

COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEASTERN MICHIGAN		<i>Policy and Procedure</i>		
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Policy Name: Confidentiality & Access To Clinical Records		Type of Policy: [] WCHO [<input checked="" type="checkbox"/>] Regional [] Network		
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Administrative/Board of Directors Sign Off				
Administrative Signature:			Date:	
Board of Directors Signature:			Date:	

I. PURPOSE

To establish guidelines for maintaining confidentiality of recipient records and to identify circumstances under which information may be disclosed.

II. APPLICATION

All recipients while under the care of any Community Mental Health Partnership of Southeastern Michigan (CMHP) staff, students, volunteers and/or contractual agencies within the provider network.

III. DEFINITIONS

Confidential Information - All personally identifiable information and material about a recipient, including information contained in automated data banks, and the information that an individual is or is not receiving services.

Confidentiality – To keep all personally identifiable information about a recipient private and not allow such information to be seen or used by anyone who does not have specific authorization to do so.

Documentable Request - A written request, or a verbal request which shall be documented by staff in the clinical record.

Holder of the Record - The agency charged with responsibility for maintaining and safeguarding each recipient's primary record. The CMHP is the holder of the record for all recipients receiving services from the CMHP or from an organization providing services under contract with the CMHP. The CMHP may delegate to organizations under contract the responsibility of maintaining portions of the record.

Limited Data Set – Protected health information that excludes direct identifiers of the recipient or of relatives, employers, or household members of the recipient. Direct identifiers are: name, postal address information, phone and fax numbers, e-mail address, social security numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers, device identifiers or serial numbers, URL's, internet protocol address numbers, biometric identifiers, and photographic or any comparable images.

Data Use Agreement – An agreement that assures that the recipient of a limited data set will only use or disclose the protected health information for limited purposes. The Agreement must establish permitted uses and disclosures of the limited data set, establish who is permitted to use or receive the limited data set, and provide for the confidentiality of the limited data set.

Privileged Information - Information obtained by a psychiatrist, psychologist or other staff member in connection with examination, diagnosis or treatment of a recipient.

IV. POLICY

Information in the record of a recipient, and other information obtained while providing services to a recipient, shall be kept confidential, including the fact that a person is or is not receiving services. Confidential information may be disclosed outside the CMHP and its contractual agencies only in the circumstances allowed by law and referenced in this Policy.

V. STANDARDS

A. General

Confidential information entered into the clinical record on or after March 28, 1996, shall be disclosed to a legally competent adult recipient upon his/her request without regard to detriment. Disclosure shall be made as expeditiously as possible, but in no event later than the earlier of 30 days from the date of the request or prior to release from treatment.

Except as provided above, confidential information may be released with consent from one of the following:

1. Recipient
2. Recipient's guardian with authority to consent
3. Parent with legal custody of a minor recipient
4. Court approved personal representative or executor of the estate of a deceased recipient to:
 - a. Providers of mental health services to the recipient.
 - b. An attorney for the recipient.
 - c. The recipient or any other person or agency in accordance with this policy.

Confidential information must be disclosed, with consent if possible or without consent, under one or more of the following circumstances:

1. Order or Subpoena of a court or legislature for non-privileged information.
2. To a prosecutor as necessary for the prosecutor to participate in a proceeding governed by the Mental Health Code.
3. To the Auditor General.
4. When necessary to comply with another provision of law, e.g., Children's Protective Services Act, Adult Protective Services Act. (Within 14 days after receipt of a written request from FIA Child Protective Services, pertinent records and information shall be released.) Specific procedures are set forth in the policy on Abuse and Neglect.
5. To the Department of Community Health when necessary in order for the Department to discharge a responsibility placed upon it by law.
6. To the recipient's surviving spouse or, if none, closest relative of the recipient in order to apply for and receive benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order.
7. Under order or subpoena from a Court, to an attorney or other regarding a Child Protective Services civil action per MCLA 722.631.

