosis and treatment of patients to determine eligibility.
7. *Is the patient's express permission required for the release of information?* Yes, except in those situations identified above where disclosure without consent is necessary to prevent death or serious bodily injury to the patient or a third party.
8. *Are there restrictions in the statute on to whom the information may be disclosed?*  
See number 6 above.
9. *Are there other restrictions stated on the release of information?* The psychologist may only disclose that information which is essential in order to protect the rights and safety of others.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Express, written consent of the patient."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes. No other requirements stated.

12. *If there is an express permission requirement, are there exceptions? Yes, no consent is needed to protect the rights and safety of others, as described in number 6 above.*
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)? N/A.*
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure? N/A.*
  - b. *If yes, must this notice be in writing? N/A.*
  - c. *If yes, does the statute impose requirements for the form or content of the notice? N/A.*
14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.4 Name and Citation of Statute or Regulation: Social Worker Records**

1. *Type of information covered by statute.* Establishment and retention of clinical treatment records by a social worker and the confidentiality of the communications contained therein.
2. *Brief summary of the statute.* Communications between a social worker and a client or prospective client, and records of the same, are confidential and cannot be disclosed without the prior written consent of the client, someone authorized to give consent if the client is a minor, or if authorized under 258 CMR 22.04 or ordered by a court of competent jurisdiction.
3. *Legal citation.* 258 CMR 22.01 through 258 CMR 22.06.
4. *Entities or persons regulated by the statute.* Licensed social workers; social workers employed by the state, county, or municipal government; social work students; interns or trainees; or any agent, employee, or colleague of the same.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made with the written consent of the patient, or disclosures made, without consent, (i) to employees, agents, or colleagues of the social worker but only if such disclosure is reasonably necessary to ensure the adequacy or continuity of the professional services rendered to the client; (ii) to prevent harm to the client or a third party; (iii) to comply with statutory obligations to report suspected abuse or neglect of a child, elderly person, or long-term care facility resident; (iv) in connection with elderly protective services investigations; (v) in connection with disabled persons protective services investigations; (vi) in connection with certain child custody or protection proceedings; (vii) in connection with collection of payment for services rendered by the social worker, but solely to the extent such information is limited to a description of the nature of the services, the dates, and the amounts owed; and (viii) to insurance companies, nonprofit hospital service corporations, medical service corporations, or health maintenance organizations in connection with determining eligibility.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* (i) Employees, agents, or other colleagues of the social worker, but only if such disclosure is reasonably necessary to ensure the adequacy or continuity of the professional services rendered to the client; (ii) hospital staff in connection with the

voluntary or involuntary hospitalization of the patient; (iii) reasonably identified persons or the appropriate law enforcement agency in the vicinity where the client or potential victim resides, to prevent death or serious bodily injury previously threatened by the client; (vi) the appropriate agency in connection with protective service investigations; (vii) the courts in connection with foster care, protective custody, or adoption proceedings, but only to the extent reasonably necessary to give complete and accurate testimony in the court proceeding or otherwise ordered by the court; (viii) nonprofit hospital service and medical service corporations in connection with determining eligibility; and (ix) to parents of minor children being treated by the social worker.

7. *Is the patient's express permission required for the release of information? Yes, except in those situations identified above where disclosure without consent is necessary to prevent death or serious bodily injury to the patient or a third party, or for investigative procedures.*
8. *Are there restrictions in the statute on to whom the information may be disclosed? See number 6 above.*
9. *Are there other restrictions stated on the release of information? The social worker may only disclose that information which is essential in order to protect the rights and safety of others.*
10. *If the patient's express permission is required, what is the term used to describe that permission? "Prior written consent of the client, or the prior written consent of someone legally authorized to give such consent on behalf of an incompetent or minor child."*
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission? Yes. No other requirements stated.*
12. *If there is an express permission requirement, are there exceptions? Yes, no consent is needed to protect the rights and safety of others or to provide accurate and complete testimony in certain court proceedings and investigations, as described in number 6 above.*
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)? Yes, communications made specifically to colleagues, agents, or other employees of the social worker must be kept confidential by the recipients unless otherwise consented to by the client.*
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure? N/A.*
  - b. *If yes, must this notice be in writing? N/A.*
  - c. *If yes, does the statute impose requirements for the form or content of the notice? N/A.*
14. *Does the statute expressly address the electronic exchange of health information? No.*

### 3.5 Name and Citation of Statute or Regulation: Social Worker Privilege

1. *Type of information covered by statute.* Confidentiality of communications with social workers and disclosure of same.
2. *Brief summary of the statute.* Communications between a social worker and a client are confidential and cannot be disclosed without the express, written consent of the client, or, if such client is incompetent to consent, of a guardian appointed to act on behalf of the client, or unless required in certain court or administrative proceedings, or if necessary to protect the safety of the client or others.
3. *Legal citation.* Mass. Gen. Laws ch. 112, §§ 135–135B.
4. *Entities or persons regulated by the statute.* Licensed social workers; social workers employed by the state, county, or municipal government; or any agent, employee, or colleague of the same.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) with the express, written consent of the client or a guardian appointed to act on his behalf; (ii) in connection with placing a client into a hospital upon determination that he is in need of treatment for mental or emotional illness; (iii) during the course of a court-ordered examination, but only to the extent it reveals the client’s mental or emotional condition and not as an admission of guilt; (iv) in any court proceeding in which the client introduces emotional condition as a defense; (v) in court proceedings under Mass. Gen. Laws ch. 119 §§ 23–24 and ch. 210 § 3, relating to custody or foster care proceedings for children; (vi) in connection with child abuse investigations under Mass. Gen. Laws ch. 119 § 52; (vii) in suits brought against the social worker for malpractice where such disclosure is necessary as a defense; (viii) to prevent harm to the client or a third party; (ix) in connection with collection of payment for services rendered by the social worker, but solely to the extent such information is limited to a description of the nature of the services, the dates, and the amounts owed; (x) in connection with elder services investigations; (xi) in connection with marital therapy, with the written consent of each adult participant; and (xii) to insurance companies, nonprofit hospital service corporations, medical service corporations, or health maintenance organizations in connection with determining eligibility.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* The social worker may contact members of the client’s family or any other person if, in the social worker’s opinion, it would assist in protecting the safety of the client.
7. *Is the patient’s express permission required for the release of information?* Yes, except in those situations identified above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* Yes, the information cannot be disclosed without the consent of the client, except in those circumstances noted above.
9. *Are there other restrictions stated on the release of information?* None other than those noted above.
10. *If the patient’s express permission is required, what is the term used to describe that permission?* “Express, written consent of such client or, in the event of a client incompetent to consent, of a guardian appointed to act in the client’s behalf.”

11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes. No other requirements stated.
12. *If there is an express permission requirement, are there exceptions?* Yes. No consent is needed to protect the rights and safety of others or to provide accurate and complete testimony in certain court proceedings and investigations, as described in number 5 above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?* No.

### **3.6 Name and Citation of Statute or Regulation: Psychotherapist Records/Privilege**

1. *Type of information covered by statute.* Confidentiality of communications between patient and psychotherapist relative to the diagnosis or treatment of the patient's emotional or mental condition, and permitted disclosure of same.
2. *Brief summary of the statute.* Communications between a psychotherapist and a client are confidential and cannot be disclosed in any court proceeding, unless waived by the patient or in other certain circumstances defined by the court.
3. *Legal citation.* Mass. Gen. Laws ch. 233, § 20B. (See also Mass. Gen. Laws ch. 112, § 129A.)
4. *Entities or persons regulated by the statute.* A "psychotherapist" is defined as a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry. The definition also includes persons licensed as a psychologist by the board of registration of psychologists, students working under the supervision of psychologists, and nurses licensed and authorized to practice as a psychiatric nurse. Accordingly, the statutes governing the records/privilege of psychologists are likely applicable, as well.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) in connection with placing a client into a hospital upon determination that he is in need of treatment for mental or emotional illness; (ii) in order to prevent a threat of imminently dangerous activity by the patient; (iii) during the course of a court-ordered examination, but only to the extent it reveals the client's mental or emotional condition and not as an admission of guilt; (iv) in any court proceeding in which the client introduces emotional condition as a defense; (v) in court proceedings relating to adoption or child custody if the judge determines such disclosure is necessary for the welfare of the child; (vi) in suits brought against the psychotherapist for malpractice where such disclosure is necessary as a defense; and (vii) to insurance companies, nonprofit hospital service corporations, medical service

corporations, or health maintenance organizations in connection with determining eligibility and expenses.

