

ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH

ADMINISTRATIVE POLICY

Date Issued **09/24;**
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Page 1

CHAPTER Service Delivery		CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records		SUBJECT Release of Case Record Information		
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I. APPLICATION:

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

II. PURPOSE STATEMENT:

St. Clair County Community Mental Health (SCCCMH) must ensure that information of persons receiving services is confidential and access to and release of the information will be in accordance with the Michigan Mental Health Code, 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 Custody:** The status of a parent or guardian, pursuant to a court Order, granting the right to make important decisions about an individual, such as where they go to school, what religion they are (if any), and major medical decisions. Legal Custody can be sole (only one person) or joint (shared with another person), and an individual with Legal Custody may or may not have physical custody. A request by a parent or guardian for access to or release of mental/behavior health records of a child under the age of 18, shall be denied if the parent does not have Legal Custody of the child.
- B. **Legal Party:** 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

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

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.
- F. Reproductive Health Care Information: All health care information potentially related to any health care an individual receives in all matters relating to the reproductive system and to its functions and processes. For example, records pertaining to medication being administered, might include information about pregnancy status, date of last menses, current medications (including contraception), etc., that could be relevant to the medication being prescribed or administered, and that information would be reproductive health care information. Additional examples include information related to contraception (including emergency contraception), preconception screening and counseling, management of pregnancy and pregnancy-related conditions (hypertension, pre-eclampsia, ectopic pregnancy, gestational diabetes, etc.), prenatal care, miscarriage management, pregnancy termination, fertility care (e.g., IVF), diagnosis/treatment of conditions that affect the reproductive system (e.g., menopause, endometriosis), mammography, pregnancy-related nutrition services, and postpartum care products.

IV. STANDARDS:

- A. Any person has the right to see their own record. The person receiving services, guardian (if there is one), or parent with legal custody may read or obtain a copy of the record or a part of it upon request. The director of the provider may make a determination that disclosure of information may be detrimental to the recipient or others. If the director of the provider declines to disclose information because of possible detriment to the recipient or others, the director of the provider shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit to the recipient outweighs the detriment. The director of the provider shall provide written notification of the determination of detriment and the justification of the determination to the person who requested the information. For case records made subsequent to March 28, 1996, information made confidential by MCL 330.1748 shall be disclosed to a competent adult recipient upon the recipient's 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 MCL 330.1748(4) 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 three (3) business days of request if record is an Electronic Health Record (EHR), or ten (10) business days of request if record is in archive storage.
- B. A parent or guardian of an individual under the age of 18 years must have Legal Custody of the individual to be permitted to request and receive the individual's record. In situations where Legal Custody has been adjudicated in a court order, the court order, signed by a judge, must be saved in OASIS to support the custody status. If a court order signed by a judge conferring Legal Custody on the requester is not saved in OASIS, the requesting parent or guardian must provide the order before information may be released to them.

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

- C. If the person receiving services has been denied access to the record, the person receiving services or someone on their behalf may appeal the decision. Contact the Recipient Rights Office for information about the appeals process.
- D. A person receiving services, their guardian, or a 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 permitted to insert into the record a statement correcting or amending the information at issue and may use [form #0917 Request for Amendment of Protected Health Information](#). The statement becomes part of the record. See MCL 330.1749.
- E. 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. When practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
- F. 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.
- G. The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, under MCL 330.1143a(1), 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.
- H. 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.
- I. All requests by persons receiving services or guardians must be responded to within thirty (30) days.
- J. 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 SCCCMH direct programs, use SCCCMH [Administrative Policy #01-002-0025, Freedom of Information Act Requests](#).
- K. All information related to drug and alcohol abuse shall be disclosed in accordance with federal law. See 42 CFR Part 2.
- L. 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.

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

- M. 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.
- N. 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.
- O. Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as required by Mich. Admin. Code R. 330.7051(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 MCL 330.1750(1).
 - 2. Privileged information shall not be disclosed unless disclosure is permitted because of other conditions that, by law, permit or require disclosure. Mich. Admin. Code R. 330.7051(5)(b).
- P. 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. Mich. Admin. Code R. 330.7051(6)(a-c).
- Q. 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. MCL 330.1748(7)(a), Mich. Admin. Code R. 330.7051(7).
- R. 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
 - 1. A person receiving services or other empowered representative has consented to the access. MCL 330.1748(8).
- S. 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, pursuant to 45 CFR 164.512 (c), (e), (f):
 - 1. Request must be 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.
 - a. A person receiving services, including one who has died or whose whereabouts are unknown, if all of the following apply:

