


Policy and Procedure Manual Saginaw County Community Mental Health Authority		
Subject: Recipient Rights – Confidentiality	Chapter: 02 - Customer Service and Recipient Rights	Subject No: 02.02.05
Effective Date: March 7, 2000	Date of Review/Revision: 3/19/03, 1/25/08, 6/29/09, 2/22/10, 6/22/12, 6/13/14, 11/27/16, 6/6/18, 1/8/19, 2/21/20, 2/9/21, 5/10/22	Approved By: Sandra M. Lindsey, CEO Responsible Director: Tim Ninemire, Director of Customer Services & Recipient Rights Authored By: Tim Ninemire Additional Reviewers: None
	Supersedes: 06.02.04.00	
		

Purpose:

The purpose of this Policy is to protect the information in the record of a consumer, and other information acquired in the course of providing public mental health services to a consumer.

Policy:

Information obtained through the course of public mental health treatment shall be kept confidential unless the consumer has signed an Authorization to Release Medical Information or is otherwise specified by law.

Application:

This Policy applies to all Saginaw County Community Mental Health Authority (SCCMHA) direct operated programs as well as all SCCMHA Service Provider Network programs.

Standards:

- F1) As stated in the Policy Section, all information in the clinical record and other information obtained in the course of providing services is confidential.
- F2) A summary of the Michigan Mental Health Code section 330.1748 is made a part of every consumer record.
- F3) For case records made subsequent to March 28, 1996; information made confidential by Section 330.748 of the Michigan Mental Health Code, shall be disclosed to a

competent adult consumer upon the consumer's request. Release will be done as expeditiously as possible, but in no event, later than the earlier of 30 days of the request, or prior to release from treatment.

- F4) Except as otherwise provided in 1748 (4), if consent has been obtained from:
- a) The consumer,
 - b) The consumer's guardian who has the authority to consent,
 - c) A parent with legal custody of a minor consumer, or
 - d) Court appointed personal representative or executor of the estate of a deceased consumer, information made confidential by 1748 may be disclosed to:
 - 1) a provider of mental health services to the consumer, or
 - 2) the consumer, his or her guardian, the parent of a minor, or another individual or agency unless, in the written judgement of the holder {of the record} the disclosure would be detrimental to the consumer or others.
- F5) When requested, information shall be disclosed only under one or more of the following circumstances:
- a) Pursuant to order or subpoenas of a court of record or legislature for non-privileged information, unless the information is privileged by law
 - b) To a prosecuting attorney as necessary for the prosecutor to participate in a proceeding governed by Mental Health Code
 - c) To an attorney for the consumer with consent of the consumer, the consumer's guardian with authority to consent, or the parent with legal and physical custody of a minor consumer
 - d) To the Auditor General
 - e) When necessary in order to comply with another provision of the law
 - f) To MDHHS when information is necessary in order for the department to discharge a responsibility placed upon it by law
 - g) To a surviving spouse, or if none, closest relative of the 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.
- F6) For requests made for confidential information by a person or agency not covered under 1748(4) the following steps will be followed.
- a) The holder of the record shall not decline to disclose information if a consumer or other empowered representative has consented, except for a documented reason.
 - b) If a holder declines to disclose, there shall be a determination whether part of the information can be released without detriment.
 - c) Once the decision has been made to not release information based on detriment, the CEO will review the information and determine if a part of the information requested may be released without detriment.
- F7) This review shall not exceed 3 business days if the record is on-site, or 10 business days if the record is off-site.