Confidential information may be disclosed, with consent if possible or without consent, at the discretion of the holder of the record:

1. To enable a recipient to apply for or receive benefits which shall accrue to the Board or shall be subject to collection for liability for mental health services.
2. For research, evaluation, accreditation, or statistical compilation. In the case of research, disclosure will not be allowed without an authorization, or an authorization waiver from an Institutional Review Board, unless disclosure is limited to a limited data set and a data use agreement is in place.
3. To providers of mental or other health services or to a local police agency or other public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or others.

The holder of the record, when authorized to release information for clinical purposes by the recipient, guardian, or parent of a minor, shall release a copy of the entire medical and clinical record to the provider of mental health services.

Recipient information and records may be exchanged among CMHP staff and with contractual agencies which provide mental health services without obtaining a Client Information Release Authorization to the extent that such exchange of information is necessary for the provision of services and set forth in the Notice of Privacy Practices.

Privileged information shall not be disclosed in civil, legislative, or administrative cases or proceedings, unless the client has waived the privilege, except under circumstances required by law.

Information shall be provided to private physicians or psychologists appointed or retained to testify in civil, criminal, or administrative proceedings. The holder of the record shall:

1. Notify physician or psychologists, before the review of records, when the records contain privileged communication which cannot be disclosed in court.
2. Inform the court or other entity that issues a subpoena or order and the attorney general's office, if involved, if subpoenaed or ordered information is privileged under a provision of law. Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or because of other conditions which, by law, permit or require disclosure.

Redisclosure: Specific information in the record obtained from other agencies through a Client Information Release Authorization will be released with a signed Client Information Release Authorization unless precluded by 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. Persons requesting information that cannot be redisclosed shall be referred directly to the source agency. If the request is made by the recipient, or someone legally authorized to act on behalf of the recipient, for the purpose of obtaining access to the recipient's own record, the entire medical and clinical record will be made available, including information obtained from other agencies.

Information regarding persons other than the recipient identified on the Client Information Release Authorization shall not be disclosed without similar consent from those persons. With regard to family members, a Release Authorization signed by the parent of a minor, guardian, or recipient does not permit disclosure of information regarding any other member of the family unless:

1. The release form specifically includes the other family members and all adult family members have signed a release of information form, or
2. The information released is general and does not include specificity on any family member who has not signed a release of information.

The holder of the record shall not decline to disclose information if a recipient, guardian, or parent of a minor has consented, except for a documented reason.

When information is disclosed, the identity of the person to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought and based on the requestor's "need to know".

Clinical record information released to any agency or individual shall be accompanied by a Notice of Federal and State Laws Against Further Disclosure.

A record shall be kept on the Confidential Information Release Log of all disclosures of confidential information and shall include the following information:

1. Information released
2. To whom it is released
3. The date it was released
4. The purpose claimed by the person requesting the information and how the disclosed information relates to the purpose.
5. The legal basis under which a disclosure was made.
6. Statement that the persons receiving the disclosed information can only further disclose consistent with the authorized purpose for which it was released, e.g., Notice of Federal and State Laws Against Further Disclosure.

A summary of Sec, 748, Confidentiality, of P.A. 258 as amended, Michigan Mental Health Code, shall be made a part of each recipient's record.

Accounting of Disclosures

A recipient has the right to request an accounting of disclosures of their confidential information made in the six years prior to the date on which the accounting is requested, but no sooner than April 14, 2003. This accounting does *not* have to include: disclosures that were for treatment, payment, and healthcare operations as outlined in the Notice of Privacy Practices; disclosures made without an Authorization that were required by law; disclosures for national security or intelligence purposes; disclosures made as part of a limited data set; or disclosures made pursuant to a signed Client Information Release Authorization.

The accounting must be provided to the recipient within sixty days of receipt of their request and must include disclosures that occurred during the preceding six years (or a shorter time period at the request of the individual), but not prior to April 14, 2003, and must include disclosures made to or by the CMHP and its business associates.

