

ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE PROCEDURE

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I. APPLICATION:

- ☐ SCCCMHA Board
- ☐ SCCCMHA Providers & Subcontractors
- ☒ Direct-Operated Programs
- ☒ Community Agency Contractors
- ☒ Residential Programs
- ☒ Specialized Foster Care

II. PURPOSE STATEMENT:

St. Clair County Community Mental Health Authority (SCCCMHA) shall ensure that information of persons receiving services is confidential and access to and release of the information will be in accordance with the Mental Health Code (MHC), Administrative Rules and the procedures outlined below.

III. DEFINITIONS:

- A. **Confidential:** Any information in the records of persons receiving services, all Electronic Healthcare Information and other information acquired in the course of providing mental health services.
- B. **Legal Party:** This includes any court, attorney, prosecutor, Workers' Compensation office, Michigan Employment Securities Commission, Disability Rights of Michigan and Auditor General.
- C. **Non-Legal Party:** This includes the person receiving services, guardian, family members, other programs, hospitals, health care offices, Social Security Administration and similar parties.
- D. **Privileged Communication:** A communication between a person receiving services and a "privileged" professional made in connection with the examination, diagnosis, or treatment of a person receiving services or to other persons while they are participating in such examination, diagnosis, or treatment.
- E. **Privileged Professional:** Includes physicians, psychologists, limited license psychologists, social workers, social work technicians or other persons under their supervision.

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IV. STANDARDS:

- A. Any person has the right to see his/her record. The person receiving services, guardian (if there is one), or parent with legal custody may read or get a copy of the record or a part of it upon request. If a part of the information in the record would be harmful to others, the information believed to be harmful may be withheld and the person receiving services will be told that this has been done. For case records made subsequent to March 28, 1996, information made confidential by Sec. 748 of the MHC shall be disclosed to a competent adult recipient upon the recipient request. Release is done as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request or prior to release from treatment. Unless section 748(4) of the Act applies to the request for information (case records made subsequent to 3/28/96), if a request for information has been delayed, the director of the provider shall review the request and make a determination of detriment within 3 business days of request if record is an Electronic Health Record or 10 business days of request if record is in archive storage.
- B. If the person receiving services has been denied access to the record, the person receiving services or someone on his/her behalf may appeal the decision. Contact the recipient rights officer or advisor for information about the appeals process.
- C. A person receiving services, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record. The person receiving services or other empowered representative is allowed to insert into the record a statement correcting or amending the information at issue. The statement becomes part of the record. (MHC 749).
- D. If confidential information is disclosed the identity of the individual to whom it pertains shall be protected and shall not be disclosed. Unless confidential information is germane to the authorized purpose for which disclosure is sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
- E. Individuals receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.
- F. The records, data, and knowledge collected for or by individuals or committees assigned a peer review function under section 143a(1) of the MHC , are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this section.
- G. Any request for information must be in writing. In rare situations a verbal request may be accepted. Verbal requests are valid for a period of two weeks and must be followed up by a written request.
- H. All requests, by persons receiving services or guardians, must be responded to within thirty (30) days.

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- I. Freedom of Information Act: Requests for non-privileged information under the Freedom of Information Act shall be responded to according to individual agency policies. For CMH direct programs use administrative procedure #01-002-0025 Freedom of Information Act Requests.
- J. All information related to drug and alcohol abuse shall be disclosed in accordance with Federal Law (42 CFR Part 2).
- K. A fee will be charged for all requests except properly executed court ordered subpoenas. For requests processed electronically or on a computer disc (CD), there will be a flat fee of \$15.00. For photocopied requests, the fee will be 11¢ per page and a flat rate of \$10 to cover staff labor and postage involved in the processing. These fees may be waived for coordination of care or financial hardship.
- L. Records of persons receiving services may be audited by agencies that provide services or funding that benefit the person receiving services without their authorization. However, information, or records cannot be reproduced for these agencies without proper release forms being completed.
- M. Release of information forms are required between family members seeking treatment in order to share information received individually between family members and/or other agencies.
- N. Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows:
Administrative Rules 7051(5)(a)
 - 1. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication that cannot be disclosed in court under section 750(1) of the Act.
 - 2. AR 7051 (50(b) Privileged information shall not be disclosed unless disclosure is permitted because of other conditions that, by law, permit or require disclosure.
- O. 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 governing body.
AR 7051(6)(a-c)
- P. The holder of a record may disclose information that enables a recipient to apply for or receive benefits without the consent of the recipient 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.

[MHC 748(7)(a), AR 7051(7)].
- Q. If required by federal law, the Community Mental Health Service Provider (CMHSP) grants a representative of Disability Rights of Michigan access to the records of all of the following [MHC 748(8)]:
 - 1. A person receiving services or other empowered representative has consented to the access.

