

Sharing Information Related to Mental Health – Federal and Illinois Law

What Information is Protected?

HIPAA Privacy Rule

HIPAA does not provide extra protections for mental health information compared with other health information.

- Generally, the Privacy Rule applies uniformly to all protected health information (“PHI”), without regard to the type of information. HIPAA does not provide special protection to mental health records in general, but it does give added protection to “psychotherapy notes”.
- The Privacy Rule permits the disclosure of PHI without an individual's consent for purposes of treatment, payment and health care operations. An exception to this rule exists for psychotherapy notes, which can be disclosed without an authorization in limited situations.
- Psychotherapy notes are defined narrowly under HIPAA, including only those notes made by a mental health care provider that document or analyze the contents of conversations occurring during counseling sessions, and that are separated from the rest of the individual's record. Psychotherapy notes expressly do not include “medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.” Psychotherapy notes also do not include any information that is maintained in a patient's medical record.
- Psychotherapy notes are treated differently from other mental health information both because they contain particularly sensitive information and because they are the personal notes of the therapist that typically are not required or useful for treatment, payment, or health care operations purposes, other than by the mental health professional who created the notes. Therefore, with few exceptions, the Privacy Rule requires a covered entity to obtain a patient's authorization prior to disclosure of psychotherapy notes for any reason, including a disclosure for treatment purposes to a health care provider other than the originator of the notes. An authorization for the use of disclosure of psychotherapy notes must be a stand-alone authorization and may not be combined with another authorization except for one that relates to the use and disclosure of psychotherapy notes.
- Although HIPAA does not give special protection to mental health records as compared to psychotherapy notes, state laws may. If those state laws are more restrictive than HIPAA, providers are required to comply with those laws in addition to HIPAA.

The Mental Health and Developmental Disabilities Confidentiality Act

Illinois law provides strict protections to mental health and developmental disabilities information.

- The Mental Health and Developmental Disabilities Confidentiality Act (“Act”) is designed to protect the confidentiality of records and communications of people who receive mental health or developmental disabilities services. The Act applies to mental health or developmental disability service records kept by a therapist or by an agency providing such services.
- The definition of what constitutes “mental health or developmental disabilities services” includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation. The term “therapist” is very broad and includes a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services.
- The Act protects all written records and information a patient gives to a therapist during the course of receiving services. It also protects all exchanges (communications) a patient makes while receiving services. The Act is highly specific that “confidential communication” means any communication made by a recipient or other person to a therapist or in the presence of other persons during or in connection with providing mental health or developmental disabilities services to a recipient. Under the Act, and with limited exceptions, information relating to “mental health or developmental disabilities services” may not be released without the patient's specific written “consent.”





Persons Entitled to Inspect and Copy Recipient's Records Protected by the Act

Upon Request

In Illinois, the patient (recipient) has the right to inspect and copy their records if they are 12 years of age or older.

In addition, the following people have the right to inspect and copy protected records, upon request:

- The parent or guardian of a recipient of services who is under 12 years of age;
- The parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying the access;
- The personal representative under HIPAA, of a recipient, regardless of the age of the recipient (eff. Jan. 1, 2024);
- The guardian of a recipient of services who is 18 years or older;
- An attorney or guardian ad litem representing a minor 12 years of age or older, with a court order;
- An agent appointed by the recipient under a power of attorney for health care or for property; and
- An attorney-in-fact named in a declaration of preferences or instructions regarding mental health treatment.

Upon Written Consent

Any person not within one of the above categories may obtain access to records only through written consent.

The consent must be made by:

- The person who is the subject of the records;
- Their parent;
- Guardian;
- Power of Attorney agent; or
- Attorney-in-fact named in a mental health treatment declaration.

Valid Written Consent

- A general release of medical records is not enough to release a patient's mental health or developmental disabilities service records.
- The written consent form must contain the following information:
 - The name of the person or agency who is permitted to obtain the record
 - The reason that the record is being disclosed
 - The kind of records to be disclosed
 - The date when the consent ends
- The consent form must be signed and witnessed.
- The consent form also must include a statement detailing their right to revoke the consent at any time. Along with the effects of refusal to grant consent.
- The Act also specifically prohibits redisclosures of released information unless the patient has consented to subsequent disclosures.


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IMPORTANT

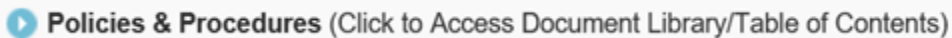
Route all requests for release of mental health and developmental disabilities information to HIM (ext. 3336).

The Login Page

The Login page provides both general (unregistered) and registered users access to the options they need in PolicyManager.

1 General Access: In this section you can use the Search feature to search for specific policy documents by entering a word or phrase that is explicit to the policy for which you are searching. Just enter the word or phrase you want to search on and click the **Search icon** .

To search for a document using the folder structure, click the **Policies and Procedures** link below the search boxes.

