Category: **Health Information**	Subject: Recording the Disclosure of PHI to Third Parties Scope: SLO Behavioral Health Department – Mental Health Services Effective Date: 11/19/2014

Purpose:
To provide direction regarding the legally mandated recording of third-party disclosures

Scope:
Applies to all Mental Health staff and contractors who provide mental health services (outpatient and inpatient)

References:
Welfare & Institutions Code §5328.6
Code of Federal Regulations 45, Part 164, Subpart E, §164.528

Procedure:
1. **Client Access**
Disclosures to the client or to the Parent/Legally Responsible Person are not third-party disclosures. Refer to the Access Request/Access Determination procedure.

2. **Third Party Disclosures Initiated by a MH Qualified Professional** [1]

Disclosure Scenarios:	Reference	Release of Information Authorization needed?	Complete Disclosure/ Request in SmartCare?[2]
Disclosures for treatment purposes "…between qualified professionals in the provision of services or appropriate referrals…" when the professionals have "medical or psychological responsibility for the patient's care" *(Allows two way of sharing information between providers)*	*CFR Title 45 §164.506 (c) and (2)* *W&I 5328 (a), 5008, 5013*	Not required[3]	Yes
Disclosures initiated by the treatment professional "…to a professional person outside the facility who does not have medical or psychological responsibility for the patient's care." *(Payee[4], social worker for non-detained minor, school, etc.)*	*W&I 5328 (a)*	Yes	Yes
Disclosures to facilitate LPS conservatorship proceedings	*W&I 5328 (a)*	No	Yes
Disclosures for the purpose of "coordinating mental health or medical care" to a DSS Social Worker who is "**authorized by the court to have custody or care of a minor (minor is detained or placed)**" [5]	*W&I 5328.04*	No	No
Common Mandatory Disclosures: • Tarasoff Warning • Child or Elder/Dependent Adult Abuse reports • Breach reports	*W&I 5328 (r), 5328.5* *CFR 45 §164.502 (a)*	No	No

3. **Third Party Disclosures Initiated by a Client or Legally Responsible Person**

Staff with one of the specific licensures listed in the table below must approve the disclosure of PHI to a third party when the disclosure is requested by the client. An approving staff with the specified licensure must sign the Release of Information Authorization.

a) If the Release of Information is received from a third party, we will obtain the approving signature for a disclosure on that document by adding the below statement/signature box.

____

Name/License

Approve as LPHA this release of records for Disclosure ID: ____________

b) Print staff Name and License and add Disclosure ID from SmartCare Disclosure/Request (see instructions in step 5).

c) Obtain staff Signature.

Disclosures to a third party requested and authorized by a parent or other Legally Responsible Person may be approved by any "Qualified Professional"[1]. The approving staff will sign the Release of Information Authorization, *the best practice is to always have an LPHA sign or co-sign*.

	Release of Information Authorization needed?	**Complete Disclosure/ Request in SmartCare?**	**Approving Staff Credentials**
Disclosures requested by a client "When the **client**…designates persons to whom information or records may be released…" *W&I 5328 (b)*	Yes	Yes	MD, licensed Psychologist, LMFT, LPCC, & MSW/LCSW[7]
Disclosures requested by a **Parent/Legally Responsible Person** for a minor, ward, dependent and/or conservatee *W&I 5328 (d)*	Yes	Yes	Qualified Professional[1] *(excludes trainees, interns without waiver)*

4. **Additional PHF Record of Disclosure Requirements** (A, B and C above also apply to PHF records)

Disclosure Scenarios:	**Reference**	**Release of Information Authorization needed?**	**Complete Disclosure/ Request in SmartCare?**
Disclosures to relatives regarding the patient's presence, death, or condition while hospitalized	*W&I 5328.1*	Yes	Yes
The personal representative of the decedent's estate would have the right of access to the decedent's patient's records, as the personal representative is treated as the individual for HIPAA purposes.	*45 CFR 160.103*	No, Use Access	Yes

Reporting incidents where a patient, while hospitalized, has been the victim or perpetrator of specified crimes[8]	*W&I 5328.4*	No	Yes
Notice of disappearance of a voluntary patient who meets the criteria for a hold, if the disclosure is necessary for the protection of the patient or others and the whereabouts of the patient are unknown	*W&I 5328.3*	No	Yes
Notice of disappearance of a gravely disabled person found incompetent to stand trial who commits certain felonies	*W&I 5328.3, 5008(h)* *PC 1370*	No	Yes

5. **Additional Justice Services court mandated disclosures**

Disclosure Scenarios:	**Release of Information Authorization needed?**	**Complete Disclosure/ Request in SmartCare?**	**Approving Staff Credentials**
Disclosures for the Justice Service Program continuum. Reports will be provided in accordance with coordinating and communicating progress. JSD Behavioral Health Court Reports JSD 11395 Treatment Program Intake Meeting Report JSD 11395 Treatment Program Assessment Report JSD 11395 Treatment Program Non-Compliance Report Code of Federal Regulations Part 2 Subpart C § 2.35	Yes	No	MD, licensed Psychologist, LMFT, LPCC, & MSW/LCSW[7]