- F8) The requestor of the information may file a complaint with the SCCMHA ORR if he or she disagrees with the decision of the CEO.
- F9) This policy is established in accordance with the Michigan Department of Health and Human Services (MDHHS) ORR CMH Rights System Assessment Policy Review Standards.
- F10) Attorneys representing consumers may review records only upon presentation of identification and the consumer's consent or a release executed by the parent or guardian shall be permitted to review the record on the provider's premises.
- F11) An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor shall be allowed to review the records.
- F12) Attorneys who are not representing consumers may review records only if the attorney presents a certified copy of an order from a court directing disclosure of information concerning the consumer to the attorney.
- F13) Attorneys shall be refused information by phone or in writing without the consent or release from the consumer or the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney.
- F14) A private physician or psychologist appointed by the court, or retained for testimony in civil, criminal, or administrative proceedings shall, upon presentation of identification and a certified copy of a court order, be permitted to review the records of the consumer on SCCMHA premises. Before the review, notification shall be provided to the reviewer and to the court if the records contain privileged communication which cannot be disclosed in court, unless disclosure is permitted because of an express waiver of privilege or because of other conditions that, by law permit or require disclosure.
- F15) A prosecutor may be given non-privileged information or privileged information which may be disclosed if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives, to admission to a hospital or facility and other information designated in policies of SCCMHA.
- F16) Information shall be provided as necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191.
- F17) The holder of a record may disclose information that enables a consumer to apply for or receive benefits without the consent of the consumer or legally authorized representative only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service.

F18) SCCMHA shall grant a representative of Disability Rights of Michigan access to the records of all of the following:

- a) A consumer, if the consumer, the consumer's guardian with authority to consent, or a minor's parents with physical and legal custody of the consumer, have consented to the access
- b) A consumer, including a consumer who has died, or whose whereabouts are unknown, if, all of the following apply:
 - i) Because of a mental or physical condition, the consumer is unable to consent to access
 - ii) The consumer does not have a guardian or other legal representative, or the consumer's guardian is the State
 - iii) Disability Rights of Michigan has received a complaint on behalf of the consumer, or has probable cause to believe, based on monitoring or other evidence, that the consumer has been subject to abuse or neglect
- c) A consumer who has a guardian or other legal representative if all of the following apply:
 - i) A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the consumer is in serious and immediate jeopardy
 - ii) Upon receipt of the name and address of the consumer's legal representative, Disability Rights of Michigan has contacted the representative and offered assistance in resolving the situation
 - iii) The representative has failed or refused to act on behalf of the consumer

F19) The records, data, and knowledge collected for or by individuals or committees assigned a peer review function including the review function under section 143a (1) of the Mental Health Code are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena.

F20) SCCMHA, when authorized to release information for clinical purposes by the consumer, their guardian, or a parent of a minor, releases a copy of the entire medical and clinical record to the provider of mental health services.

F21) Upon receipt of a written request from Department of Health and Human Services and/or Child Protective Services, every effort will be made to provide the requested records or information by the next business day. However, compliance with the request will not exceed 14 days from the receipt of the request.

F22) A consumer, guardian, or parent of a minor consumer, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the consumer's record; the consumer or other empowered representative will be allowed to insert into the record a statement correcting or amending the information at issue; the statement will become part of the record.

F23) A record is kept of disclosures including:

- a) Information released,
- b) To whom it is released,
- c) Purpose stated by person requesting the information,
- d) Statement indicating how disclosed information is germane to the state purpose,
- e) The part of law under which disclosure is made,
- f) Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.

F24) Any person receiving information made confidential by this policy shall disclose the information to others to the extent consistent with the authorized purpose for which the information was released. A record shall be kept of all disclosures including:

- a) Information released
- b) To whom it is released
- c) Purpose stated by the person requesting the information
- d) Statement indicating how disclosure information is germane to the stated purpose
- e) The part of law by which disclosure is made
- f) Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released

F25) Information may be disclosed at the discretion of the holder of the record:

- a) As necessary for the purpose of, outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information be identified from the disclosed information, only when such identification is essential in order to achieve the purpose for which the information is sought or when preventing such identification would clearly be impractical. But, in no event when the subject of the information is likely to be harmed by such identification.
- b) To providers of mental or other health services or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the or other person.

F26) Unless 330.748(4) applies, if a request for information has been delayed, the SCCMHA Chief Executive Officer (CEO) shall review the request.

Definitions:

Holder of the record: The agency given charge over a record which contains confidential information obtained through the course of mental health treatment.