6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* Staff members of hospitals and law enforcement authorities are expressly contemplated in connection with preventing threats of imminently dangerous activity. All other disclosures under this statute are in connection with court proceedings. See also Mass. Gen. Laws ch. 112, § 129A.
7. *Is the patient's express permission required for the release of information?* Yes, except in those situations identified above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* None, other than those noted above.
9. *Are there other restrictions stated on the release of information?* None, other than those noted above.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "To exercise or waive such privilege."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* No, but see also Mass. Gen. Laws ch. 112, § 129A.
12. *If there is an express permission requirement, are there exceptions?* Yes, as noted above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?* No.

### **3.7 Name and Citation of Statute or Regulation: Substance Abuse Treatment Facilities**

1. *Type of information covered by statute.* Confidentiality of patient-specific information in acute care inpatient substance abuse detoxification treatment facilities and substance abuse outpatient counseling services, respectively.
2. *Brief summary of the statute.* Patient-specific information is privileged and confidential and shall only be made available in certain circumstances or with the prior informed consent of the patient.
3. *Legal citation.* 105 CMR 160.303 through 105 CMR 160.305 (acute care inpatient substance abuse detoxification treatment services) and 105 CMR 162.303 through 105 CMR 162.305 (substance abuse outpatient counseling services).

4. *Entities or persons regulated by the statute.* All present or past staff members who have access to, knowledge of, or possess any information pertaining to present or former patients of acute care inpatient substance abuse detoxification treatment services and outpatient counseling services, as defined in 105 CMR 160.020 and 105 CMR 162.020, respectively.
5. *What disclosures are expressly permitted and for what purposes?* Patient-specific information shall only be made available (i) to medical personnel in a medical emergency; (ii) to qualified personnel for the purpose of conducting scientific research, management audits, or program evaluations; (iii) if authorized by an order of a court of competent jurisdiction; or (iv) where authorized by the prior informed consent of the patient.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* See number 5 above.
7. *Is the patient's express permission required for the release of information?* Yes, except in those situations identified above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* Unless requested by the patient, only the administrator or the designee of the administrator shall release information from patient records to those individuals and for the purposes noted in number 5 above or to the specific individuals or organizations identified in the patient's consent.
9. *Are there other restrictions stated on the release of information?* Authorization for release of information shall have a duration no longer than that necessary to accomplish the purpose for which it is given and shall be limited to the information necessary in light of the need and purpose of the disclosure.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Prior informed consent of the patient."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, the patient's informed consent must be in writing and shall contain (i) the specific name of the program or person permitted to make the disclosure, (ii) the name of the individual or organization to which disclosure is to be made, (iii) the name of the patient, (iv) the purpose of the disclosure, (v) how much and what kind of information is to be disclosed, (vi) the signature of the patient or authorized representative of the same if the patient is a minor or incompetent, (vii) the date, (viii) a statement that the consent is subject to revocation at any time except to the extent the recipient of the disclosure has already acted in reliance of it, and (ix) the date and condition upon which the consent will expire.
12. *If there is an express permission requirement, are there exceptions?* Yes, as noted above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* Not explicitly.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.

c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.

14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.8 Name and Citation of Statute or Regulation: Alcohol Treatment Facilities**

1. *Type of information covered by statute.* Maintenance and confidentiality of records kept for residents of halfway houses for alcoholics and residential alcohol treatment programs for operating under the influence offenders.
2. *Brief summary of the statute.* All records maintained at these facilities shall be strictly confidential, and only the administrator or authorized program staff shall have access to them. Individually identifiable confidential information shall not be used or released without the prior written approval of the resident.
3. *Legal citation.* 105 CMR 165.560 and 105 CMR 166.053.
4. *Entities or persons regulated by the statute.* Halfway houses and residential treatment facilities for operating under the influence offenders.
5. *What disclosures are expressly permitted and for what purposes?* No disclosures, except with the authorized approval by the resident.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* Administrator or authorized program staff.
7. *Is the patient's express permission required for the release of information?* Yes.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* None, other than those noted above.
9. *Are there other restrictions stated on the release of information?* With respect to the regulations governing residential alcohol treatment programs for operating under the influence offenders, all records of identity, diagnosis, prognosis, or services rendered on any resident shall be subject to the federally legislated requirements of P.L. 93-282, Confidentiality of Alcohol and Drug Abuse Patient Records.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Prior written approval."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, with respect to halfway houses; not explicitly required under the regulations pertaining to under the influence offender programs.
12. *If there is an express permission requirement, are there exceptions?* None noted.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.

c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.

14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.9 Name and Citation of Statute or Regulation: Hospitals Licensed Under the Department of Mental Health**

1. *Type of information covered by statute.* Maintenance and confidentiality of records kept for patients at Department of Mental Health facilities.
2. *Brief summary of the statute.* All records maintained at these facilities shall be private and not open to public inspection, except as provided in the regulation or with the consent of the patient.
3. *Legal citation.* 104 CMR 27.17.
4. *Entities or persons regulated by the statute.* Mental Health Department-operated hospitals, community mental health centers with inpatient units, or psychiatric units within a public health hospital; department-licensed psychiatric hospitals; department-licensed psychiatric units within a general hospital; or a secure intensive residential treatment program for adolescents that is either designated as a facility under the control of the department or licensed by the department.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) upon proper judicial order; (ii) to an attorney of the patient, upon the request of the patient or the attorney; (iii) to the patient or the patient's legal representative, unless such inspection is reasonably likely to endanger the life or physical safety of the patient or another person; (iv) to third parties, solely upon the written informed consent of the patient or his legal representative and the consent meets the requirements of 45 CFR 164.508; (v) as otherwise required by law; and (vi) where such disclosure, in the reasonable discretion of the Commissioner, is in the best interest of the patient and such disclosure is permitted by HIPAA. Such instances where disclosure would be in the best interest of the patient are (a) in connection with a transfer to a different facility; (b) to another treating physician for the treatment of a medical or psychiatric emergency, provided the patient is informed of the disclosure as soon as possible; (c) to a medical or psychiatric facility currently caring for the patient when the disclosure is necessary for the safe and appropriate treatment; (d) where the patient has previously provided consent for treatment, to the persons involved in such treatment; (e) between the department and a vendor regarding individuals being served by the vendor for purposes related to such services; (f) to persons authorized by the department to monitor the quality of the services provided to the patient; (g) to enable the patient to obtain benefits; (h) to persons conducting an investigation or research under 104 CMR 31.00 or 104 CMR 32.00; (i) to accrediting bodies; (j) in connection with reports of communicable or other infectious diseases; or (k) in the case of death, to coroners, medical examiners, or funeral home directors.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* See number 5 above.
7. *Is the patient's express permission required for the release of information?* Yes, prior to authorizing any release of records or information, except pursuant to a court

order, the administrator must make a determination that it is not possible or practicable to obtain the informed written consent of the patient.

8. *Are there restrictions in the statute on to whom the information may be disclosed?* None, other than those noted above.
9. *Are there other restrictions stated on the release of information?* Notwithstanding the disclosures referenced above, inspection or disclosure of a patient's records shall not be permitted in the following circumstances: (i) if the record or information was obtained from someone other than a health care provider on a promise of confidentiality and the requested disclosure would likely reveal the source; (ii) on a temporary basis only, during the course of research involving treatment, where the subject of the research agreed to the temporary suspension of access when consenting to participate in the research; (iii) if the subject is in the custody of a correctional institution and such institution has requested that access not be provided for safety reasons; (iv) if the records are restricted under the Federal Clinical Laboratory Improvement Act; and (v) if the records are created in anticipation of litigation. Additionally, all disclosures should be limited to the minimum information necessary to achieve the purpose of the exception.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Written informed consent."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, except that requests by the patient's attorney need not necessarily be in writing, unless requested by the physician. No other requirements are noted in the regulation.
12. *If there is an express permission requirement, are there exceptions?* See those exceptions noted in number 5 above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?* No.

### **3.10 Name and Citation of Statute or Regulation: Records of Mammography Facilities**

1. *Type of information covered by statute.* Maintenance of record-keeping system for each patient of the mammography facility.
2. *Brief summary of the statute.* The responsible physician should maintain a record for each patient of the facility containing certain, designated information. All mammograms (films), reports, and other related patient medical records are confidential and shall not be disclosed without the written authorization of the patient or his/her representative.