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[1]*Disclosure of PHI between "qualified professional persons" in the provision of services is permitted by State and Federal law without client or Legally Responsible Person authorization. The professional persons must each have "medical or psychological responsibility for the patient's care". Some third parties will require an Authorization.*

The credentials of the "professional person" making or approving the disclosure are not specifically defined, but the Licensed Mental Health Professional definition in CCR Title 9 § 1810.223 (MD, Psychologist, LCSW, LMFT, LPCC, RN, LPT or LVN) plus interns with a waiver will be used (excludes trainees, interns without waiver). Any of the above clinical staff may sign the Record of Disclosure as the staff approving the disclosures (and the Authorization to Use or Disclose PHI, if one is obtained).

[2]*Welfare & Institutions Code §5328.6*

[3] Authorization *is always permitted. Obtaining an authorization may be the best clinical decision, even if not required.*

[4]*When not the LPS conservator, the Public Guardian is a "professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care".*

[5] ***Permissible Disclosures to DSS to coordinate care***

- *The disclosure pertains to a minor detained pursuant to Welfare & Institutions Code 300.*
- *The court issues an order authorizing DSS to obtain and to coordinate mental health services (authorization to obtain general medical care is not sufficient). A copy of the court's order is scanned into the record.*
- *The information disclosed is, in the MH staff member's clinical opinion, reasonably necessary for the coordination of the minor's care. Nothing in the law requires or compels Mental Health staff to disclose information given in confidence by the minor or the minor's family.*
- *Disclosure of records would be completed under an Access Request.*

Exclusions

- *Psychotherapy notes*
- *Any information that is not reasonably necessary for coordination of the minor's care*
- *Substance abuse treatment records*

[6]*Examples could include disclosures requested by the client to family members or other persons who are not in a professional relationship with the client.*

[7]*Note that RNs are omitted and unlicensed MSWs are included; this is not quite the same as LPHA.*

[8]*The type of crime and injury to the victim determine whether the disclosures are mandatory or discretionary. In all cases, the disclosures must be limited solely to information that directly relates to the factual circumstances of the crime and must not include any information that relates to the mental state of the patient or the circumstances of the voluntary or involuntary admission or treatment.*

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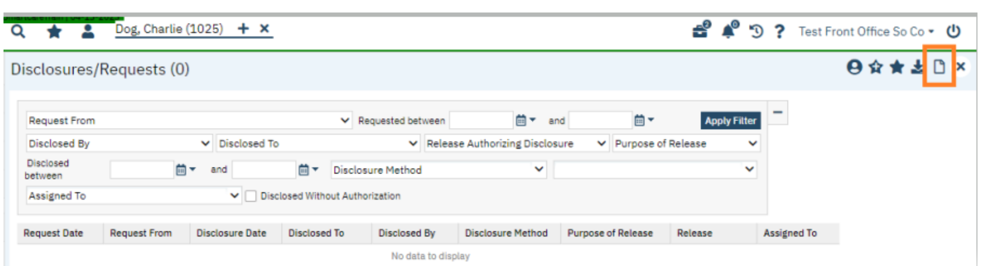
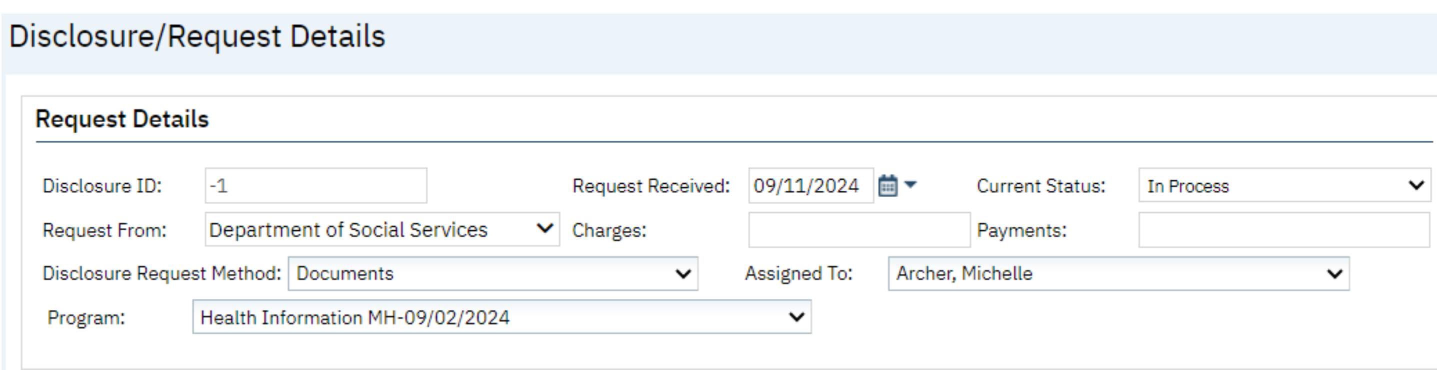
6. How to Complete Disclosures/Requests Log

SmartCare search words are **bold**.