References:

Mental Health Code: 330.1748

Mental Health Code: 330.1749

Mental Health Code: 330.1776

Administrative Rules: 330.7051

45 Code of Federal Regulations 164.502(g)(4)

Health insurance portability and accountability act of 1996

Public Law 104-19

Exhibits:**Exhibit A - Saginaw County Community Mental Health Authority Release of Information****Procedure:**

ACTIONS	RESPONSIBLE
1) Requests for information contained in consumer medical records are directed to the Medical Records Unit.	1) Persons requesting medical records
2) Any individual requesting medical records, including consumers, will be required to sign the appropriate release to receive the requested information.	2) Medical Records staff
3) Requests for medical records are processed in accordance with the Standards contained in this policy.	3) Medical Records staff

Exhibit A



Authorization to Exchange PHI



IDENTIFYING INFORMATION				
NAME Consumer W. Twelve	DOB 08/18/1989	AGE 30	CASE # 000000012	GENDER Female
ADDRESS Homeless, SAGINAW, MI 48605				

DOCUMENT DATE
11/21/2019

AUTHORIZATION
I authorize SCCMHA to Receive the specified information to/from the person/organization(s) named below

ORGANIZATION
SCCMHA SCCMHA 1040 Towerline Rd. SAGINAW, MI 48601 Phone: 989-797-3400 Fax: 989-754-7829

INFORMATION TO BE MADE AVAILABLE:
<input checked="" type="checkbox"/> Entire Record
<input type="checkbox"/> Entire Record EXCEPT the following types of documents
<input type="checkbox"/> Only these types of documents

TIME FRAME OF RECORDS NEEDED

I understand that this health information may include information relating to diagnosis or treatment of psychiatric disabilities and/or substance abuse and that by signing this form, I am specifically authorizing the release of information relating to:

- ☐ Mental Health
- ☐ Substance Abuse (including alcohol / drug abuse)
- ☐ HIV

RESTRICTIONS

The information indicated will be disclosed unless there are specific restrictions noted here

PURPOSE OR NEED FOR THE DISCLOSURE (CHECK ALL THAT APPLY)
<input type="checkbox"/> Acquisition of Services or Benefits
<input type="checkbox"/> Coordination Of Care
<input type="checkbox"/> Patient Request
<input type="checkbox"/> Other:

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- I understand there is a possibility the protected health information may be re-disclosed by the recipient of the information and will no longer be protected by the Privacy Rules.
- I understand that medical information may include mental health treatment records, substance abuse information, information about serious communicable diseases or infections including HIV/AIDS, ARC, Tuberculosis, Hepatitis B, and Venereal Disease as permitted by law.
- I understand that treatment, payment, enrollment or eligibility for services will not be conditioned upon the signing of this authorization.
- I understand that this authorization will be honored unless revoked verbally or in writing. Revocation may be made at any time except to the extent that action has already been taken. To revoke an authorization, I need to notify the SCCMHA Medical Records Department.
- I understand that this authorization will expire (Select one**):
 - ☒ One year from this date (i.e., date of signature)
 - ☐ On the following date:
 - ☐ Upon the following specific event (describe):

****Note:** If neither a specific date or a specific event is selected, this Authorization will automatically expire 60 days after discharge or one year from the date of authorization, whichever comes first.

Note to Recipient of Disclosed Mental Health Information: This disclosed information is protected by the Mental Health Code 330.1748. An individual receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

Note to Recipient of Disclosed Substance / Alcohol Abuse Information: This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. (52 FR 21809, June 9, 1987; 52 FR 41997, Nov 2, 1987)

I understand that my alcohol and/or drug treatment records are protected under Federal confidentiality rules (42 CFR Part 2), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 45 CFR Parts 160 & 164. Information about my mental health status is confidential and is protected by the Michigan Mental Health Code PA 258 of 1974, section 78 (3), PA 488 of 1988, effective 3/30/1989-42 CFR 455, Part B. Information about my medical condition, including status of serious communicable disease or infections such as HIV and acquired immunodeficiency syndrome, is confidential and protected under the Michigan Public Health Code PA 368. This information cannot be disclosed without my written consent unless otherwise provided for in the regulations.

SIGNATURES

CONSUMER SIGNATURE	PRINTED NAME	DATE

PARENT/GUARDIAN/AUTHORIZED REPRESENTATIVE SIGNATURE	PRINTED NAME	DATE

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