3. *Legal citation.* 105 CMR 127.020.
4. *Entities or persons regulated by the statute.* Any mammography facility, whether stationary or mobile, that offers diagnostic or screening mammography services in the Commonwealth to any person.
5. *What disclosures are expressly permitted and for what purposes?* No disclosures, except with the written authorization of the patient.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* None identified.
7. *Is the patient's express permission required for the release of information?* Yes.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* None identified.
9. *Are there other restrictions stated on the release of information?* None identified.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Written authorization of the patient."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, but no other requirements identified.
12. *If there is an express permission requirement, are there exceptions?* None noted.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?* No.

### **3.11 Name and Citation of Statute or Regulation: Mental Health Information Held by Medical Service Corporations**

1. *Type of information covered by statute.* Confidentiality of information of subscribers receiving mental health care.
2. *Brief summary of the statute.* No medical service corporation may, without the express and informed written consent of its subscriber or a covered family member of its subscriber, disclose any information it may have acquired from or about the subscriber pertaining to the administration of benefits provided for expenses arising from the outpatient diagnosis or treatment, or both, of mental or nervous conditions, except under the circumstances discussed below.
3. *Legal citation.* Mass. Gen. Laws ch. 176B, § 20.
4. *Entities or persons regulated by the statute.* Medical service corporations.

5. *What disclosures are expressly permitted and for what purposes?* Disclosure of (i) information that is not privileged and is permitted under Mass. Gen. Laws ch. 112, § 135 or Mass. Gen. Laws ch. 233, § 20B; (ii) aggregate patient data if such data contains no information personally identifying any insured or family member of the insured; (iii) patient utilization data to law enforcement authorities, state boards of registration, or a court of competent jurisdiction if any of them or the medical service corporation suspects that the patient or provider is committing or has committed fraud; (iv) patient information in connection with coordination of benefits, subrogation, peer review, or utilization review; and (v) patient information to a self-insured account administered by the corporation for research conducted by the account, provided, however, that no patient shall be the subject of such research without having first been notified by the account in writing of the scope and purpose of the research. The patient is not obligated to be a participant in such research and will not be penalized if he elects to be excluded.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* See number 5 above.
7. *Is the patient's express permission required for the release of information?* Yes, except as provided above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* See number 5 above.
9. *Are there other restrictions stated on the release of information?* The written consent of the subscriber or covered family member shall not be made a condition of the receipt of any benefits for which the insured subscribes.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Express and informed written consent of its subscriber or a covered family member of its subscriber."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, but no other requirements identified.
12. *If there is an express permission requirement, are there exceptions?* See number 5 above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### 3.12 Name and Citation of Statute or Regulation: Mental Health Information Held by Hospital Service Corporations

1. *Type of information covered by statute.* Confidentiality of information of subscribers receiving mental health care.
2. *Brief summary of the statute.* No nonprofit hospital service corporation may, without the express and informed written consent of its subscriber or a covered family member of its subscriber, disclose any information it may have acquired from or about the subscriber pertaining to the administration of benefits provided for expenses arising from the outpatient diagnosis or treatment, or both, of mental or nervous conditions, except under the circumstances discussed below.
3. *Legal citation.* Mass. Gen. Laws ch. 176A, § 14B.
4. *Entities or persons regulated by the statute.* Nonprofit hospital service corporations.
5. *What disclosures are expressly permitted and for what purposes?* Disclosure of (i) information that is not privileged and is permitted under Mass. Gen. Laws ch. 112, § 135 or Mass. Gen. Laws ch. 233, § 20B; (ii) aggregate patient data if such data contains no information personally identifying any insured or family member of the insured; (iii) patient utilization data to law enforcement authorities, state boards of registration, or a court of competent jurisdiction if any of them or the hospital service corporation suspects that the patient or provider is committing or has committed fraud; (iv) patient information in connection with coordination of benefits, subrogation, peer review, or utilization review; and (v) patient information to a self-insured account administered by the corporation for research conducted by the account, provided, however, that no patient shall be the subject of such research without having first been notified by the account in writing of the scope and purpose of the research. The patient is not obligated to be a participant in such research and will not be penalized if he elects to be excluded.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* See number 5 above.
7. *Is the patient's express permission required for the release of information?* Yes, except as provided above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* See number 5 above.
9. *Are there other restrictions stated on the release of information?* The written consent of the subscriber or covered family member shall not be made a condition of the receipt of any benefits for which the insured subscribes.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Express and informed written consent of its subscriber or a covered family member of its subscriber."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes, but no other requirements identified.
12. *If there is an express permission requirement, are there exceptions?* See number 5 above.

13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
  - a. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
  - b. *If yes, must this notice be in writing?* N/A.
  - c. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
14. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.13 Name and Citation of Statute or Regulation: AIDS-Related Health Information Held by Licensed Insurance Companies**

1. *Type of information covered by statute.* The confidentiality of AIDS-related tests and the permitted disclosures of the results of the same.
2. *Brief summary of the statute.* AIDS-related information must be treated as highly confidential. No insurer, insurance producer, or employee thereof shall communicate information regarding an AIDS-related test, the results of any such test, or any other AIDS-related information to any person, unless made with the written authorization of the individual to whom the information relates, or as otherwise required by law.
3. *Legal citation.* 211 CMR 36.04 through 211 CMR 36.08.
4. *Entities or persons regulated by the statute.* Insurers, insurance producers, or employees of the same.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) with the specific, prior written consent of the individual or (ii) to those persons or entities specifically described in the consent form obtained by the individual prior to the individual agreeing to be tested (which persons and entities shall consist of only those persons or entities to which release of such confidential medical information is lawful and those to whom disclosure without authorization is required by law).
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* Insurers are required to notify an individual of any disclosure of AIDS-related information to any of the designated persons identified in the patient's prior informed consent to be tested other than the insurer, its employees, reinsurers, attorneys, and contractors solely on a need-to-know basis for use for underwriting, claims, or other business purposes in connection with the insurance transaction.
7. *Is the patient's express permission required for the release of information?* Yes, except as provided above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?*  
See numbers 5 and 6 above.
9. *Are there other restrictions stated on the release of information?* Before conducting an AIDS-related test, the individual to be tested must also give prior written informed consent to such testing, showing an understanding of, among other things, the persons or entities that will or may have access to the test results or to which the results of the test may be disclosed. To that end, the insurers must disclose at the very minimum, the following before obtaining written consent: (i) the purpose of

the test; (ii) the effects of the test on the individual's insurance; (iii) information explaining AIDS, including the nature of the test and the meaning of the results; (iv) a description of the insurer's confidentiality standards and the procedures, including full disclosure of any potential use that may be made of the test results, and the extent to which the insurer restricts access to such information; (v) a complete description of the persons or entities that may be reasonably expected to have access to the test results or any other AIDS-related information; (vi) information about free-anonymous AIDS-related testing through alternative sources and the opportunity of counseling; (vii) information about how the results will be provided; and (viii) information regarding what to do if the individual believes his confidentiality has been violated.

10. Additionally, the AIDS-related information shall be accessible only to the minimum necessary number of people designated to have access to the information.
11. *If the patient's express permission is required, what is the term used to describe that permission?* "Written authorization" and "written informed consent."
12. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes. Prior to being tested, the individual's written informed consent must contain a statement that the test results or any other AIDS-related information will not be released to any person or entity other than those described in the consent form unless the insurer obtains the prior written consent of the individual.
13. *If there is an express permission requirement, are there exceptions?* Only as permitted by applicable law and as described in numbers 5 and 6 above.
14. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* Insurers are required to notify an individual of any disclosure of AIDS-related information to any of the designated persons identified in the patient's prior informed consent to be tested other than the insurer, its employees, reinsurers, attorneys, and contractors solely on a need-to-know basis for use for underwriting, claims, or other business purposes in connection with the insurance transaction.
15. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
16. *If yes, must this notice be in writing?* N/A.
17. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.
18. *Does the statute expressly address the electronic exchange of health information?* Only that the insurer should take reasonable security safeguards to ensure that information stored in a computer data bank or other files is adequately protected.

### **3.14 Name and Citation of Statute or Regulation: Records of Emancipated Minor and Minors Being Treated for Dangerous Diseases**

1. *Type of information covered by statute.* Permitted treatment of minors without the consent of a parent, legal guardian, or other person having custody or control of a minor child.

