

Confidentiality Policy and Procedures

For

Chatham Trades, Inc.

July 2020

Conflict of Interest Policy Record of Changes

Description of Changes	Date	Review/Revision by
Enacted	4/9/2003	Board of Directors
No Changes	7/23/2020	Jessica Godfrey
Revision	8/21/2020	Jessica Godfrey

POLICY

All Chatham Trades staff, volunteers, interns and affiliates will only disclose protected health information in accordance with current State and Federal regulations, and with Chatham Trades, Inc. policies and procedures.

PURPOSE:

To assure consumer confidentiality of information, proper disclosure of information, and appropriate access to confidential information by consumer, staff and others.

PROCEDURE:

State and Federal regulations

All questions pertaining to disclosure of medical record information can be directed to the Executive Director, 2535 Old US Hwy 421 North, Siler City, NC 27344. Reference materials are as follows:

* Mental health, developmental disabilities and substance abuse services division standards codify confidentiality requirements, referencing North Carolina General Statutes, 122C-51-56 and North Carolina Administrative Code 10 NCAC 18D.

* Health insurance Portability and Accountability Act (HIPAA) of 1996.

*All service information in records for consumers receiving substance abuse services may only be disclosed in accordance with current Federal regulations 42 CFR, Part 2, "confidentiality of alcohol and drug abuse patient records".

*If any of the regulations cited in b or c above are less restrictive than North Carolina General Statutes, 122C50-56 will be followed.

Notice of Privacy Practice

* The Agency shall provide consumers with a notice of the uses and disclosures of protected health information that may be made by the agency, the rights of the consumer, and the agency's legal duties with respect to protected health information. The notice shall be written in plain language, and shall be provided to all consumers upon admission, if substantive revisions are made or anytime, if requested.

*The agency shall make a good faith effort to obtain a written acknowledgement of receipt of the notice provided to consumers at admission.

*Revisions to the notice may be made as appropriate and the revised notice shall be available at each facility for distribution to all consumers.

Consumer Access to Record

* When a consumer requests review of his/her record, the consumer must complete the "client access to record" form. The request must be processed in a timely manner, but no later than 30 days after the receipt of the request. If the protected health information is off site, then the request must be honored no later than 60 days from the receipt of the request.

*If the Executive Director, Quality Assurance Manager or primary Program Manager approves consumer access to the record, then the primary program manager will schedule an appointment as soon as possible with the consumer for such review. The appointment time will be appropriate for both the consumer and the program manager.

*The primary program manager or Quality Assurance Manager must be present during the entire review of the record by the consumer.

Consumer Request for Change in Record:

* The agency shall permit the consumer's request for an amendment to their protected health information. The agency shall act upon the request in a timely manner, no later than 60 days upon receipt of the request.

*Whenever the Executive Director or Quality Assurance Manager agrees to the request for a change in a record, the contested portion of the record must be identified and the altered information will be entered as an addendum to the record. All portions of the original document, including changes, must remain in the consumers' records. The Program Manager will make reasonable efforts to inform others who have previously received the protected health information and that documentation will be placed in the file.

*When the Executive Director or Quality Assurance Manager is not in agreement with the consumer about a change in the record, the contested portion must be identified and a statement relative to the contested portion will be added to the consumer record, which shall be recorded on a separate form and not on the original portion of the record which is being contested. Such a statement shall be made a permanent part of the consumers' files and shall be released along with the contested portion of the record.

Disclosure of Consumer Information:

* No staff member shall release any consumer information until he/she has obtained an Authorization for Disclosure of Protected Health Information form signed by the consumer or his/her legal representative. Authorizations are for a period of no more than one year. The nature and extent of the material to be released shall be

specified and no additional information shall be released without the consumers' written authorization. All releases shall be dated.

*The Executive Director and Assistant Director/Vocational Services Manager are responsible for the release of consumer information.