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- R. If Disability Rights of Michigan receives a complaint or has probable cause to suspect abuse, the following conditions must be met before Disability Rights of Michigan Services may have access to records: [45 CFR 164.512 (c), (e), (f)]
1. Request must be put in writing
 2. CMHSP must make determination, if in their professional judgment, it is reasonable to believe that the recipient is/has been subjected to abuse or neglect.
 3. CMHSP must limit the disclosure to the relevant information expressly authorized statute or regulation.
 4. CMHSP must maintain documentation of all disclosures [45CFR 164.512 (c), (e), (f)]
 - a. A person receiving services, including one who has died or whose whereabouts are unknown, if all of the following apply:
 - (1) Because of mental or physical condition, the person receiving services is unable to consent to the access.
 - (2) The person receiving services does not have a guardian or other legal representative, or the person receiving service's guardian is the State of Michigan.
 - (3) Disability Rights of Michigan Services has received a complaint on behalf of the person receiving services or has probable cause to believe based on monitoring or other evidence that the person receiving services has been subject to abuse or neglect.
 - b. A person receiving services who has a guardian or other legal representative if all of the following apply:
 - (1) A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
 - (2) Upon receipt of the name and address of the person receiving services legal representative, Disability Rights of Michigan Services has contacted the representative and offered assistance in resolving the situation.
 - (3) The representative has failed or refused to act on behalf of the recipient.
- S. The CMHSP when authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor, releases a copy of the entire medical and clinical record to the provider of mental health services. (MHC 748 [10])
- T. When requested, confidential information shall be disclosed only under one or more of the following circumstances: [MHC 748(5)(a-g)]
1. Order or subpoena of a court of record or legislature for non-privileged information.
 2. To a prosecutor as necessary for the prosecutor to participate in a proceeding governed by the MHC.
 3. To the person receiving service's attorney with the consent of the person receiving services or other empowered representative.
 4. To the Auditor General.

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5. When necessary to comply with another provision of law.
 6. To the Michigan Department of Health and Human Services (MDHHS) when necessary in order for the department to discharge a responsibility placed upon it by law.
 7. To a surviving spouse, or if none, closest relative of the person receiving services in order to apply for and receive benefits but only if spouse or closest relative has been designated the personal representative or has a court order.
- U. Within 14 days after receipt of written request from MDHHS/CPS pertinent records and information are released. [MHC 748a].
- V. Any disclosure of protected health information will be released in accordance with the Health Insurance Portability and Accountability Act (reference administrative procedures #08-002-0006).
- W. Except as otherwise provided in MHC 748 subsection (4), confidential information may be disclosed to providers of mental health services to the person receiving services or to any individual or agency if consent has been obtained from a) Person receiving services; b) Person receiving service's Legal guardian with authority to consent; c) Parent with legal custody of a minor recipient; d) Court approved personal representative or executor of the estate of a deceased person who was open for services. (MHC 748(6)). Except for MHC 748(4) preceding, if a holder of the record, for a documented reason, declines to disclose, there shall be a determination whether part of the information can be released with detriment.
- X. If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm, a MDHHS caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health professional and shall request in writing mental health records and information that are pertinent to that investigation. Upon receipt of this notification and request, the mental health professional shall review all mental health records and information that is pertinent to that investigation. Within 14 days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation. (MHC330.1748a)
- Y. "A record is kept of disclosures including: [AR 7051 (2) (a-e)]
1. Information released [(2) (a)];
 2. To whom it is released [(2) (b)];
 3. Purpose stated by person requesting the information [(2) (c)];
 4. Statement indicating how disclosed information is germane to the state purpose [(2) (c)];
 5. The part of law under which disclosure is made [(2) (d)];
 6. Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released [(2) (e)]."

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V. PROCEDURES:

A. **Request from a person receiving services, Parent of a Minor, Legal Guardian, or Non-Legal Party other than a psychiatric hospital.**

Records Technician

1. Obtains an Authorization from party requesting information or completes an Authorization for Release of Information in OASIS noting the specific information that is being requested from a party. Consults with Chief Operating Officer or Support Services Director if needed.
2. Reviews request and determines what should be disclosed or if there should be a delay in disclosure.
3. Processes any delay of release in accordance with Administrative Rule 7051(3)(4)(5).
4. Replies in writing, if disclosure of information dated prior to March 28, 1996, is considered detrimental and will not be released.
5. Makes a CD, PDF file, or paper copy of the materials, stamps envelope "Confidential", and sends to the requester with a cover memo indicating fee if applicable.
6. Records documents sent in the Disclosure Log in the Electronic Health Record.
7. Scans the invoice and request into the correspondence section of the Electronic Health Record.

B. **Request from a Legal Party**

Records Technician

1. Receives a written request, either through a consent or subpoena, for release of case record information.
2. Forwards the request to the Chief Operating Officer or Support Services Director, for approval, if needed.
3. Reviews the request for accuracy, adequacy and authenticity.
4. Contacts the requester if further information is needed or to convey that there will be no response to the request.
5. Determines without delay what information should be copied and sent to the requester.
6. Makes a CD, PDF file, or paper copy of the selected materials and sends to the requester with a cover memo, indicating fee if applicable.
7. Records documents sent in the Disclosure Log in the Electronic Health Record.

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8. Scans the invoice and request into the correspondence section of the Electronic Health Record.

VI. REFERENCES:

- A. Privileged Communications for Social Workers, MCLA 339.1610 or P.A. 89-101
- B. Privileged Communications for Psychiatrists or Psychologists, MCLA 339.1750 or P.A. 89-123
- C. Mental Health Code 330.7148 and 330.7148a Confidentiality
- D. MDDHS Administrative Rules 330.7051 Confidentiality and Disclosure
- E. OP. Atty. Gen. 1978, No. 5125 (turning over material to prosecutor)
- F. HIPAA
- G. 42 CFR Part 2
- H. 45 CFR 164.512

VII. EXHIBITS:

None Available

VIII. REVISION HISTORY:

Dates issued 07/82, 06/86, 12/90, 08/92, 12/93, 09/97, 08/98, 06/00, 06/02, 04/04, 04/06, 04/08, 04/10, 05/12, 09/12, 09/13, 09/14, 07/16, 09/17, 09/18, 11/20, 11/21, 11/22.