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

- (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 to assist in resolving the situation.
 - (3) The representative has failed or refused to act on behalf of the recipient.
- T. The CMHSP when authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor with legal custody, releases a copy of the entire medical and clinical record to the provider of mental health services. MCL 330.1748(10).
- U. When requested, confidential information shall be disclosed only under one or more of the following circumstances: MHC 748(5)(a-g)/MCL 330.1748(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 attorney for the person receiving services when the attorney is retained or appointed by a court to represent a recipient and presents identification and a consent or release executed by one of the following: the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient. Said attorney shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. 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 records. Absent a valid consent or release, an attorney who does not represent a recipient shall not be allowed to review records, unless the attorney presents a certified copy of an order from a court directing disclosure of information concerning the recipient to the attorney. An attorney shall be refused written or telephoned requests for information unless the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney, or unless consent or release has been appropriately executed.
 4. To the Auditor General.
 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.

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

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.
- V. Any disclosure of protected health information will be released in accordance with the Health Insurance Portability and Accountability Act, as outlined in [Administrative Policy #08-002-0006, Health Care Information Privacy and Security and HIPAA Breach Notification](#).
- W. Disclosures Potentially Related to Reproductive Health Care
1. On or after December 23, 2024, if a request for information is not from the person receiving services, their guardian, or their parent with legal custody, and the requestor is:
 - i. Seeking records for use in administrative or judicial proceedings;
 - ii. Seeking records for a law enforcement purpose;
 - iii. Seeking records for a health oversight purpose; or
 - iv. Seeking records to fulfill coroner or medical examiner duties,

The requestor must complete [form #0227 Model Attestation for Requested Use or Disclosure of Protected Health Information Potentially Related to Health Care](#), in addition to other requirements set forth in this Policy.
 2. The information must not be disclosed for prohibited purposes, which include:
 - i. To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
 - ii. To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
 - iii. To identify any person for any purpose described in (i) or (ii).
- X. Within 14 days after receipt of written request from MDHHS Children's Protective Services (CPS), pertinent records and information are released. MCL 330.1748a.
- Y. Except as otherwise provided in MCL 330.1748(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. MCL 330.1748(6). Except as set out in MCL 330.1748(4), 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.
- Z. 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

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

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. MCL 330.1748a.

AA. As set out in Mich. Admin. Code R. 7051(2)(a)-(e), a record is kept of disclosures including:

1. Information released
2. To whom it is released
3. The purpose stated by the person requesting the information
4. A statement indicating how disclosed information is germane to the state purpose
5. The part of law under which disclosure is made
6. A statement that the persons receiving the disclosed information may only further disclose consistent with the authorized purpose for which it was released.

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. Verifies in OASIS, or obtains and uploads to OASIS, a signed Order that states the party requesting information has legal custody of the recipient, in situations where there is a question about the custody status of the recipient.
3. Reviews request and determines what should be disclosed or if there should be a delay in disclosure.
4. Processes any delay of release in accordance with Mich. Admin. Code R. 7051(3)(4)(5).
5. Replies in writing, if disclosure of information dated prior to March 28, 1996, is considered detrimental and will not be released.
6. 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.
7. Records documents sent in the Disclosure Log in the Electronic Health Record.
8. Scans the invoice and request into the correspondence section of the Electronic Health Record.

CHAPTER Service Delivery	CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records	SUBJECT Release of Case Record Information		

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. Requests [form #0227 Model Attestation for Requested Use or Disclosure of Protected Health Information Potentially Related to Health Care](#) be completed.
4. Reviews the request for accuracy, adequacy, and authenticity.
5. Contacts the requester if further information is needed or to convey that there will be no response to the request.
6. Determines without delay what information should be copied and sent to the requester.
7. 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.
8. Records documents sent in the Disclosure Log in the Electronic Health Record.
9. Scans the invoice and request into the correspondence section of the Electronic Health Record.

VI. REFERENCES:

- A. Privileged Communications for Social Workers, MCL 339.1610 or P.A. 89-101
- B. Privileged Communications for Psychiatrists or Psychologists, MCL 339.1750 or P.A. 89-123
- C. MCL 330.1748 Confidentiality and MCL 330.1748a Child abuse or neglect investigation
- D. Mich. Admin. Code R. 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

CHAPTER Service Delivery		CHAPTER 03	SECTION 002	SUBJECT 0030
SECTION Records		SUBJECT Release of Case Record Information		

VII. EXHIBITS:

N/A

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, 11/23, 07/24, 09/24.