The accounting must include the date of the disclosure; the name of the person or entity to whom the disclosure was made; a brief description of the confidential information that was disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure.

Peer Review

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under Sec. 143a(1) of the

Mental Health Code, are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena.

B. Requests for Information from Attorneys, Prosecutors and from Attorneys or Others through Subpoena

If a staff member receives a request for information from an attorney or receives a subpoena requesting confidential information, that Program's Administrator or his/her designee shall be informed. That Program's Administrator shall inform the CMH Director and shall make available to the CMH Director a copy of the subpoena or request for information along with a description of the actions contemplated by the program.

Information shall be provided by the holder of the record to attorneys, other than prosecuting attorneys:

1. Who present a consent for release of confidential information completed by the recipient, guardian, or parent of a minor.
2. Who are retained or appointed by a court to represent a recipient and present identification and a properly executed Consent for release of confidential information.
3. Who do not represent a recipient but present a certified copy of an order from a court directing disclosure.

A prosecutor may be given non-privileged information pursuant to a subpoena if it relates to proceedings under the Mental Health Code, and a good faith effort has been made to notify the recipient and provide the recipient an opportunity to file an objection with the court. Privileged information may be disclosed pursuant to a court order, if it relates to proceedings under the Mental Health Code, including all of the following:

1. Names of witnesses to acts which support the criteria for involuntary admission.
2. Information relevant to alternatives to admission to a hospital or facility.
3. Other information designated in policies of the governing body.

C. Court Services Confidentiality

Information obtained in interviews that take place as part of the court commitment procedure, including commitment interviews and alternative report interviews, may be disclosed without a Client Information Release Authorization only with respect to the particular purpose for which the examination occurred. A staff member conducting such an interview must explain to the recipient that any information obtained in the interview is not confidential, in relation to a court proceeding. If the recipient was not informed that communications could be used in court proceedings, then those communications are privileged and shall not be disclosed, unless the person has waived the privilege.

D. Disclosure of Information Regarding HIV/AIDS Status

A Client Information Release Authorization that specifies that consent is given for disclosure of information regarding HIV/AIDS status must be obtained before releasing such information. A general consent to release medical or health information is not sufficient.

State law allows information regarding a recipient's HIV/AIDS status to be released without a Release Authorization to those staff, students, or volunteers of the CMHP or organizations under contract to the CMHP who are diagnosing or caring for the recipient. These are the only staff, students, or volunteers who have a "need to know" this information, and includes only those who are providing direct treatment or managing the treatment of the consumer's physical and mental health care. Disclosure to anyone else will require a signed Client Information Release Authorization.

Disclosure may be made to the local Department of Public Health regarding HIV/AIDS status without a Release Authorization if necessary to:

1. Protect the health of an individual.
2. To diagnose and care for a recipient.
3. To prevent further transmission of the virus.

Disclosure to the local Department of Public Health shall not contain information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of the virus.

E. Disclosure of Information Regarding Substance Abuse Treatment Program Services

A Client Information Release Authorization indicating the specific information to be disclosed must be obtained before releasing information regarding recipients who are receiving any alcohol or drug abuse related services, including assessment, diagnosis, counseling, or referral for treatment.

A substance abuse treatment program may not inform a person outside the program that a recipient attends the program, or disclose any information identifying a recipient as an alcohol or drug abuser unless:

1. The recipient consents to disclose about substance abuse treatment in writing, or
2. The disclosure is allowed by court order, or
3. The disclosure is made to medical personnel in a medical emergency, or
4. The disclosure is made to qualified personnel for research, audit, or program evaluation, or
5. The recipient commits or threatens to commit a crime either at the program or against any person who works for the program, or

6. There is suspected child abuse and/or neglect which must be reported to FIA Child Protective Services, or
7. Information is needed by a qualified service organization in order to provide services to the program.