1. With the client record open, search **Disclosure,** and select **Disclosures/Requests (Client).**

2. Click the New icon.

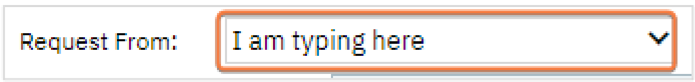




3. In the Request Details section, enter information about the requestor/request.

a. Disclosure ID will automatically populate on Save, no need to enter anything.
b. Enter the Request Received date. (This may be a date prior to the current date.)
c. Select the Current Status from the dropdown. If you have just received the request and are starting the log entry, select “In Process.” If you will be completing the disclosure now, select “Completed.”
d. Select Request From in the dropdown. Note, this pulls from the client contacts (Client Information screen > Contacts tab).

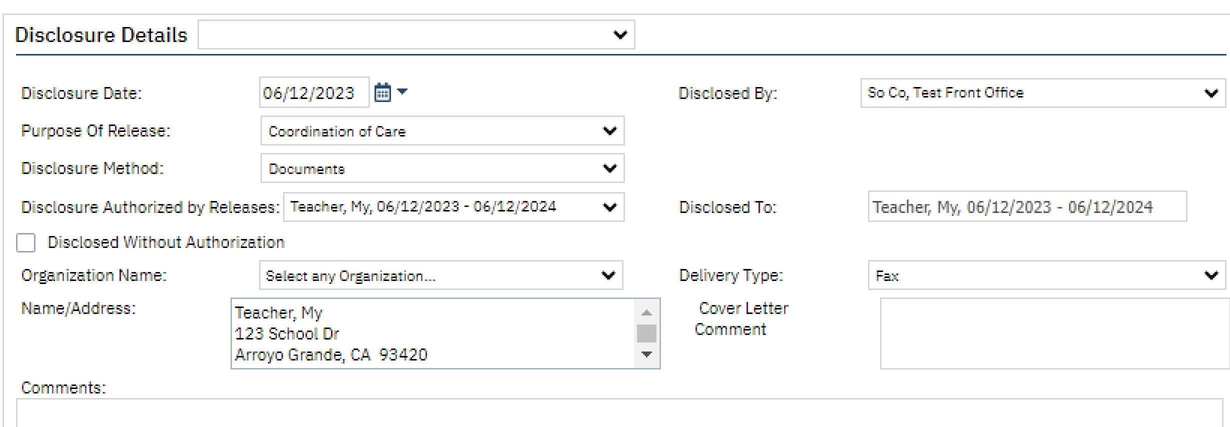
    1. If a request is from someone not on the client contact, and you do not intend to add them as contact, you may type directly into the field by adding your curser to the Request From field.



e. Leave Charges and Payments blank.
f. Select Disclosure Request Method from the dropdown.
g. Select Assigned To if Request is being assigned to someone.
    1. Assigned requests can be located on the list pages only, a notification is not sent, this will be for information only, communication regarding the disclosure will not happen in the Disclosures/Requests List page.
h. Select the Program. If a client is only associated with one program it will default to the program.

4. In the Disclosure Details section, enter information about the disclosure.

Note: Disclosure templates are not currently set up, so this first drop-down in the details section will remain blank.



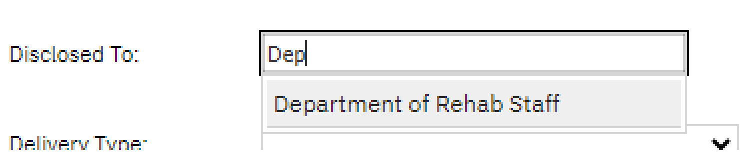
a. Enter the Disclosure Date. This is the date the disclosure occurs. If it has not happened yet, you may enter when completing the disclosure.
b. Select the person who performed the disclosure from the dropdown (in most cases HIT).

c. Select the purpose of the release. Most common will be Coordination of Care, Medical Records Release, Personal or Legal.

