

Home Provider Mandatory Disclosure Law Implementation Questions and Answers

November 6, 2002

The following questions and responses were compiled by DDMHS as a result of written questions submitted by the Vermont Council of Developmental and Mental Health Services (VCDMHS) and by Developmental Services Guardianship Services Specialists, as well as dialogue that occurred during the meeting between DDMHS and VCDMHS representatives on October 25, 2002.

1. Is a disclosure required for all current homes?

Answer: Yes

2. Clarification is needed as to what facilities are considered home providers, for instance are licensed facilities covered by the law?

Answer: *If the home provider lives in the home as their own home, they are included in this law.*

3. Does the law apply when the DA has facilitated the placement of a client in the home by providing the contact, but is not at all involved financially or contractually? (Client makes all payments directly to the home provider.)

Answer: *No, this law only applies to home care providers paid by an agency and to respite providers paid by the agency or home provider.*

4. Does the law apply when the client pays the home provider from personal funds (e.g. SSD or SSI income), but the DA is the client's representative payee and cuts the check to the home provider from the client's funds? (DA has no contractual involvement in the arrangement with the home provider.)

Answer: *No. The law was specifically written to only apply to situations where a designated agency has a formal paid arrangement with the home provider for the consumer to live with them in their home.*

5. Is disclosure required if the DA assists a consumer in finding an apartment and the case manager is involved in working with the landlord?

Answer: *H. 522 only requires disclosure to a home provider, not a landlord. However, an agency may decide that a disclosure should be made when a landlord would have reason to expect that an agency would disclose information relative to his or her safety.*

6. Is disclosure required for placement in Community Care Homes?

Answer: Yes, if the provider lives in the home.

7. If a DA takes over after SRS has made a home placement does the DA need to follow the disclosure guidelines?

Answer: *If the DA pays the home provider, then they must follow the disclosure guidelines.*

8. Does the DA need to follow the disclosure guidelines if the consumer is receiving services from multiple state and local agencies?

Answer: *Yes, but only if the DA is paying for the home placement.*

(It was recommended that DDMHS and SRS develop a uniform approach to disclosing consumer information)

9. Which respite providers need to receive the information?

Answer: *The law covers only respite providers providing daily or overnight care in his or her home.*

10. If a consumer is a resident of a home, does this consumer and/or guardian get a copy of the disclosure form (the consumer is at risk too). More generally, we are wanting a way to have disclosure of risks presented to one consumer by a second consumer moving into a home (access to the form is not the only way, but we are concerned that the confidentiality language might mean that the language CAN'T be shared with the other person's team.)

Answer: *The law does not apply to these situations. However, a consumer can authorize disclosure to any other individuals, including other consumers, if they so choose.*

11. Ditto when a consumer is coming to the home of another consumer for respite? What disclosure to the consumer who lives in the home and/or guardian is permitted?

Answer: *See answer to Question 10.*

12. What information should be shared with other people living in the home, such as family members?

Answer: *The DA should consider who in the home should receive the information and then get authorization from the consumer to share that information.*

Recommendation: *Add to the disclosure and authorization forms a space to list names of those allowed to receive the information (this has been done).*

13. Is it clear that the guardian or consumer may have a copy of the notice, upon request?

Answer: *Guardians and consumers can get a copy of the notice as part of their medical record.*

14. It is our strong feeling that the guardian needs to give consent to a completed form, and cannot consent to a blank form notice. In other words, the consumer/guardian needs to know what information is being disclosed before he or she can decide whether or not to consent.)

Answer: *The authorization for release of this information should specifically include notice that information disclosed to home providers will include medications and any relevant information concerning history of violent behavior. We will add this to the Guidelines.*

15. We think it should be made clear that best practice for a team discussion about what information to put on the form is to do it at a private meeting, and not at the ISA. It could be quite upsetting to the consumer.

Answer: *According to this law, the DA/SSA is the entity that is required to determine what is relevant information to be shared. They may or may not choose to do this through an individual's team meeting. The agency needs to decide what is the best forum for these decisions.*

16. What should happen when the guardians and the clinicians disagree about the level of information to disclose?

Answer: *Whenever there is a guardian involved, it may be advantageous to include him or her in the discussions about what to disclose to facilitate agreement to release the information. However, it is ultimately the responsibility of the DA/SSA to decide what should be in the disclosure statement. The guardian then decides whether to authorize the disclosure or not. If the guardian decides not to authorize the disclosure, the DA/SSA must ensure that the notice includes a statement that certain information was not disclosed.*

17. The term "relevant history" should be clarified in regard to how far back in time, what behaviors and what circumstances should be included.