 **Policies & Procedures** (Click to Access Document Library/Table of Contents)

2 Registered User Login: Here is where you will enter your username and password to access the application. The user role you have determines the features and functionalities you will have access to once you log in. The System Administrators control that and can hide this login box depending on how User Access is set up. If hidden, you will need to click on the link to open this area.

Registered Users ONLY click here to login

Enter your username and password, and click **Log in**.

SEARCHING IN POLICYMANAGER

Keyword Search

The keyword search feature helps you find documents related to a specific subject. For example, this feature would be most helpful if you wanted to view all the policies on “vacation”. The below steps will walk you through searching for those policies.

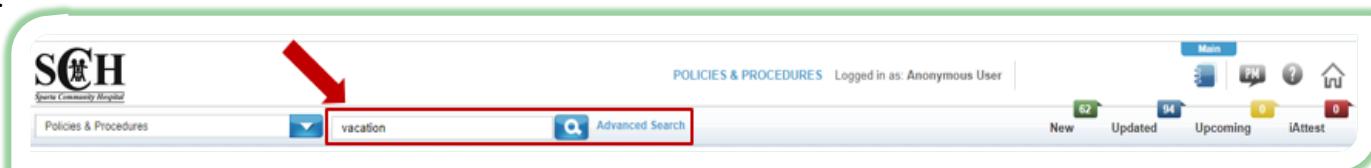
There are **two ways** to search for a specific policy subject:


On the PolicyManager Login page, go to the General Access section.



Search Bar on the Main Page.

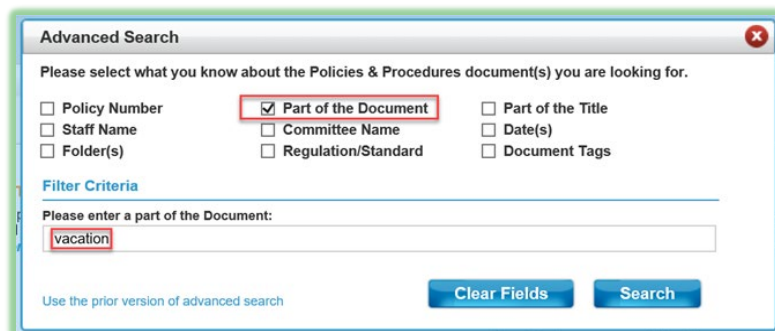
On the **Main Page**, after logging in, via Search bar (on the top center area):



- Type in a specific keyword or phrase. In our example, we typed “vacation”.
- Click the search icon  to activate the search. The results depend on the policy and procedures you have in your system.

Advanced Search

When using the **advanced search**, you will be able to combine filters such as Policy Number and Part of the Title, or any other combination. If the *Folder(s)* filter is selected, you will have options for selecting a specific folder and sub folders; the same scenario applies to *Staff Name* and so forth.

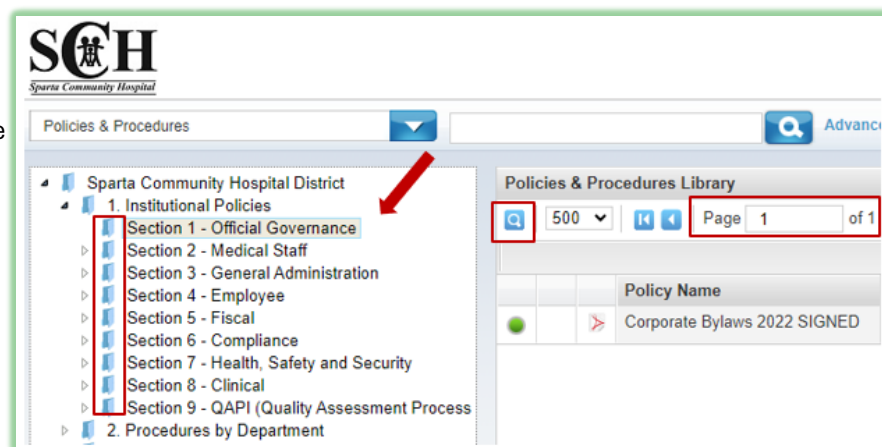



Folder Search

When policies are added to the PolicyManager system, they are added to folders, much like the folders in Windows Explorer or your email system. PolicyManager allows you to search through these folders. For example, your facility may have the policies added under hospital functions or departments. If you were a new employee and wanted to view the policies for your department, the folder search feature may work best.

To use the folder search feature, follow the steps below and refer to the image to the right:

1. Once you log in, the folders will be located on the left-hand side of the main page.
2. Click on the folder’s name you wish to view.
3. Navigate and click the sub folders (if applicable).
4. The documents will be listed in the center of the page; and from there, you will be able to open each of them by clicking on the title of the document you wish to view.



Note: As highlighted in the picture above, you can search within the folder you selected by clicking on the magnifying glass icon  located on the top of the results. You can also navigate other pages (if available) by clicking on the arrows beside the page display.