2. *Brief summary of the statute.* No consent from a parent or guardian is necessary to provide emergency medical treatment to a minor if a delay in such treatment could endanger the life of the patient or if the minor is able to consent on his own, as provided in the statute. The records in connection with the care of such minor who has consented to treatment shall be confidential between the minor and the physician/dentist and shall not be released except upon the written consent of the minor or a proper judicial order.
3. *Legal citation.* Mass. Gen. Laws ch. 112, § 12F.
4. *Entities or persons regulated by the statute.* Physicians, dentists, and hospitals.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures made (i) with the written consent of the minor who previously consented to the treatment; (ii) by proper judicial order; or (iii) to the parents or guardians of a minor whose life the physician or dentist reasonably believes is endangered, with notice to the minor after said notification.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* When the physician or dentist attending a minor reasonably believes that his condition is so serious that his life is endangered, the physician/dentist shall notify the parents, legal guardian, or foster parents of said condition and shall inform the minor of said notification.
7. *Is the patient's express permission required for the release of information?* Yes, except as provided above.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* See numbers 5 and 6 above.
9. *Are there other restrictions stated on the release of information?* The confidentiality between the minor and the physician/dentist only occurs if the minor has the ability to consent to treatment. Such consent may be given by a minor if (i) he is married, widowed, or divorced; (ii) he is the parent of a child; (iii) he is a member of the armed forces; (iv) she is pregnant or believes herself to be pregnant; (v) he lives apart from his parents and manages his own finances; or (vi) he reasonably believes that he has a dangerous disease as defined in Mass. Gen. Laws ch. 111, § 6.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Written consent."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* Yes. No other requirements are noted.
12. *If there is an express permission requirement, are there exceptions?* See numbers 5 and 6 above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* N/A.
14. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* N/A.
15. *If yes, must this notice be in writing?* N/A.
16. *If yes, does the statute impose requirements for the form or content of the notice?* N/A.

17. *Does the statute expressly address the electronic exchange of health information?*  
No.

### **3.15 Name and Citation of Statute or Regulation: Fair Information Practices Act**

1. *Type of information covered by statute.* Maintenance, accountability for, and protection of records containing personal data by the holders of the same.
2. *Brief summary of the statute.* Every holder maintaining personal data shall take measures to insure that access and dissemination of personal data to unauthorized recipients is prevented.
3. *Legal citation.* Mass. Gen. Laws ch. 66A, § 2.
4. *Entities or persons regulated by the statute.* Any agency of the executive branch of the government that collects, uses, maintains, or disseminates personal data or any person or entity that contracts or has an arrangement with any agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures of (i) medical and psychiatric data may be made available to a physician treating an individual upon the request of said physician, but only if a medical or psychiatric emergency arises that precludes the individual giving approval for the release of such data, provided the individual shall be given notice of such access upon the termination of the emergency; (ii) data requested to be disseminated by the individual to a third party; and (iii) information to the Bureau of Special Investigations for the purposes of fraud detection and control.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* See number 5 above.
7. *Is the patient's express permission required for the release of information?* Yes, except in those situations noted above. Additionally, the holder of personal data may withhold information from the individual who is currently the subject of an investigation, the disclosure of which would prejudice the possibility of effective law enforcement. Such information may be held for the earlier of (i) the time it takes to complete the investigation or (ii) one year from commencement of the investigation.
8. *Are there restrictions in the statute on to whom the information may be disclosed?* If the information contains personal identifiers relating to a third person, the agency may remove them before disseminating the information, unless such third party is an officer or employee of the government acting as such.
9. *Are there other restrictions stated on the release of information?* A holder of personal data shall not allow any other agency or individual not employed by the holder to have access to the personal data unless such access is authorized by law or is approved by the individual whose personal data is sought.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Approval by the data subject."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* No indication that the consent must be in writing.

12. *If there is an express permission requirement, are there exceptions? See number 5 above.*
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)? N/A.*
14. *Must the original provider notify the recipient of the requirement of permission before redisclosure? N/A.*
15. *If yes, must this notice be in writing? N/A.*
16. *If yes, does the statute impose requirements for the form or content of the notice? N/A.*
17. *Does the statute expressly address the electronic exchange of health information? Yes.*

### **3.16 Name and Citation of Statute or Regulation: Genetic Testing and Privacy Protection**

1. *Type of information covered by statute.* Disclosure of genetic information and results of genetic tests. "Genetic tests" means a test of human DNA, RNA, mitochondrial DNA, chromosomes, or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material. It does not include tests given for drugs, alcohol, cholesterol, or HIV or any other test for the purpose of diagnosing or detecting an existing disease, illness, impairment, or disorder.
2. *Brief summary of the statute.* No facility, physician, or health care provider shall test for genetic information without obtaining prior written consent or disclose the results of a genetic test to any person other than the subject of the test, or identify the subject of the test to any person, without first obtaining the subject's informed written consent, except as noted below. Any records containing genetic information shall not be divulged without informed written consent, except as noted below.
3. *Legal citation.* Mass. Gen. Laws ch. 111, § 70G.
4. *Entities or persons regulated by the statute.* Health care facilities (as defined in section 70E), physicians, health care providers, and any person having charge of or access to any records pertaining to any genetic information.
5. *What disclosures are expressly permitted and for what purposes?* Disclosures with the informed written consent of the patient only, except (i) upon proper judicial order; (ii) in connection with life, disability, and long-term care insurance as authorized by ch. 175I; or (iii) as confidential research information for use in epidemiological or clinical research conducted for the purpose of generating scientific knowledge about genes or learning about the genetic basis of disease or for developing pharmaceutical and other treatments for a disease.
6. *Who is identified as a permitted recipient of the information and for what purpose or purposes?* Individuals to whom the patient has previously given informed written consent to receive such information, insurance providers as authorized by ch. 175I, and researchers in connection with the studies described above. Organizations conducting pharmaco-economic studies in systematic research to determine the cost-benefits of specific treatments for genetic-based diseases shall also be exempted from the need to reobtain informed written consent.

7. *Is the patient's express permission required for the release of information?* Yes.
8. *Are there restrictions in the statute on to whom the information may be disclosed?*  
No.
9. *Are there other restrictions stated on the release of information?* No.
10. *If the patient's express permission is required, what is the term used to describe that permission?* "Informed written consent" and "prior informed consent."
11. *Must the patient's express permission be in writing? If so, what requirements exist as to duration by time, by event, format, or content of the permission?* "Informed written consent" shall mean a written consent form for the requested release of a person's genetic information, or the release of genetic information, or for the release of medical records containing such information. Such written request form shall state the purpose for which the information is being requested and shall be distinguished from written consent for the release of other medical information. Alternatively, patients must give prior written consent before being tested for genetic information.
12. *If there is an express permission requirement, are there exceptions?* As noted in number 5 above.
13. *If yes, does the statute require the recipient to obtain permission to disclose to others for the listed purposes (or otherwise)?* Yes, if the recipient is a physician, facility, or health care provider.
14. *Must the original provider notify the recipient of the requirement of permission before redisclosure?* No.
15. *If yes, must this notice be in writing?* N/A.
16. *If yes, does the statute impose requirements for the form or content of the notice?*  
N/A.
17. *Does the statute expressly address the electronic exchange of health information?*  
No.

## **4. PLAIN LANGUAGE CONSUMER EDUCATION DOCUMENTS (LEGAL INVENTORY TRANSLATIONS)**

### **4.1 Release of the Results of HIV/AIDS Tests (Mass. Gen. Laws ch. 111, § 70F)**

#### ***Included Providers***

- health care facilities
- physicians
- health care providers

#### ***Summary of Statute***

These facts apply to Massachusetts Law governing the release of the results of HIV/AIDS tests:

- All patients have rights and protection regarding the release of their medical history and records.
- After taking an HIV/AIDS test, a physician or health care provider is only allowed to share the results of this test with the patient.

#### ***Your Rights as a Patient***

Information about your HIV/AIDS status and/or tests WILL NOT be shared with anyone without written permission by you.

If you want somebody other than you to receive this information, you will be asked to sign a document at your doctor's office.

For example: You have been living with HIV+ for the past 10 years. You recently had a medical workup, and tests confirmed a diagnosis of lymphoma. In order to ensure no contraindications with medications and treatment, you want your new oncologist to speak with your primary care doctor. Your primary care doctor asks you to sign a consent form documenting your authorization to release health information regarding your HIV+ status.

#### ***Responsibilities of Your Physician or Health Care Provider***

Your physician or health care provider MAY ONLY share HIV/AIDS results with other persons after you provide written permission to do so.

### **4.2 Psychologist Privilege (Mass. Gen. Laws ch. 112, § 129A) and Psychologist Records (251 CMR 1.10)**

Confidentiality of communications between psychologists and patients and disclosure of this information; maintenance and review of patients' records.