*Prior to signing an Authorization for Disclosure of Protected Health Information form the consumer shall be told the following information:

- a. The contents of the information to be released.
- b. That there is a need for the information.
- c. That he/she may withhold consent for release, or alternatively, that the release is mandated by law or regulations, without the consumer's consent.
- d. That there are laws protecting the confidentiality of the information being requested.
- e. Explanation of any reasonable unforeseen risk to the consumer.

Release of any information shall be documented on the Accounting of Disclosure/Release of Client Information form in the consumers' records. It should include the following:

- a. Name of recipient.
- b. Extent of information released.
- c. Specific reason for release.
- d. Date of release.
- e. Signature of the individual who released the information and their title.
- f. The staff member releasing the information shall be responsible for stamping the following information on each page of the information to be released:
SENSITIVE INFORMATION – WHEN REQUESTED BY THE CONSUMER MUST BE SHOWN AND OR INTERPRETED BY A COMPETENT CLINICIAN.
RESDISCLOSURE IS STRICTLY PROHIBITED BY LAW WITHOUT CLIENT CONSENT.

Disclosure of Consumer Information Without Consumer Consent:

The following situations in this section constitute a basis for the release of information without the consent of the consumer. No information shall be released without consumer authorization except when Chatham Trades is mandated by law or regulations to release this information. If a staff member feels it is in the best interests of the client, a discussion shall be held with the Executive Director prior to making any unauthorized releases.

- Written notice of the disclosure without consent shall be given to the consumer or his/her legal representative in accordance with G.S. 122C-52 through G.S.122C-56. This notice shall be explained to the consumer or legally responsible person as soon as possible.

* The disclosure of the information shall be documented in the consumers' records on the Accounting of Release or Disclosure of Client Information form.

GROUNDS FOR DISCLOSURE:

*The following situations constitute a basis for the release of confidential consumer information without the consumer's consent:

Pursuant to Court order: Confidential information shall be disclosed if a court of competent jurisdiction issues an order compelling disclosure, not merely a subpoena. Whenever a subpoena to produce document is received by any person within Chatham Trades, that person shall notify the Executive Director and/or Quality Assurance Manager, either of whom shall be responsible for directing necessary action regarding the subpoena.

Petition for Appointment of Guardian: Consumer information shall be released in response to a valid written court order issued by the clerk of court, the magistrate, an administrative hearing officer or a judge of district or superior court.

Petition for Involuntary Commitment: consumer information may be released in response to a valid written court order issued by the clerk of court, the magistrate, an administrative hearing officer or a judge of district or superior court.

Consumer information may also be released to attorneys in cases of respondents facing commitment proceedings relative to the admission of a consumer into treatment facilities.

Voluntary Commitment: Only information necessary for admission may be released.

Criminal Proceedings: Exchange of consumer information is allowed when a court of competent jurisdiction issues a written order requiring a mental examination of a criminal defendant.

❖ Disclosure to Legally Responsible Person:

- North Carolina General Statute I 22C-55 allows for disclosure of certain confidential consumer information upon request of the next of kin or other family member or by a person designated by the client as the legally responsible person, any of whom having a legitimate role in the therapeutic services rendered to the consumer.
- Basic information: The responsible professional (person designated as responsible for treatment), after first notifying the consumer that the information has been requested, shall provide to these persons (a) notification of the consumer's admission to the facility; (b) transfer to another facility; (c) decision to leave the

facility against medical advice; (d) discharge from the facility, and (e) referrals and appointment information for treatment after discharge.

- Further information: For information other than described in the paragraph above, the family member or otherwise legally designated legally responsible person must make a written request for information, identifying the intended use for this information.
- The responsible professional shall, in a timely manner:

Provide the information requested based upon the responsible professional's determination that providing this information will be to the consumer's therapeutic benefit, and provided that the consumer and or his/her legally responsible person has consented, in writing, to the release of the information requested; or

Refuse to provide the information requested based on the responsible professional's determination that providing this information will be detrimental to the therapeutic relationship between consumer and professional, or

Refuse to provide the information requested based upon the responsible professional's determination that the next of kin or family member or designee does not have a legitimate need for the information requested.