F. Disclosure of Information to Protection and Advocacy Staff

If a staff member receives a request for information from Protection and Advocacy staff, that Program's Administrator/Department Head or his/her designee shall be informed. That Program's Administrator/designee shall inform the CMH Director or his/her designee prior to the disclosure of confidential information.

If Michigan P&A receives a complaint or has probable cause to suspect abuse, the following conditions must be met before Michigan P&A may have access to the record:

1. Request must be in writing.
2. In the interest of ensuring that the record is not released inappropriately, the CMH Director/designee must determine if, in the Director's professional judgment, the purpose of the Michigan P & A request for access to the record is due to reasonable cause to suspect that the recipient has been or is being subjected to abuse or neglect.
3. The CMHP must limit the disclosure to the relevant information expressly authorized by statute or regulation.
4. The CMHP must maintain documentation of all disclosures.

If the above criteria are met, a representative of P&A shall have access to the clinical records of all of the following:

1. A recipient, if the recipient, or other empowered representative has consented to the access.
2. A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
 - a. Because of mental or physical condition, the recipient is unable to consent to the access.
 - b. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
 - c. Michigan P&A Services has received a complaint on behalf of the recipient or has probable cause to believe, based on monitoring or other evidence, that the recipient has been subject to abuse or neglect.
3. A recipient who has a guardian or other legal representative if all of the following apply:

- a. A complaint has been received by the P&A system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
- b. Upon receipt of the name and address of the recipient's legal representative, Michigan P&A Services has contacted the representative and offered assistance in resolving the situation.
- c. The representative has failed or refused to act on behalf of the recipient.

In order for a P&A representative to determine whether a recipient is subject to a guardianship or conservatorship order and to determine who has the power to authorize a release of information, the P&A shall be provided with the name, address, and telephone number of a guardian, conservator, or parent upon written request and presentation of a statement that a complaint has been received, or that P&A has probable cause to believe the recipient has been subjected to abuse or neglect or that the health or safety of the recipient is in serious and immediate jeopardy.

G. Disclosure of Information for Purposes of Evaluation, Accreditation, Compilation of Statistical Information, or Research

Confidential information may be disclosed in the discretion of the holder of the record for the purposes of evaluation, accreditation, or compilation of statistical information:

1. Only when it is essential to achieve the purpose for which the information is sought, or
2. When preventing such identification would clearly be impractical.

Confidential information shall not be released if the subject of the information is likely to be harmed by its release.

Whenever possible, aggregate data shall be provided which does not identify recipients or disclose confidential information.

Requests for information in connection with evaluation, accreditation or statistical compilation shall be reviewed by the Director's office, which shall ensure that:

1. Confidential information is not disclosed in any manner, including inspecting or sampling of information, unless such disclosure is essential to achieve the purpose and allowed by law.
2. Disclosure is not to be made when identification would be harmful to a recipient.
3. When an evaluator, accreditor or compiler of statistical information asserts that withholding confidential information about a recipient would be too impractical

to be prevented, documentation is provided which verifies this assertion before approval for disclosure is given.

4. Recipient confidentiality shall be safeguarded in any document which is to be disseminated outside the CMHP.

Requests for information in connection with research, investigative activities, and/or utilization of experimental intervention methods or medication are subject to review by an Institutional Review Board as described in CMH Policy on Research. Confidential information will be disclosed without a Client Information Release Authorization only if:

1. An authorization waiver is approved by an Institutional Review Board, or
2. Disclosure is limited to a limited data set where there is a data use agreement in place.

H. Report of Potential Physical Harm and Duty to Warn

If a staff member assesses that a situation exists or that information received indicates that "substantial or serious physical harm may come to the recipient or to another person in the near future" s/he shall immediately inform the Program Administrator/Department Head or his/her designee and complete a Report of Potential Physical Harm. The CMH Director shall be immediately notified and the Report of Potential Physical Harm submitted to him/her. Then, confidentiality policies may be waived to disclose necessary information to the local police agency or to others.