### ***Included Providers***

- psychologists and their colleagues
- people employed by the psychologist

### ***Summary of Statute***

- All patients have rights and protection regarding information discussed with their psychologist.
- All psychologists keep a record for each patient. Your record may include information regarding your diagnosis and treatment, as well as other personal information.
- All patients have rights and protection regarding the maintenance and inspection of their medical health record and history kept by their psychologist.

### ***Your Rights as a Patient***

All communication between you and your psychologist is kept private, EXCEPT in some situations.

These situations include if you are in danger of hurting yourself or another known person. It is your right as a patient that sharing your communications will be made ONLY in cases when your safety or the safety of others is threatened.

For example: Recently, you have been under a lot of stress at home and work. You are having thoughts of suicide and about overdosing on pills. You tell your psychologist your fears about keeping yourself safe. You and your psychologist decide that you need to be hospitalized. Your psychologist makes a call to the hospital to arrange for your stay. He provides the admitting doctor at the hospital with a brief history of your present illness and current thoughts of hurting yourself.

In all other situations, information discussed with your psychologist will only be shared at YOUR WRITTEN REQUEST.

You (or your representative) may ask your psychologist to see a copy of your record at any time.

At your written request, a copy of your entire record may also be shown to your lawyer or another psychotherapist.

For example: You have been seeing a psychologist to help cope with the stress of your divorce. Your divorce lawyer would like to see a copy of your psychotherapy record. Your lawyer wants to use the information in it to support your case that you are a good parent, are emotionally stable, and should receive full custody of your children. At your request, your psychologist is permitted to disclose your entire record to your lawyer.

### **Responsibilities of Your Psychologist**

- DOES NOT need your permission to share information in your record with another mental health professional. Psychologists consult with other mental health professionals to provide better treatment to their patients.
- WILL PROTECT your privacy in consultation. Your psychologist will not provide your name or other identifying information without your permission.
- DOES NOT need your permission to share confidential information if you make threats to harm yourself or another known person. The following people/agencies will be informed about this information:
  - known persons who are in serious danger of being hurt or injured
  - the police
  - hospital staff regarding involuntary hospitalization
  - medical service agencies and nonprofit companies related with the hospital may review your record to determine medical benefits and eligibility
- WILL ONLY share information necessary to keep you and others safe.
- MAY provide you with a *summary* rather than your *entire* record, if he or she believes that seeing your entire record will be harmful to your well-being.

### **4.3 Social Worker Privilege (Mass. Gen. Laws ch. 112, §§ 135-135B) and Social Worker Records (258 CMR 22.01 through 258 CMR 22.06)**

Confidentiality of communications with social workers and disclosure of this information; establishment and retention of treatment records and confidentiality of the communication between social worker and client.

#### **Included Providers**

- licensed social workers
- social workers employed by the state, county, or government
- social work students, interns, or trainees
- agents, colleagues, and employees associated with the social worker

#### **Summary of Statute**

These facts apply to Massachusetts Law governing *social worker privilege*, the *confidentiality of communications* between social workers (and other providers listed above) and patients, and the *disclosure* of such information:

- All patients have rights and protection regarding information discussed with their social worker. All communication and conversations will be kept confidential.

- Any communications cannot be shared without written permission by the patient or a person authorized to give permission if the patient is disabled, incompetent, or a minor.
- EXCEPTIONS: Sharing information may be allowable WITHOUT your permission if by an order from the court or when necessary to protect your safety or the safety of others.

### ***Your Rights as a Patient***

It is your right as a patient that you or your appointed guardian provide written permission before your social worker can share private information with others.

Sharing your information may be done WITHOUT your prior permission, in the following situations:

- Regarding your treatment and safety:
  - Your social worker may speak with associates or other employees when necessary regarding your care.
  - Your social worker may speak with associates or other employees regarding a decision made for necessary admission to the hospital for treatment for mental or emotional illness.
  - Your social worker may speak with associates or other employees to prevent you or someone else from suffering harm.
- Disclosures made by you to a social worker may be used in a court proceeding WITHOUT your permission, when made in the following situations:
  - during court-ordered evaluations to help explain your mental or emotional status
  - in court, if your lawyer uses your emotional condition as part of your defense
  - in court, relating to foster care or custody of children
  - to report cases of suspected abuse or neglect of a child, an elderly person, or a resident in a long-term care facility (i.e., disabled or incompetent persons)
  - in malpractice lawsuits against the social worker, whereby disclosures are necessary in the social worker's defense

For example: You are the legal guardian for your 15-year-old grandson. He has had multiple hospital stays for violent and destructive behavior. While at a clinic appointment with his social worker, he became aggressive and made threats to hurt himself and the social worker. The social worker informed you of what happened in the session. She then told you that he needed to be hospitalized for his own safety and the safety of others. You agreed, and your grandson was then taken to the emergency room of the local hospital.

- Regarding insurance companies and billing:
  - Your information may be shared with collection of payments for social worker services (describing the nature of the services provided, dates, and amount owed), but not detailed notes about your treatment.

- Your information may be shared with insurance companies, nonprofit hospital service corporations, or health maintenance organizations in order to determine health benefits eligibility.

For example: Your child is being treated for an anxiety disorder that requires weekly visits with a social worker at the clinic. With recent change of jobs, your health benefits also changed. You speak with the social worker at your child's clinic to make sure your child will be covered under your new medical insurance. The social worker tells you that she will call the insurance company to find out your new medical benefits. During this call, the social worker provides your child's name, diagnosis, and reason for treatment at the clinic.

### ***Responsibilities of Your Social Worker***

Your social worker IS allowed to share information about you to the following people and agencies:

- other employees, agents, or colleagues ONLY when necessary to make sure your health/medical benefits will continue
- hospital staff, as part of your hospitalization
- identified persons who have been threatened and are in serious danger of being hurt or injured
- the police in your neighborhood or in the potential victim's neighborhood to prevent death or serious bodily harm to identified persons
- organizations connected with protective service investigations (for example, child protective services, elder protective services)
- courts in connection with foster care, protective custody, or adoption proceedings (This is necessary ONLY to provide COMPLETE and ACCURATE information in court.)
- health insurers, who may review portions of your record in order to determine eligibility
- parents of minor children being treated by the social worker

Your social worker DOES NOT need your authorization to share information with family members or other persons that is necessary to protect you and others from danger.

Your social worker DOES NOT need your authorization to release information for abuse or neglect cases (for example, abuse and/or neglect of children, the elderly, or the disabled).

When your prior permission is needed to disclose confidential information (about you or about individuals under your care, such as children, the elderly, or the disabled), you must do so IN WRITING.

Any communications made to social worker colleagues or other employees WILL BE KEPT CONFIDENTIAL, unless permission is otherwise given by YOU.

#### **4.4 Psychotherapist Records/Privilege (Mass. Gen. Laws ch. 233, § 20B)**

Confidentiality of communications between psychotherapist and patients and disclosure of this information.

##### ***Included Providers***

- A psychotherapist includes licensed individuals in the fields of psychiatry, psychology, and nursing:
  - psychiatrists and individuals licensed by the board of medicine to practice psychiatry
  - licensed psychologists, as well as students supervised by licensed psychologists
  - licensed psychiatric nurses

##### ***Summary of Statute***

These facts apply to Massachusetts Law governing the *psychotherapist privilege*, the *confidentiality of communications* between psychotherapists and patients, and the *sharing* of such information:

- All patients have rights and protection over information discussed with their psychotherapist.
- All communication and conversations will be kept confidential. This information cannot be disclosed in a court proceeding without the patient's permission or a court order after a hearing.
- All psychotherapists keep records for each of their patients. A record may include information regarding diagnosis and treatment, as well as other personal information.
- EXCEPTIONS: Your communications with a psychotherapist cannot be disclosed in a court proceeding unless expressly permitted by you.

##### ***Your Rights as a Patient***

Your communications and information from your psychotherapist may be disclosed in a court proceeding WITHOUT your prior permission, when made in the following situations:

- when your psychotherapist discloses the communication to admit you to the hospital for treatment for mental or emotional illness
- when your psychotherapist discloses the communication following your threats to harm yourself or another person
- during court-ordered evaluations to help explain your mental or emotional status
- in court, if your lawyer uses your emotional condition as part of your defense
- in court, relating to adoption or child custody, to serve the best interests of your child

- in malpractice lawsuits against the psychotherapist, whereby disclosures are necessary in the therapist's defense
- to insurance companies, such as Blue Cross/Blue Shield, or health maintenance organizations in order to determine health benefits eligibility

For example: Your mother has a long history of depression and recently required a hospital stay. The psychiatrist met with you and your mother in a family meeting to talk about different treatment options. Your mother has been on several medicines over the years. None of these medicines have worked very well. The psychiatrist wants your authorization to try your mother on a new drug that is very effective to treat depression. This new drug has some risky and serious side effects. You agree to this plan, but your mother refuses to take the new drug. In order for your mother to take the new drug, you and the psychiatrist must get approval from the court. In court, your mother's diagnosis and prior treatment were discussed.