Answer: *The term "relevant" was included in the law to allow discretion. However, on the disclosure form, we have included behaviors or activities that **must** be disclosed if they are known to the agency or are in the clinical record. You must use your clinical discretion to determine what other past actions you think might predict or indicate the likelihood that the individual will cause future harm.*

18. What level of substantiation is required for disclosing information? How much research of clinical history, such as previous hospitalizations, is required?

Answer: *Information should be substantiated to the extent consistent with good clinical practice; the same is true for research of clinical history. If a DA chooses, it can set its own standards for clinicians to follow.*

19. What if NOTHING is dangerous? Do they still have to give the form, or is the emergency fact sheet enough?

Answer: *They still have to complete the form as indicated in the Guidelines.*

20. What if the consumer is willing to only disclose a partial amount of relevant history/information?

Answer: *Add a note to the form (or specific section of the form) explaining that the consumer chose not to disclose additional relevant information.*

21. What happens when an emergency respite placement is required for a child or DS consumer (who has a guardian) and no guardian is available to authorize the release of information?

Answer: *The DA may need to inform the family that the DA does not have legal consent to disclose the information. The home provider will then make the decision whether to accept the placement without disclosure.*

22. What is the threshold for giving out a new notice?

Answer: *Whenever there is new relevant information.*

23. Keeping the disclosure form updated could be problematic with clients whose medication changes often. Is one option to write on the form, "See Emergency Fact Sheet or Medication Log for current medications."

Answer: *Yes, it says Emergency Fact Sheet now and we will add "Medication Sheet".*

24. Does there have to be a new disclosure notice change every time there is a new med?

Answer: *If the Disclosure Form is being used as the primary source for medication information, then the form needs to be updated by adding the new information with a date and signatures next to it.*

25. Is it enough to update the emergency fact sheet?

Answer: *If you are using the Emergency Fact Sheet or Medication Sheet as the primary source for medication information, you can simply update this sheet, and note on the Disclosure Form that the sheet was updated on a particular date.*

26. Does each and every critical incident form need to be shared with the home provider?

Answer: *No, each and every critical incident form does not need to be shared with the home provider, if the history of such incidents has already been disclosed and the action giving rise to the form does not create any additional risk.*

27. Can information on critical incidents be summarized on the disclosure form?

Answer: *Yes, the history of incidents can be summarized and the frequency/quantity can be summarized, as well.*

28. As people are starting to do this, it is felt that presenting the information in a POSITIVE way, in the form of a behavior support plan is the preferable way to present the information. If the information is all there in a behavior support plan, can they just say "see attached" on the form?

Answer: *This is applicable for Numbers 3 and 4 on the Disclosure Form (warning signs of dangerous behavior and information to protect the consumer from harm). Staff and home provider signatures must be obtained on the Disclosure Form even if a Behavioral Support Plan is used for these items.*

29. How can providers practically monitor for full compliance by home providers?

Answer: *The same way you monitor full compliance for any other requirements for a home provider (e.g., Services Coordinator/Case Manager visits).*

30. How do we ensure that the home provider has shared the information with respite workers? How frequently must this occur – every day, every weekend, etc?

Answer: *See answer to Question 29.*

31. Should we require a form be signed by the respite worker stating that the home provider has shared relevant information with them or the fact that the home provider has shared with them that the consumer has refused to consent to the sharing of information regarding the consumer's history of violent behavior?

Answer: *The law does not require this, but agencies can choose to do this.*

32. One agency made these comments - this act requires sharing of 3 sets of information: 1) written relevant information about the person referred for home care, 2) written notice of confidentiality and 3) written notice of the disclosure act itself. All of this has an impact upon HIPAA Privacy regulations. Written materials need to also include a privacy notice and some assurance that the privacy notice is shared with respite care workers.

Answer: *The HIPAA Privacy Notice is required to be given to consumers when they first begin to receive services. It does need to be connected to this disclosure.*

Also, their Privacy Committee has discussed the security issue regarding home care providers. They will be keeping written information that should be considered protected health information (PHI), and they will need to share this information with respite workers. Their understanding was that this information may only be shared verbally - not in writing.

Answer: *No, it can be shared in writing.*

How will they assure that only verbal information is shared? What record will need to be kept regarding the verbal sharing of this PHI? These are the ramifications of this act that need clarification.

Answer: *Respite providers are part of the consumer's treatment; therefore no record of sharing verbal or written information with a respite provider is needed for HIPAA compliance.*

33. Should providers begin the implementation process with a focus on individuals who have obvious issues first?

Answer: *Yes.*