If the threat of physical violence is against a reasonably identifiable person, and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the staff member or Director/designee has a duty to take one or more of the following actions in a timely manner:

1. Hospitalize the recipient or initiate proceedings to hospitalize the recipient.
2. Make a reasonable attempt to communicate the threat to the threatened person and communicate the threat to the local police department for the area where the threatened person resides.
3. If the staff member or Director/designee has reason to believe that the threatened person is a minor or is incompetent by other than age, they will communicate the threat to the threatened person's parent, legal guardian, or whoever is appropriate in the best interests of the threatened person, in addition to communicating the threat to the threatened person, if appropriate, and to the local police department.

A copy of the Report of Potential Physical Harm shall be included in the recipient's record.

I. Delay in Release of Confidential Information

Confidential information entered into the mental health clinical record on or after March 28, 1996 shall be promptly disclosed to a third party, without regard to possible detriment, upon an adult recipient's legally competent request. Information in the record will be redisclosed only to an extent consistent with the authorized purpose for which the original disclosure was made. Confidential information related to substance abuse will be released to a third party who is not the recipient or the recipient's legal representative only as allowed by 42 CFR, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

Except as provided above, disclosure of confidential information entered into the clinical record on or before March 27, 1996 may be delayed (unless it is to be released pursuant to an order or a subpoena of a court or the legislature for non-privileged information, to a prosecutor as necessary for the prosecutor to participate in a proceeding governed by the Mental Health Code, to a recipient's attorney with the recipient's consent, the auditor general, or when necessary to comply with another provision of law) if:

1. Staff has determined, in the exercise of professional judgment, that such disclosure would produce a substantial probability of detriment to the recipient or others; or
2. The recipient, guardian or parent of a minor requests that information not be released or declines to consent, except that information shall be released to a recipient's attorney without delay if the recipient has consented even though guardian or parent of a minor requests a delay.

If a staff member believes that the disclosure of information contained in the record to a person or agency would produce a substantial probability of detriment to the recipient or others, the staff member must obtain permission of the Program Administrator/Department Head for any delay in the disclosure.

The Program Administrator/Department Head shall review the request and make a determination whether the disclosure will be allowed within three business days if the record is located on-site and within ten business days if the record is at another location.

The record will be released if the benefit of disclosure to the recipient outweighs the risk. The Program Administrator/Department Head shall also determine whether part of the information can be released without risk.

If information is not disclosed, a statement shall be included in the record explaining why the information was not disclosed. The requestor shall be given written notification of the determination regarding detriment and the justification for the determination. If the requestor disagrees with the determination, s/he may file a Recipient Rights Complaint.

J. Recipient Access to His/Her Own Record

A recipient requesting access to his/her own record shall be asked to provide a written request to see part or all of the record, and provide appropriate identification before seeing the record. The assigned staff, supervisor, Program Administrator/Department Head, or designee shall be available to review the contents of the record with the recipient.

If a recipient requests a copy of his/her record, the record shall be copied onto watermarked paper and made available to the recipient within thirty days of receipt of the request. A reasonable amount for photocopying may be charged. The cost per page shall be calculated annually. Upon receipt of copy, the recipient shall sign a statement that confirms receipt and advises the recipient that the CMHP cannot protect the confidentiality of records that are released into his/her possession; the recipient will be responsible for protecting the confidentiality of those records.

A competent adult recipient has the right to see all information entered into his/her clinical record on or after March 28, 1996, including reports obtained from other agencies, without regard to possible detriment unless such access is prohibited by 42 CFR Part 2.

A recipient has the right to see all information entered into his/her clinical record on or before March 27, 1996, including reports obtained from other agencies. Access will be denied in whole or in part, however, if in the judgment of the Program Administrator:

1. The access is reasonably likely to endanger the life or physical safety of the recipient or another person; or
2. The record makes reference to another person (who is not a health care provider) and providing access to the record is reasonably likely to cause substantial harm to such other person; or
3. If the request is made by the recipient's personal representative and the provision of access to such personal representative is reasonably likely to cause substantial harm to the recipient or another person.