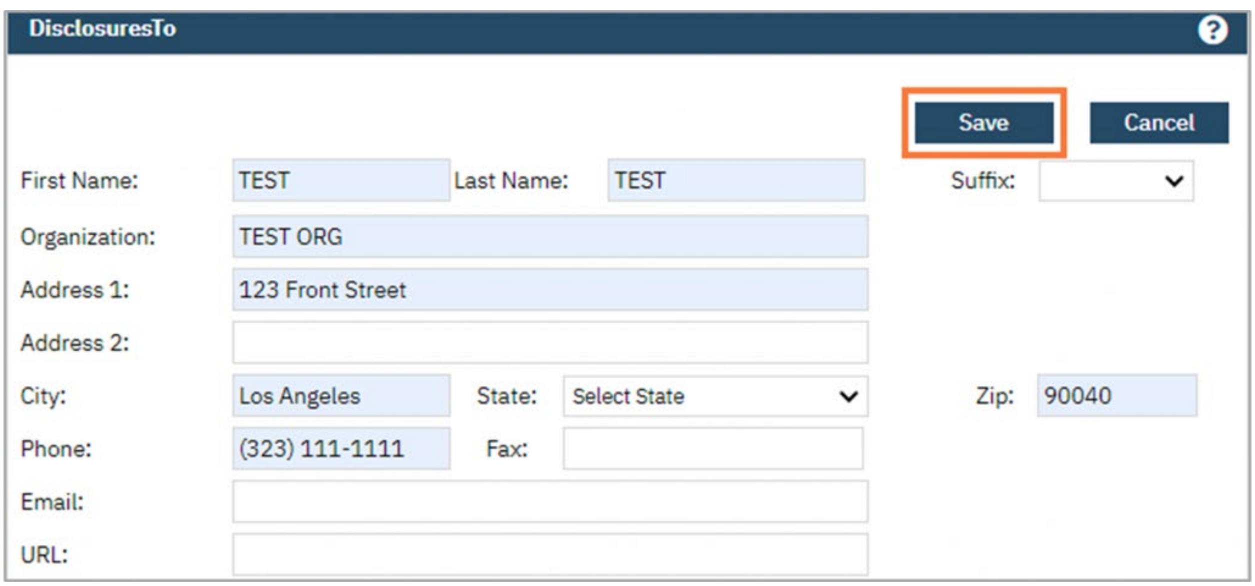
d. Select the method of disclosure from the dropdowns.
   1. Most common methods will be Documents (mail, fax, or secure portal) and Secure e-mail (encrypted email).
   2. Other and Verbal will disable the ability to attach documents; the button will be disabled.

e. Select the release that authorizes the disclosure. This dropdown pulls from Client Information > Release of Information Log.
   1. Release of Information log can store releases signed in SmartCare and releases that are manually added.
   2. Disclosed To will automatically populate based on release selected.

f. If the person/organization is not in the dropdown, tab to Disclosed To box.
   1. Start typing the name of the person or organization.



   2. If the person/organization to whom information was disclosed is not found, an ellipses button will initialize.
   3. Click the ellipsis button, the Disclosure To pop-up window will appear.
   4. Add information about the person/organization and click Save.



g. Select delivery type from the dropdown options. Most common will be Fax, In Person, Mail, Secure Email or Secure Portal.

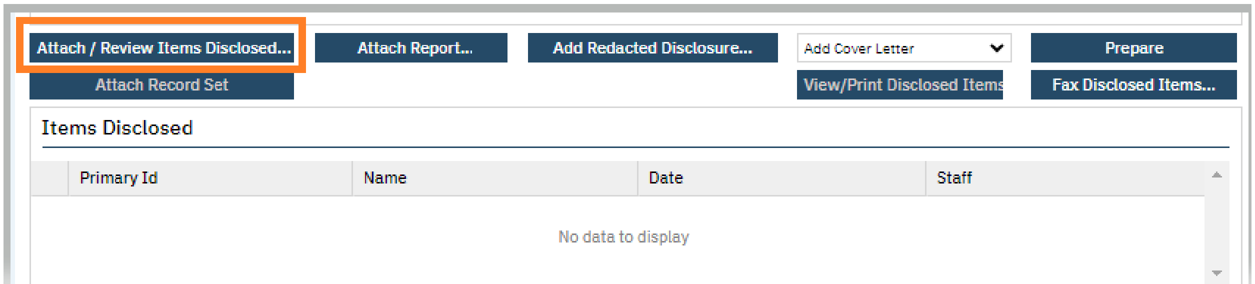
h. Name/Address field will populate from the Disclosed To. You can edit this field if needed to add fax or secure email address or any other pertinent information.

i. Add any comments if needed.

j. When disclosing actual parts of the client record in SmartCare, you will want to add items to be disclosed. This is accomplished by:

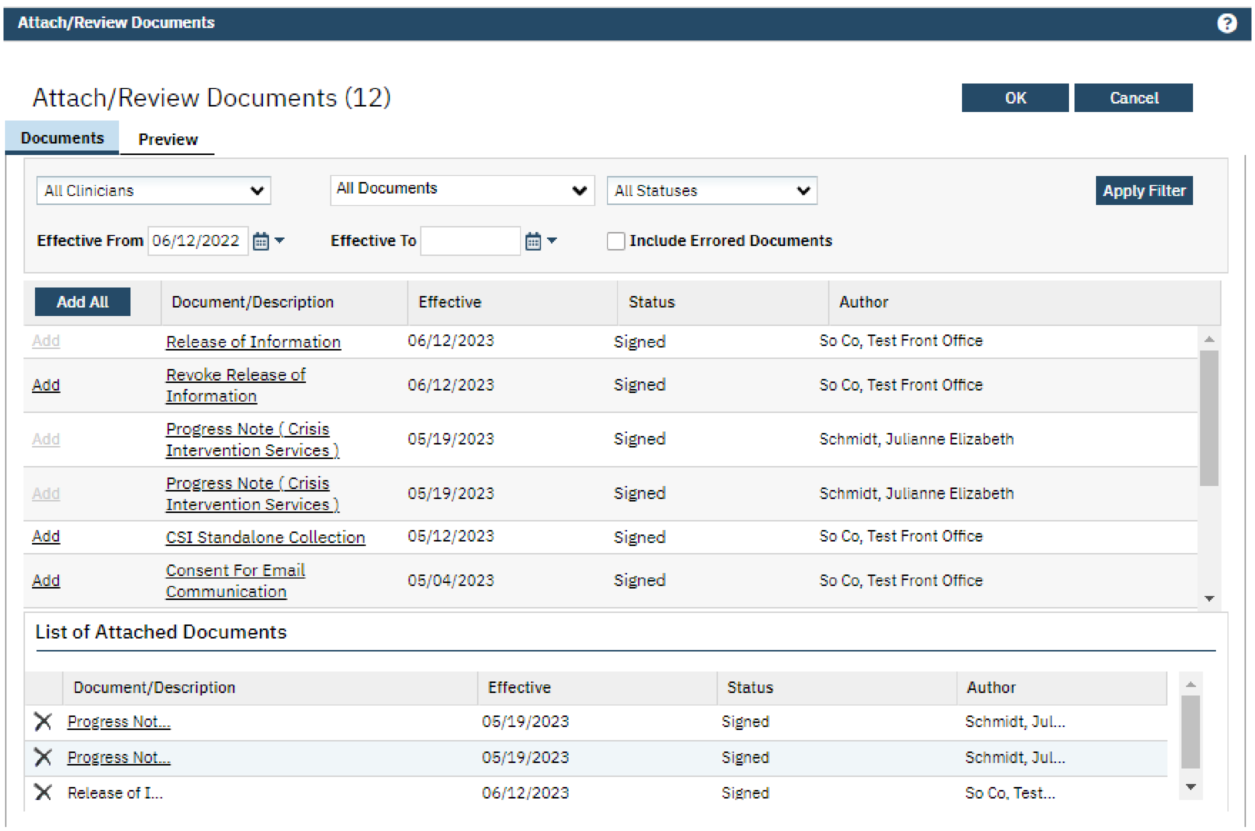
1. Attach/Review Items Disclosed (Step 5 below.)
2. Add Redacted Disclosure (Step 7 below)

5. Click the Attach/Review Items Disclosed button.



The pop-up window will display items in the client's record. You can utilize the filters to narrow down items displayed.

7. Click Add next to each item you are disclosing. Items will appear in the List of Attached Documents section. Once done, click OK.

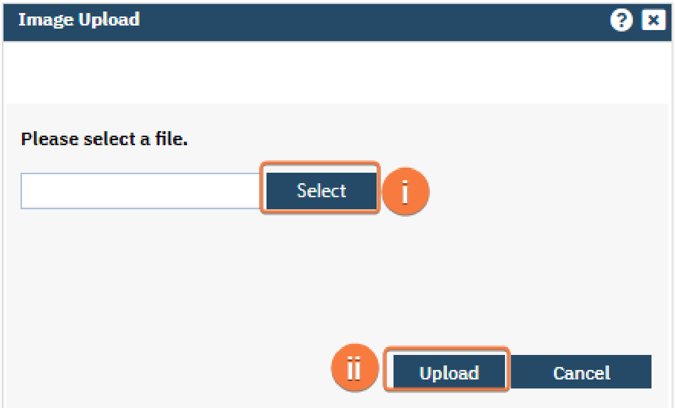


a) Make sure if the request for records was received via fax or mail that request has been scanned in and added to the Disclosure Attached Documents.
b) If you are using a Release of Information received from an outside agency and have obtained the LPHA signature as described in step 3, ensure that Release of Information from request is scanned with signature into the record and added to Disclosure Attached Documents.

7. To add a redacted disclosure, Click Attach Redacted Disclosure to add a redacted item. SmartCare does not redact items directly they will need to be uploaded into the disclosure.

In the pop-up, click 'Select' and choose the redacted PDF file from your computer's file that you prepared.

Click the Upload button.