### ***Responsibilities of Your Psychotherapist***

Your psychotherapist DOES NOT need your authorization to share confidential information if you make threats to harm yourself or another known person.

The following people/agencies will be informed about this information:

- identified persons who are in danger of being hurt or injured
- the police
- hospital staff who are familiar with the hospitalization
- court officials, regarding child custody cases, malpractice suits, or in cases when using your emotional condition as part of your defense

Your psychotherapist WILL ONLY share information that is necessary to keep you and others safe.

## **4.5 Substance Abuse Treatment Facilities (105 CMR 160.303 through 105 CMR 160.305)**

Confidentiality of patient records in acute care inpatient substance abuse detoxification treatment facilities and substance abuse outpatient counseling services.

### ***Included Providers***

- Staff members at both inpatient and outpatient treatment facilities for substance abuse. All private information about you will be kept CONFIDENTIAL. Staff members who worked at either facility in the past, or staff members currently working at either facility now, will not share your information.

### **Summary of Statute**

Massachusetts Law governing *substance abuse treatment facilities* protects the *confidentiality of patient information* and restricts the *sharing* of such information:

- All patients have privacy rights with respect to information about treatment for substance abuse. All information about you is private and will be kept confidential.
- This information cannot be shared without your permission.
- EXCEPTIONS: Sharing information is permitted WITHOUT your permission in certain events. (See the next section for more details.)

### **Your Rights as a Patient**

Your information will NOT be shared with others without your express WRITTEN permission, except ONLY in the following events:

- to other medical personnel in an emergency
- to qualified personnel doing scientific research or program reviews
- when ordered by a court

For example: For 12 months, you have attended an outpatient support group for heroin addicts. You learned coping skills and ways to stay sober even when tempted to use drugs again. As your time in the group comes to an end, the leader asks you to be part of a research study for recovering addicts. You would be asked questions about your past drug use and experience in the support group. The researcher is a licensed medical doctor. You decide to participate and give your group leader written permission to give the researcher your contact information. The researcher calls you to schedule an appointment for an in-person interview.

### **Responsibilities of Your Treatment Facility Provider**

Your treatment facility provider may only release your information in the following situations:

- to other medical personnel in a medical emergency
- to qualified personnel doing scientific research or program reviews and evaluations
- following a court order
- to individuals or organizations YOU give written permission to

The amount of information released will be LIMITED and will not include more than is necessary.

Information shared will also be LIMITED in the time it may be used and will not be used longer than necessary.

### ***Other Facts about Your Rights as a Patient and Your Medical Record***

When your prior permission is needed to share personal information, it must be IN WRITING.

The consent MUST INCLUDE the following:

- the date
- your name
- the name of the person or the organization permitted to share the information
- the individual's name or organization receiving the information
- reason for the sharing of information
- the kind of information released
- your signature (or your parent/guardian if the patient is a minor or incompetent)
- a statement noting that the permission may be withdrawn at any time, unless the receiver has already reviewed the information
- the date (and medical condition) for which the permission will end

### **4.6 Alcohol Treatment Facilities (105 CMR 165.560 and 105 CMR 166.053)**

Maintenance and confidentiality of records kept for residents of halfway houses for alcoholics and residential alcohol treatment programs for operating under the influence offenders.

#### ***Included Providers***

- administrators and authorized staff at the alcohol treatment facilities

#### ***Summary of Statute***

These facts apply to Massachusetts Law governing *medical staff members at alcohol treatment facilities*, the *maintenance and confidentiality of patient records*, and the *sharing* of such information:

- All patients have rights and protection over information discussed while in an alcohol treatment facility. All information about a patient is private and will be kept confidential.
- This information cannot be shared without a patient's written permission.

#### ***Your Rights as a Patient***

It is your right as a patient that your information CANNOT be shared WITHOUT your prior written permission.

For example: A 27-year-old man has been living in a halfway house for alcoholics. While he is sober now, he does not want his parents or friends to know about his recent relapse with alcohol. His parents know where he is living but do not know about his relapse or his mental and emotional state. His counselor keeps his information confidential and does not share any information when his parents come to visit.

When in treatment at *halfway houses*, your prior permission is needed to disclose confidential information. You must give your authorization IN WRITING.

You are not necessarily required to provide written authorization to disclose confidential information when in treatment at *residential alcohol treatment facilities for operating under the influence offenders*, but confidential information still cannot be released without your authorization.

### ***Responsibilities of Your Treatment Facility Provider***

Your treatment facility provider allows ONLY the administrator (or someone else given permission by the administrator) access to your records. Your medical record may include the following:

- identifying information (i.e., name, age, address, etc.)
- diagnosis (what is medical illness)
- prognosis (what is the result of illness and treatment)
- treatment received

When approved to RELEASE your records, appropriate steps will be taken to keep your identifying information CONFIDENTIAL. Federal law regulates that your information be kept secure (P.L. 93-282).

## **4.7 Mental Health Information Held by Hospital Service Corporations (Mass. Gen. Laws ch. 176A, § 14B)**

Confidentiality of subscribers' use of mental health care.

### ***Included Providers***

- nonprofit hospital service corporations (for example, Blue Cross of Massachusetts)
- money paid or refunded by these corporations for hospital care and medical treatment

### ***Summary of Statute***

Massachusetts Law protects the *confidentiality of subscribers' mental health care information* kept by *hospital service corporations (Blue Cross)* and restricts the *sharing of this information*:

- All subscribers have rights to privacy with respect to their mental health information and treatment history held by nonprofit hospital service corporations (Blue Cross).
- Nonprofit hospital service corporations are NOT allowed to share information about benefits and expenses for your outpatient mental health treatment without your WRITTEN permission (or permission of a family member covered under your policy).

### ***Your Rights as a Patient***

Your information may NOT be shared with others without your WRITTEN permission, unless an exception applies.

### ***Responsibilities of a Nonprofit Hospital Service Corporation***

A nonprofit hospital service corporation IS allowed to disclose information during a court proceeding if the information is not protected by a privilege. That means disclosures can be made by a hospital service corporation if they were made in the following situations:

- when your therapist discloses the communication to admit you to the hospital for treatment for mental or emotional illness
- when your therapist discloses the communication following your threats to harm yourself or another person
- during court-ordered evaluations to help explain your mental or emotional status
- in court, if your lawyer uses your emotional condition as part of your defense
- in court, relating to adoption or child custody, to serve the best interests of your child
- in malpractice lawsuits against the therapist, whereby disclosures are necessary in the therapist's defense
- to report cases of suspected abuse or neglect of a child, an elderly person, or a resident in a long-term care facility (i.e., disabled or incompetent persons)

Nonprofit hospital service corporations may also disclose the following:

- aggregate patient information that doesn't identify you or your family members
- information regarding the type of visit, the number of times, and the length of the hospital service use (for example, number of emergency room visits, number of missed appointments) to alert law enforcement agencies, state boards, or courts in cases of suspected fraud
- subscriber information to arrange benefits or review history of services used

For example:

You have seen a psychologist for several months in her private office to help with your depression and anxiety. Your insurance will cover 50 outpatient visits per calendar year. You have already used 40 visits and have 4 months to go before the next calendar year. You are still having severe symptoms and will need more treatment. Your psychologist said that she will submit a request for more visits from your insurance company. She will share information about your condition in her request, but only as necessary to verify the need for further services.

- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for purposes of billing and audits
- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for research purposes

You will be told about the purpose of the research BEFORE your information is used and may elect in writing to be excluded. You are NOT REQUIRED to take part in any research. It will not be held against you.

### ***Other Facts about Your Rights as a Patient and Your Medical Record***

When your permission is needed to share information, it must be IN WRITING.

Your written consent is not a necessary condition for whether or not you (or a family member) will receive mental health benefits.

## **4.8 Records of Mammography Facilities (105 CMR 127.020)**

Maintenance and confidentiality of patient records kept at mammography facilities.