If a request from a recipient for access to his/her record is denied in whole or in part, the CMHP must provide the recipient with a written denial and offer the recipient the option of obtaining a review of the denial. The written denial must describe the basis for the denial and a description of how the recipient can complain to the CMHP or to the Secretary of Health and Human Services, including the name, title, and telephone number of the contact person at the CMHP who will handle such complaints.

If the recipient chooses to have the denial reviewed, the Director will designate a licensed psychologist, master's level social worker, or master's level psychologist, who did not participate in the original decision to deny access, to act as a reviewing official. The CMHP must provide written notification to the recipient of the reviewing official's determination, and must provide or deny access in accordance with the determination made by the reviewer.

If the CMHP does not maintain the record that is the subject of the recipient's request for access, and the CMHP knows where the requested record is maintained, the CMHP must inform the recipient where to direct the request for access.

K. Recipient's Right to Amend His/Her Own Record

A recipient, guardian, or parent of a minor may add a notation at any time in the clinical record, and this statement shall become part of the clinical record. A recipient, guardian or parent of a minor may challenge the accuracy, completeness, timeliness, or relevance of factual information in the record and may insert into the record a statement correcting or amending the information at issue, and this statement shall become part of the clinical record within 30 days of its receipt.

The CMHP must make reasonable efforts to inform and provide the amendment to any health care provider the recipient identifies as being in need of the amendment, and to persons, including business associates, that the CMHP knows have the record that is subject to amendment and that may have relied, or could foreseeably rely, on the information to the detriment of the recipient.

The CMHP has the right to deny a recipient's request for an amendment if the information that is subject to the request was not created by the CMHP, unless the recipient provides a reasonable basis to believe that the originator of the record is no longer available to act on the request for amendment. If the request is denied in whole or in part, the CMHP must:

1. Provide a timely written denial containing the basis for the denial and, if possible, informing the recipient where to direct the request for amendment.
2. Notify the recipient that he/she may either submit a statement of disagreement or that he/she may request that the CMHP provide the request for amendment and denial with any future disclosures of the confidential information that is the subject of the amendment.
3. Provide a description of how the individual may complain to the CMHP or to the Secretary of Health and Human Services, including the name, title, and telephone number of the contact person at the CMHP who will handle such complaints.

L. Record Storage

Recipient records shall be stored in locked file cabinets or a locked record room under the supervision of one person designated by the Program Administrator/Department Head. File cabinets or record rooms containing recipient records shall be kept locked overnight and when unattended to control access to records.

Each program shall institute a system to control the location of recipient records on the premises. No records are to leave the program site unless explicit permission has been

granted by the Program Administrator. Recipient records shall be signed out by staff when the record is removed from the office. Sign-out forms shall be placed in the appropriate file when the recipient record is removed.

Department of Community Health Guidelines on Record Retention shall be followed with assurance that shredding of documents shall occur. A record shall be retained for at least ten years from the date of case closure.

VI. EXHIBITS

None

VII. REFERENCES

- A. Michigan Mental Health Code, Public Act 258 as amended - 330.1748, 330.1749, 330.1750, 330.1946.
- B. Confidentiality of HIV/AIDS Information, MCL 333.5131; Michigan Public Health Code, Public Act 488 of 1988, as amended
- C. DCH Administrative Rules - 330.7051
- D. Your Rights When Receiving Mental Health Services in Michigan, 10/97, Pg. 5
- E. Michigan Department of Community Health Policy, Resident Records: Release to Protection and Advocacy, 07-C-1748/GL-00.
- F. Michigan Department of Community Health Policy, Records Retention and Disposal Schedules, 07-C-1746/GL
- E. 42 C.F.R. (Code of Federal Regulations) Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; Final Rule.
- F. Health Insurance Portability and Accountability Act of 1996 (45 CFR, Parts 160 and 164)