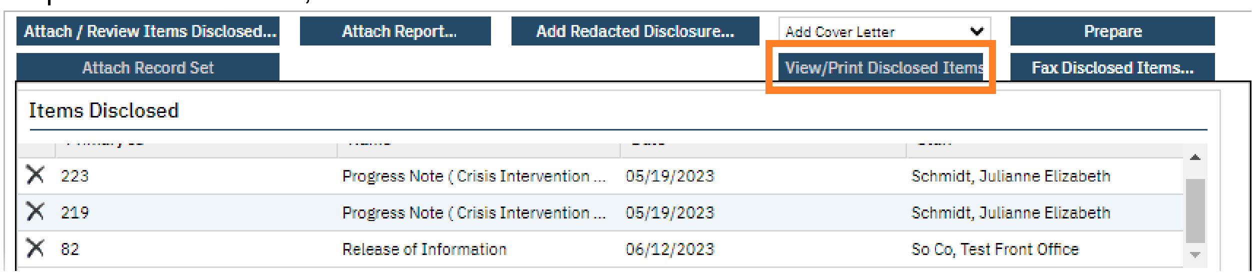
9. Once all desired attachments have been added to the disclosure, choose a method for disclosure.

Methods for Disclosure

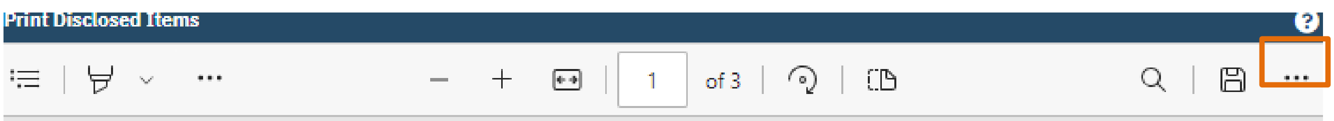
Select Prepare Button, this will combine all selected documents.

1. Mailing or Faxing from Fax Machine-

a) To print the documents, click the View/Print Disclosed Items.

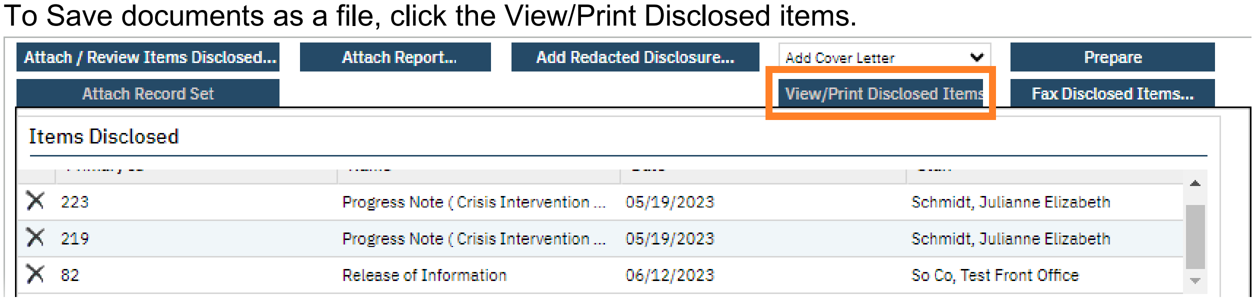


b) Print Disclosed Items screen comes up. Select the three dots to print documents for mailing for faxing.

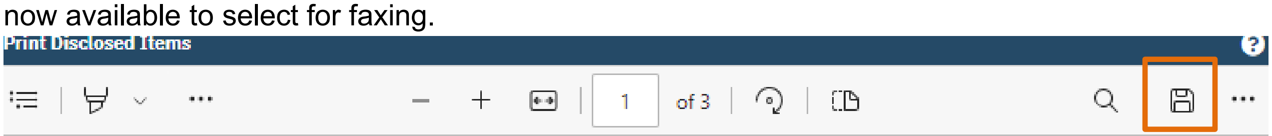


2. Faxing (from electronic service outside SmartCare) or Sending via Secure Email-

a) To Save documents as a file, click the View/Print Disclosed items.



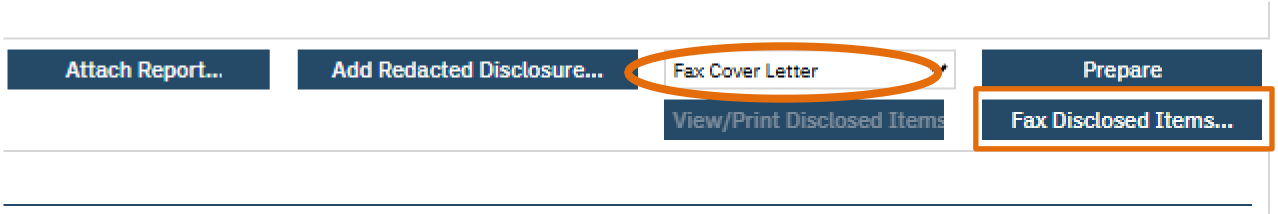
b) Print Disclosed Items Screen comes up. Select the save icon to save as PDF. Save to folder, PDF is now available to select for faxing.



3. Faxing from SmartCare

a) From dop-down change to Fax Cover Letter.

b) Select Fax Disclosed Items.



c) Complete Send Fax box with required Information.