### ***Included Providers***

- any facility offering diagnostic or mammography screening services that allow physicians to determine the presence of cancerous tissue in the breast

### ***Summary of Statute***

These facts apply to Massachusetts Law governing the *maintenance and confidentiality* of records kept at *mammography facilities* and the *disclosure* of such information:

- All patients have rights and protection over the maintenance and inspection of their medical record and history kept by the mammography facility.
- All doctors keep a record for each of their patients. Your patient record includes your mammograms (films/images of the breast tissue) and reports, as well as other medical information.
- All patient records are kept private and may only be seen by people involved in your care.
- Sharing a patient's medical record and mammograms is NOT ALLOWED without the patient's written permission (or a patient's representative's written authorization).

### ***Your Rights as a Patient***

It is your right that your mammogram or medical record will NOT be shared with others without your WRITTEN permission.

### ***Responsibilities of Your Treatment Provider***

- DOES need your WRITTEN permission to share your medical record.

For example: You went to the radiologist's outpatient office for your annual mammography. You asked that a copy of the report be sent to your gynecologist and your primary care doctor. The radiologist (staff person) asks that you sign a "release of information" form giving them permission to send your reports to your doctors.

## **4.9 Mental Health Information Held by Medical Service Corporations (Mass. Gen. Laws ch. 176B, § 20)**

Confidentiality of subscribers' use of mental health care.

### ***Included Providers***

- medical service corporations (for example, Blue Shield of Massachusetts)
- money paid by these corporations for medical and chiropractic treatment and services used

### ***Summary of Statute***

Massachusetts Law protects the *confidentiality of subscribers' mental health care information* kept by *medical service corporations (Blue Shield of Massachusetts)* and restricts the *sharing* of such information:

- All subscribers have rights and protection of their mental health information and treatment history held by medical service corporations.
- Medical service corporations are NOT allowed to share information about benefits and expenses for your outpatient mental health treatment without your WRITTEN permission (or permission of a family member covered under your policy).
- Sharing information is ALLOWED without your permission in some events listed below.

### ***Your Rights as a Patient***

Your information may NOT be shared with others without your WRITTEN permission, unless an exception applies.

### **Responsibilities of a Medical Service Corporation**

A medical service corporation IS ALLOWED to disclose information during a court proceeding if the information is not protected by a privilege. That means disclosures can be made by a medical service corporation if they were made in the following situations:

- when your therapist discloses the communication to admit you to the hospital for treatment for mental or emotional illness
- when your therapist discloses the communication following your threats to harm yourself or another person
- during court-ordered evaluations to help explain your mental or emotional status
- in court, if your lawyer uses your emotional condition as part of your defense
- in court, relating to adoption or child custody, to serve the best interests of your child
- in malpractice lawsuits against the therapist, whereby disclosures are necessary in the therapist's defense
- to report cases of suspected abuse or neglect of a child, an elderly person, or a resident in a long-term care facility (i.e., disabled or incompetent persons)

Nonprofit hospital service corporations may also disclose the following:

- aggregate patient information that doesn't identify you or your family members
- information regarding the type of visit, the number of times, and the length of the hospital service use (for example, number of emergency room visits, number of missed appointments) to alert law enforcement agencies, state boards, or judicial in cases of suspected fraud
- subscriber information to arrange benefits or review history of services used
- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for purposes of billing and audits
- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for research purposes

You will be told about the purpose of the research BEFORE your information is used and may elect in writing to be excluded. You are NOT REQUIRED to take part in any research. It will not be held against you.

For example: You are covered by your employer's health plan that is administered by Blue Shield. Your employer wants to do a study on mental health costs. Blue Shield will not release information that identifies you without your written permission.

### **Other Facts about Your Rights as a Patient and Your Medical Record**

When your permission is needed to share information, it must be IN WRITING.

Your written permission is not a reason for whether or not you (or a family member) will receive mental health benefits.

#### **4.10 Mental Health Information Held by Hospital Service Corporations (Mass. Gen. Laws ch. 176A, § 14B)**

Confidentiality of subscribers' use of mental health care.

##### ***Included Providers***

- nonprofit hospital service corporations (for example, Blue Cross of Massachusetts)
- money paid or refunded by these corporations for hospital care and medical treatment

##### ***Summary of Statute***

Massachusetts Law protects the *confidentiality of subscribers' mental health care information* kept by *hospital service corporations (Blue Cross)* and restricts the *sharing* of this information:

- All subscribers have rights to privacy with respect to their mental health information and treatment history held by nonprofit hospital service corporations (Blue Cross).
- Nonprofit hospital service corporations are NOT allowed to share information about benefits and expenses for your outpatient mental health treatment without your WRITTEN permission (or permission of a family member covered under your policy).

##### ***Your Rights as a Patient***

Your information may NOT be shared with others without your WRITTEN permission, unless an exception applies.

##### ***Responsibilities of a Nonprofit Hospital Service Corporation***

A nonprofit hospital service corporation IS allowed to disclose information during a court proceeding if the information is not protected by a privilege. That means disclosures can be made by a hospital service corporation if they were made in the following situations:

- when your therapist discloses the communication to admit you to the hospital for treatment for mental or emotional illness
- when your therapist discloses the communication following your threats to harm yourself or another person
- during court-ordered evaluations to help explain your mental or emotional status
- in court, if your lawyer uses your emotional condition as part of your defense
- in court, relating to adoption or child custody, to serve the best interests of your child

- in malpractice lawsuits against the therapist, whereby disclosures are necessary in the therapist's defense
- to report cases of suspected abuse or neglect of a child, an elderly person, or a resident in a long-term care facility (i.e., disabled or incompetent persons)

Nonprofit hospital service corporations may also disclose the following:

- aggregate patient information that doesn't identify you or your family members
- information regarding the type of visit, the number of times, and the length of the hospital service use (for example, number of emergency room visits, number of missed appointments) to alert law enforcement agencies, state boards, or courts in cases of suspected fraud
- subscriber information to arrange benefits or review history of services used

For example: You have seen a psychologist for several months in her private office to help with your depression and anxiety. Your insurance will cover 50 outpatient visits per calendar year. You have already used 40 visits and have 4 months to go before the next calendar year. You are still having severe symptoms and will need more treatment. Your psychologist said that she will submit a request for more visits from your insurance company. She will share information about your condition in her request, but only as necessary to verify the need for further services.

- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for purposes of billing and audits
- subscriber information to self-insured employers who use insurers or other administrative agents to pay claims for research purposes

You will be told about the purpose of the research BEFORE your information is used and may elect in writing to be excluded. You are NOT REQUIRED to take part in any research. It will not be held against you.

### ***Other Facts about Your Rights as a Patient and Your Medical Record***

When your permission is needed to share information, it must be IN WRITING.

Your written consent is not a necessary condition for whether or not you (or a family member) will receive mental health benefits.

### **4.11 Aids-Related Health Information Held by Licensed Insurance Companies (211 CMR 36.04 through 211 CMR 36.08)**

Confidentiality of AIDS-related tests and permitted disclosures.

#### ***Included Providers***

- insurers
- insurance producers or employees

### **Summary of Statute**

These facts apply to Massachusetts Law governing the *confidentiality of AIDS-related health information* held by *licensed insurance companies* and the *disclosure* of such information:

- All subscribers have rights and protection over the maintenance of their medical history and records held by insurance companies.
- Insurance companies and their employees treat AIDS-related information and results as HIGHLY CONFIDENTIAL.
- AIDS-related information WILL NOT be shared with any person without a subscriber's WRITTEN CONSENT (permission), or as otherwise required by law.

### **Your Rights as a Patient**

It is your right as a patient that, prior to any testing for HIV/AIDS, you must give informed written consent to such testing.

An informed consent form will include a statement informing you of the persons or organizations that may be allowed to see your information and test results.

Sharing of your results is made ONLY to those persons or organizations named in the consent form.

Your insurance company MUST get your prior written approval to release your information and test results to persons or entities *not included* in the consent form.

Your test results will not be shared without your WRITTEN consent (permission).

When your consent is *not needed* to release confidential information, disclosures will ONLY be made when required by law.

### **Responsibilities of Your Insurance or Health Care Provider**

Your insurance or health care provider will review the following information with you, *before* you sign the informed consent:

- purpose of the HIV/AIDS test
- effects of the HIV/AIDS test on your insurance
- information about HIV/AIDS, including information about the test and the meaning of the results
- description of your insurance company's confidentiality standards
- description of your insurance company's policies about giving out your test results and AIDS-related information
- description about when access to your information is restricted

- list of persons or organizations who may be expected to have access to your test results or other AIDS-related information
- information about free-anonymous AIDS-related testing
- information about the opportunity for counseling
- information about how the results of your AIDS testing will be provided
- information about steps to take if you believe that your confidentiality has been violated

Your insurance or health care provider **MUST** inform you when AIDS-related information is released to persons specified in your previously signed informed consent.