Exclusion Applicable to Substance Abuse Clients

- The fact of admission or other basic information described in the paragraph above of a substance abuse consumer may only be disclosed to the consumer's next of kin when the responsible professional ("treating physician") determines that the disclosure is in the best interest of the consumer and when the consumer is incapable of rational communication.

Disclosure of Consumer HIV Information:

- Issues of Confidentiality and Duty to Warn: Confidentiality shall be protected by the Agency for all consumers with HIV infections, as required by confidentiality regulations. Only those staff providing direct medical, clinical or habilitative services to the consumer may be notified of the consumer's condition. This includes all staff who may have direct service or behavior management contact with the specific consumer and staff providing direct service/clinical supervision on such contact.
- Decisions to notify any other persons or agencies shall be on an absolute "need to know" basis.

- Failure by an employee to preserve consumer confidentiality is grounds for disciplinary action and may render the employee liable to civil prosecution.

Staff training

The process of training staff about issues of confidentiality and protected health information is an agency wide process. Responsibilities of particular individuals are outlined below:

- Executive Director: Prepares and distributes outline of confidentiality and protected health information regulations to Managers and Supervisors. Participates as a trainer of all new staff members of its workforce, volunteers, trainees or any other persons carrying out job duties for the agency by reviewing confidentiality and protected health information regulations. Advises staff on responding to subpoenas or court orders, interprets Division updates, and provides legal guidance and further training as needed. Restricts access of computerized information to only authorized users.
- Assistant Director/Vocational Services Manager: confirms that new employees, volunteers, students and all others having access to consumer information have received training on the regulations governing consumer confidentiality, liabilities and disciplinary actions for breaching confidentiality. If training has not occurred, the AD/VSM will provide confidentiality training. Training will occur within 30 days of hire or placement and again if requirements change. Completes "Assurance of Confidentiality" form with new employees.
- Quality Assurance Manager: monitors and updates database to document training activities for those in the workforce.

❖ Security of Consumer Information:

- All consumer records are confidential and shall be kept in locked filing cabinets in the filing/work room. All history files shall be kept in locked filing cabinets in the storage room. History files (for adults 18 years or older) may be destroyed a minimum of 11 years after the last date of service.
- Only staff authorized by the Executive Director or Assistant Director/Vocational Services Manager may have access to consumer records. Access will be limited to a "need to know basis". Staff removing a file from the file drawers should note this on the checkout sheet in front of the file drawers.

❖ **Notice of Computerized Records**

- Consumers will be made aware of when information is being provided to other agencies (Local Management Entity, Vocational Rehabilitation, etc.) that will be stored on a computerized data system.

❖ **Utilization Review (UR)**

- During all tiers of the UR process, staff will ensure the confidentiality of consumer information at all times.
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- Audits: All outside personnel participating in audits, licensing, accreditations, etc., will authenticate appropriate “Assurance of Confidentiality” forms to ensure the confidentiality of the records they are reviewing/auditing.

❖ **Consequences for Not Maintaining Confidentiality:**

- Staff is subject to suspension, dismissal or disciplinary action for failure to comply with confidentiality rules. Breach of confidentiality under existing North Carolina Statutes is a Class 3 misdemeanor and is punishable by a fine not to exceed \$500.00. Staff could also be subject to civil action by the consumer for any breach of confidentiality.
- Under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the following sanctions would also apply:
 - General civil penalty for failure to comply. \$100 per violation per person and/or \$25,000 fine per calendar year.
- Criminal penalties regarding privacy rules are imposed for any person who knowingly and wrongfully discloses individually identifiable health information:
 - Simple offense, up to \$50,000 fine and/or one-year imprisonment.
 - If committed under false pretenses, up to \$100,000 and/or five years imprisonment.
 - If committed with intent to sell, transfer, or use information for commercial advantage, personal gain or malicious harm, up to \$250,000 and/or ten years imprisonment.

For further information regarding confidentiality requirements, please see:

APSM-45-1 Confidentiality Rules, available from the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services.