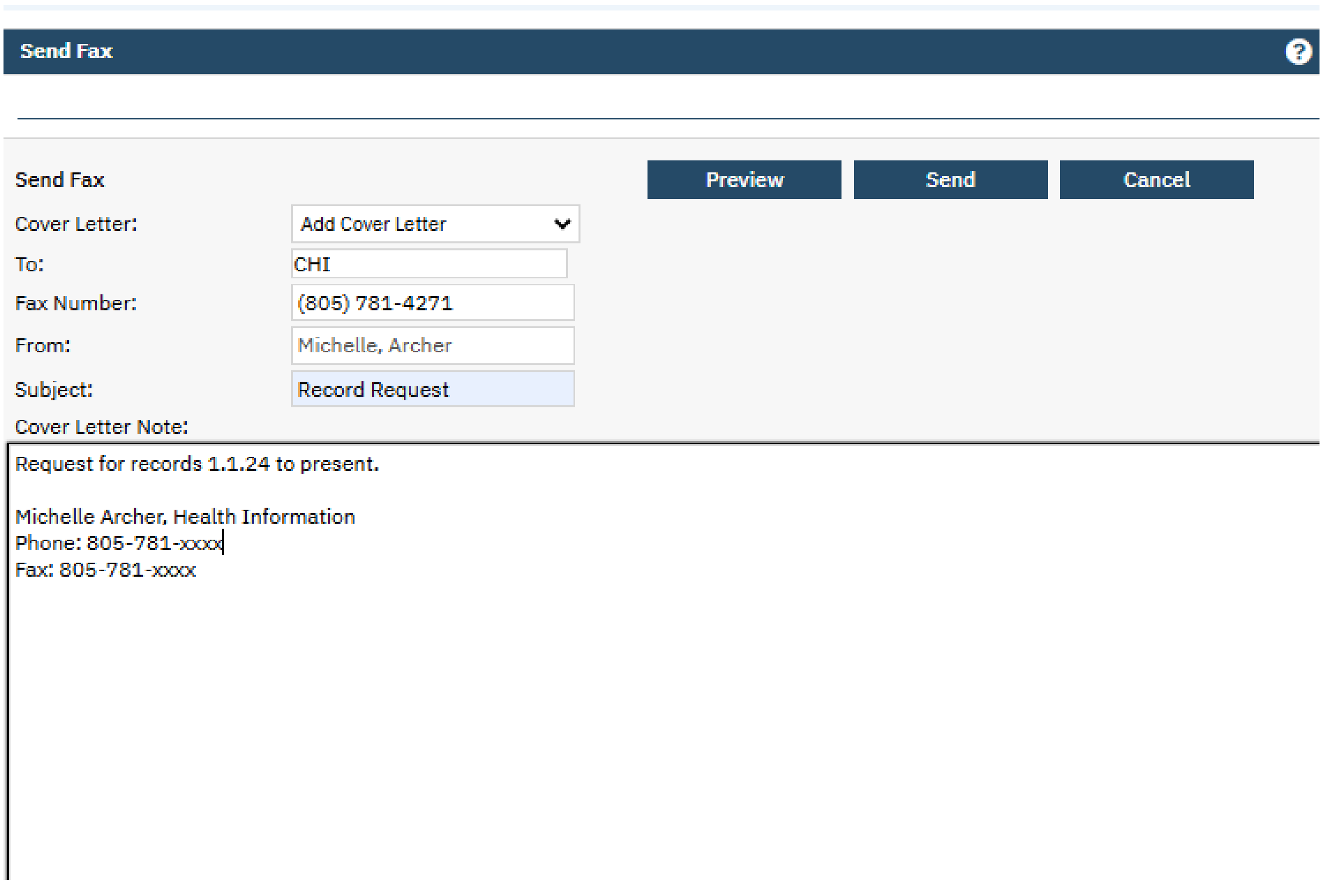
   i) Select Fax Cover Letter

   ii) To: Recipient

   iii) Fax Number

   iv) From: Clinic/Staff (Your Clinic/You)

   v) Cover Letter Note: Short Description, for example – Requested Records. Add your phone number and fax number.



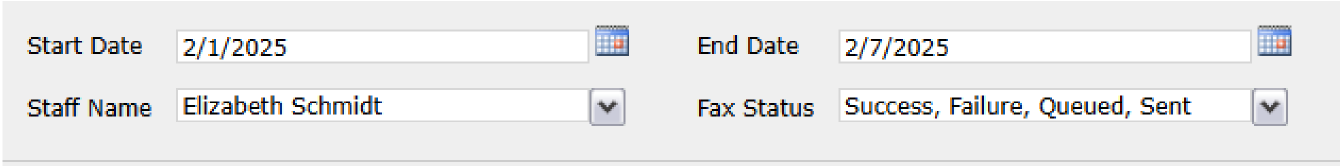
d) Select Send.

e) Run “SLO Fax Status” Report to verify if fax successfully sent.