Your insurance company, its employees, reinsurers, attorneys, and contractors will only access your private information when needed to process insurance claims.

For example: You had unprotected sex with a man you met at a party. A few weeks after the party, you get a phone call from this man telling you that he is HIV+. You are concerned that you have the disease and decide to get tested. After getting preapproval to get the testing, your insurance company reviews its policies on protecting your confidential information by providing you with a pamphlet containing such information. You understand that your information will be kept private and only shared when needed to process your insurance claim.

#### **4.12 Records of Emancipated Minors and Minors Being Treated for Dangerous Diseases (Mass. Gen. Laws ch. 112, § 12F)**

Permitted treatment of minors **WITHOUT** the consent of a parent, legal guardian, or other person having custody of a minor child. An emancipated minor is a child under the age of 18 who

- is married, widowed, or divorced;
- is the parent of a child;
- is a member of the armed forces;
- is pregnant or believes herself to be pregnant;
- lives apart from his parents and manages his own finances; or
- reasonably believes that he has a dangerous disease (as defined by Mass. Gen. Laws ch. 111, § 6).

#### ***Included Providers***

- physicians
- dentists

- hospitals
- clinics

### **Summary of Statute**

Massachusetts Law protects the *confidentiality of emancipated minors' and minors' records* and restricts the *sharing* of such information:

- Permission from a parent or guardian IS NOT needed to treat minors in need of emergency medical care. Medical treatment will not be delayed when the minor's life is in danger or if the minor can consent on his/her own.
- Emancipated minors may consent to their own treatment, without the further consent of their parents, guardians, or others. Upon giving permission to treatment, all of the minor's records will be kept private to the same extent as if the patient was an adult. Your physician/dentist/hospital will NOT SHARE your records WITHOUT your permission.

### **Your Rights as a Patient**

Sharing your information is allowed only with your WRITTEN permission.

Exception to this right:

- Your permission is *not needed* to share confidential information if requested by an order from the court.
- Your permission is *not needed* to share information to your parents or guardian, when your doctor or dentist believes that your life is in danger.
  - You will be told when information is shared with your parents or guardian in this situation.

<p>For example: A 17-year-old male was involved in a car accident. When he arrived at the emergency room, he was unconscious. The doctors believed that his condition was serious and called his parents, but treated him right away. After he woke up from surgery, his doctor informed him that his parents were called.</p>
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### **Responsibilities of Your Doctor, Dentist, or Hospital**

- WILL NOT share your personal information if you are able to give permission to treatment (if you are emancipated).
- IS allowed to share information about you to your parents or guardian if your doctor or dentist believes that your life is in danger.
  - You will be told when information is shared with your parents or guardian in this situation.
  - Permission may be given by a minor if he or she
    - is married, widowed, or divorced;
    - is the parent of a child;

- is a member of the armed forces;
- is pregnant or believes herself to be pregnant;
- lives apart from his parents and manages his own finances; or
- reasonably believes that he has a dangerous disease (as defined by Mass. Gen. Laws ch. 111, § 6).

For example: A 15-year-old girl goes to the doctor because she thinks she is pregnant. After a physical exam and pregnancy test, the doctor confirms that she is pregnant. The girl tells the doctor that she does not want her parents to find out. The doctor talks to her about her options. The doctor tells the girl that he will not tell her parents, and her privacy will be protected.

### ***Other Facts about Your Rights as a Patient and Your Medical Record***

When your consent is needed to disclose information, it must be IN WRITING.

### **4.13 Fair Information Practices Act (Mass. Gen. Laws ch. 66A, § 2)**

Maintenance, accountability for, and protection of records containing personal data.

#### ***Included Providers***

- agencies of the executive branch of government that collect, use, hold, and share personal information
- any individual or organization that contracts with such an agency to provide a government or public function that collects, uses, holds, and shares personal information

#### ***Summary of Statute***

These facts apply to Massachusetts Law governing the *maintenance, accountability for, and protection of records* containing personal data and the *disclosure* of such information:

- Government agencies and those individuals or organizations contracted with such government agencies will take appropriate measures to protect your personal records.
- Holders of personal information will ensure that access and distribution of personal information is restricted to unauthorized people or agencies.
- Any holder of your personal information WILL NOT release your information unless authorized by law or approved by you.

#### ***Your Rights as a Patient***

Information from your medical record can be shared WITHOUT your permission in the following situations:

- Doctors ARE allowed to see your medical and psychiatric records in medical and psychiatric emergency situations. You will be told about the viewing of your records after the emergency ends.

- The Bureau of Special Investigations may view your records in cases of fraud detection and control.
- You may give permission to a third party to see your records.

### **Responsibilities of Government**

- IS allowed to keep information from you, if such information is the subject of an investigation and the disclosure could prejudice effective law enforcement. The information from your record may be held for the time it takes to complete the investigation or one year (whichever is shorter).

For example: Kate is a 39-year-old woman with a history of bipolar disorder. Last year, while experiencing a manic episode, she was charged with stealing and assault. The case is still pending and has not been settled. Kate wants access to her file, but the government is withholding information from her and her authority until after the case is complete.

- MAY remove any personal identifying information that could possibly identify someone other than the patient who is named in your record.

### **4.14 Genetic Testing and Privacy Protection (Mass. Gen. Laws ch. 111, § 70G)**

Sharing of genetic information and results of genetic tests. “Genetic tests” help to identify genes and any abnormalities in your genetic makeup (both inherited and acquired characteristics). Genetic tests DO NOT include tests given for drugs, alcohol, cholesterol, or HIV. Genetic tests ARE NOT used to diagnose an existing disease, illness, impairment, or disorder.

#### **Included Providers**

- health care facilities and providers
- physicians
- identified persons in charge of looking at records with genetic information

#### **Summary of Statute**

These facts apply to Massachusetts Law governing *genetic testing, privacy of patient information*, and the *disclosure* of such information:

- All patients have rights and protection of their genetic information and history.
- A doctor or other health care provider CANNOT provide genetic testing WITHOUT a patient’s PRIOR WRITTEN CONSENT (permission).
- A doctor or other health care provider can only share genetic test results to the patient. This information will be kept confidential.
- EXCEPTION: Sharing a patient’s genetic information is allowed AFTER the patient signs an INFORMED WRITTEN CONSENT form.

### ***Your Rights as a Patient***

Your genetic information can be shared WITHOUT YOUR PERMISSION in the following situations:

- when requested by a court order
- in connection with getting life, disability, and long-term care insurance (authorized by [ch. 175I](#))
- as part of confidential research information in order to study and learn about types of genetic diseases, provided your identity is not revealed in such research (Also, this research may help to develop treatments for genetic diseases. In most cases, doctors will seek your permission for such research.)

You must give written consent BEFORE having genetic testing.

For example: You and your husband are ready to have a baby. Before getting pregnant, you want to find out if you or your husband are at risk of having a child with a genetic disease. You and your husband speak with your doctor and sign a consent form to have genetic testing. This consent form gives the doctors permission to test you.

### ***Responsibilities of Your Health Care Provider***

- IS ALLOWED to view information about your genetic information if you have previously given your informed written consent.
  - This information may then also be released to the following:
    - insurance providers (as authorized by [ch. 175I](#))
    - researchers interested in studying genetic diseases and treatments for the diseases without any identifying information
    - organizations interested in determining the costs and benefits of treatments for genetic-based diseases without any identifying information
    - other third parties with your informed, written consent

## **5. CONCLUSION**

Federal and state statutes and regulations regarding the privacy and security of sensitive health information may be complex and unclear to consumers and health care providers. The legal requirements associated with sensitive health information are often complex and may be misunderstood. Interpretation is not uniform among organizations. The education of consumers and providers regarding the legal requirements of sensitive health information is a critical step in allaying fears about the risks of inappropriate disclosure. Understanding by all stakeholders is necessary for appropriate clinical decision making and patient-centered health care.

The intent of this report was twofold: to provide a succinct description and legal inventory of sensitive health information disclosure protections in Massachusetts and to translate those descriptions for consumers and providers. While there is no simple way to describe Massachusetts sensitive health information laws and regulations, Section 4 both defines and describes consumer rights and responsibilities at a usable level of comprehension that can be applied by consumers and professionals alike.