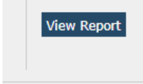
   i) Enter Start and End Date range for faxes sent

   ii) Select your name from Staff List (Your name will only appear on the list if you sent a fax during selected dates).

iii) Select all statuses.



iv) Click View report.



v) Verify that fax status is "Success."

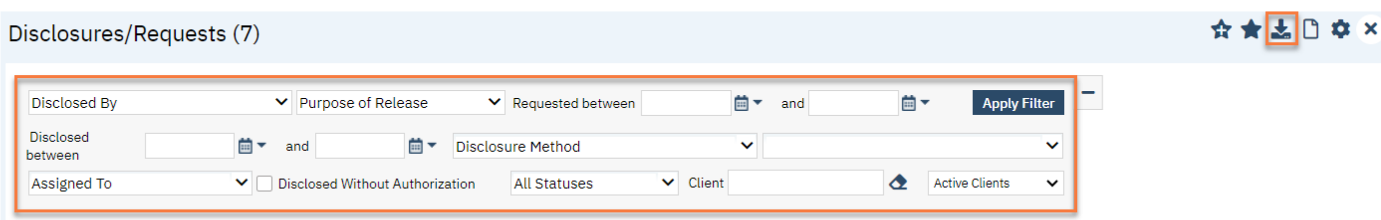
vi) Enter in the Disclosure Comments box that fax was successful and include Document ID.

Faxstatus	Client Id	Client Disclosure Id	Document Id	Staff Name	Created Date	Fax Sent Date Time
Success	400001	4366	11886055	Michelle Archer	2/7/2025 1:12:11 PM	2/7/2025 3:30:54 PM

How to See a List of Disclosure Requests

You can use the filters as needed to sort the data. You can also use the export icon to export this to Excel or other formats.

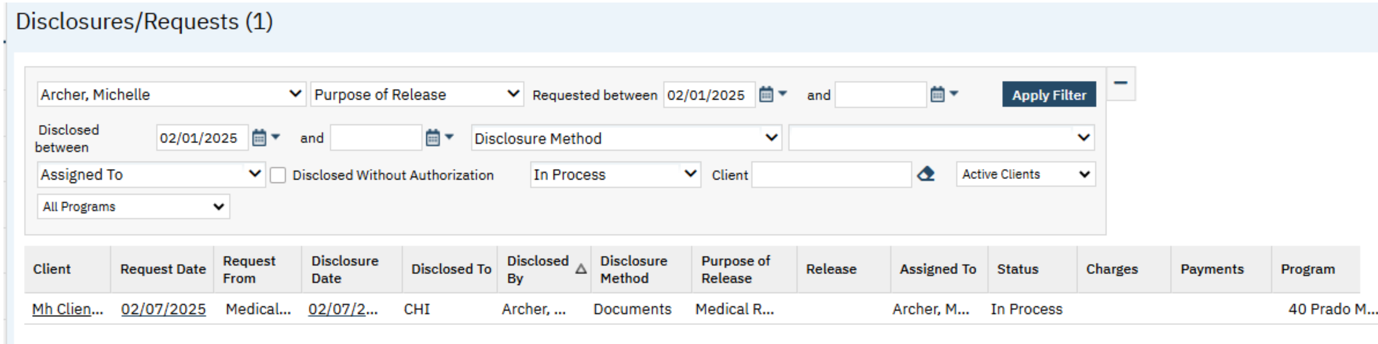
All disclosures will appear at the bottom of the **Disclosures/Requests** screen.



Client	Request Date	Request From	Disclosure Date	Disclosed To	Disclosed By	Disclosure Method	Purpose of Release	Release	Assigned To	Status	Charges	Payments
Inpatien...	06/22/2023	I am typi...			Bowers, ...					Complet...		
Inpatien...	05/18/2023				Bowers, ...					Complet...		
Test, Pat...	12/28/2022		12/28/2022	Thompso...	Sullivan, ...	Documents	Legal	Thompso...		Complet...		
Test, Gir...	12/01/2022	c	12/01/2022	VVV, AAA	Carlson, J...	Claims	Coordinatio...		Carlson, J...	Complet...	$2,222,2...	
Test, Pat...	08/26/2022		08/26/2022	Thompso...	Staff, Acc...	Documents	Coordinatio...	Thompso...		Complet...		
BAizE, J...	03/08/2022	Test, Jacob	03/08/2022	Test, Jacob	Baize, Ja...	Documents	Coordinatio...		Baize, Ja...	sentout		
BAizE, J...	03/08/2022				Shafiq, Sy...					Complet...		

Checking Disclosures List Page for In Process

Set filters to see your In Process Disclosures to follow up or if covering for another HIT to see Disclosures that are pending.



Revision History

Date:	Section Revised:	Details of Revision:
11/19/2014	Original procedure	
10/9/24	Update	Update for Electronic Health Record change
2/7/25	Methods of Disclosure In Process	Updated Faxing from SmartCare section, adding section on reviewing In Process Faxes
5/13/2025	Section 5	Updated with Justice Service requirements