

MCCMH MCO Policy 10-325

(was Administrative Policy 9-09-040)

Chapter: **DIRECTLY-OPERATED PROGRAM MANAGEMENT**  
Title: **MINIMUM NECESSARY HIPAA PRIVACY**

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Approved By: BOARD ACTION

  
Executive Director

  
Date

**I. Abstract**

This policy establishes the standards and procedures of the Macomb County Community Mental Health (MCCMH) Board (the "Board") for compliance with the Privacy Rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by establishing the process for applying the HIPAA "minimum necessary" standards to uses, disclosures, and requests for Protected Health Information (PHI).

**II. Application**

This policy shall apply to all MCCMH Workforce Members.

**III. Policy**

It is the policy of the MCCMH Board that MCCMH shall apply the HIPAA minimum necessary standards to all uses, disclosures, and requests for PHI in compliance with the Health Insurance Portability and Accountability act of 1996 (HIPAA).

**IV. Definitions**

A. Minimum Necessary: A key protection of the HIPAA Privacy Rule which requires MCCMH to make reasonable efforts to limit the use, disclosure, receipt of, and requests for PHI to the minimum necessary amount to accomplish the intended purpose.

- B. MCCMH Role Based Access to Personal Health Information Matrix (the “Access Matrix”): The classification of Workforce Members, their categories of access to consumers’ PHI, and the conditions appropriate to such access pertaining to job function and uninterrupted flow of MCO and clinical operations.
- C. Protected Health Information (PHI): Individually identifiable health information:
- 1) Except as provided in paragraph (2) of this definition, that is:
    - i. Transmitted by [electronic media](#);
    - ii. Maintained in [electronic media](#); or
    - iii. Transmitted or maintained in any other form or medium.
  - 2) Protected health information excludes individually identifiable health information:
    - i. In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;
    - ii. In records described at 20 U.S.C. 1232g(a)(4)(B)(iv);
    - iii. In employment records held by a covered entity in its role as employer; and
    - iv. Regarding a person who has been deceased for more than 50 years.
- D. Workforce Member: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for MCCMH, is under the direct control of MCCMH, including but not limited to, administrative and directly-operated network provider employees, independent contractors, and volunteers

## V. Standards

- A. MCCMH shall apply the HIPAA minimum necessary standards to all uses, disclosures, and requests for PHI, except for:
1. Disclosures to, or requests, by, a healthcare provider for the purpose of treatment. This allows Workforce Members to determine quickly and without constraint the information that is necessary to disclose in order for the provider to care for the consumer;
  2. Disclosures to the consumer (including a consumer-initiated authorization). The exceptions to this are:
    - a. Authorizations that MCCMH requests. MCCMH is required to apply the minimum necessary standards to its requests for disclosures by third parties. By signing the authorization, the consumer consents to MCCMH’s determination of the minimum necessary information.
    - b. Authorizations sent by third parties to MCCMH where MCCMH believes the authorization is excessive or is not warranted. For

example, a consumer requests the disclosure of his/her psychotherapy notes to his/her employer. In those cases the Workforce Member who receives the authorization should consult with his/her supervisor or the Privacy Officer to determine if the consumer should be contacted and wishes to submit a modified authorization.

3. Disclosures required by regulation (disclosures of PHI to the Secretary of Health and Human Services for compliance purposes and disclosures that MCCMH is required to make in order to comply with the HIPAA Privacy Rules on standard transactions); and
  4. Disclosures that MCCMH is required to make by other law, to the extent that such disclosure complies with and is limited to the requirements of relevant law(s).
- B. MCCMH shall develop and implement an Executive Staff approved MCCMH Role-Based Access to Personal Health Information Matrix, Access Matrix.
  - C. Changes to the Access Matrix shall require notification and review by Executive Staff for inclusion in subsequent training of direct service personnel.
  - D. All Workforce Members shall be trained on the Access Matrix and Supervisors shall be prepared to assist their supervisees in complying with the Access Matrix's limitations on access to PHI.
  - E. Accessing PHI beyond that which is permitted by the Access Matrix, or otherwise beyond that which is minimally necessary to perform one's job, will be considered a violation of HIPAA's minimum necessary standards, as well as a violation of this policy.
  - F. If an investigation by the Office of Corporate Compliance concludes that a Workforce Member has failed to comply with HIPAA's minimum necessary standards, the Workforce Member may be subject to disciplinary sanctions, up to and including possible termination. Discipline in any given case will be determined based upon the nature and severity of the violation.
  - G. The Access Matrix currently in effect will be attached to this policy and may have an effective date later than this policy.
  - H. Non-routine, non-recurring disclosures of PHI shall be reviewed, prior to release of PHI, by a designated clinical professional, an "expert resource," as identified in procedures below.
  - I. Documentation of the decision regarding disclosures by the designated expert resource shall be maintained in the clinical record.

- J. Permitted disclosures for public health activities and purposes: Minimum necessary disclosures of PHI may be made to the entities listed below:
1. Public officials for a disclosure not requiring any legal permission if the public official represents that the information requested is the minimum necessary, for purposes such as preventing or controlling disease, injury, or disability, receiving reports of child abuse or neglect, making reports to the Food and Drug Administration, conducting a public health intervention or investigation regarding exposure to sexually transmitted diseases, reporting/investigating work-related illness or injury or a workplace-related medical surveillance.
    - a. The MCCMH designated expert resource may rely, if release is reasonable, on the following for verification of a public official:
      - 1) If the request is made in person, an agency identification badge, other official credentials, or other proof of government status;
      - 2) If the request is in writing, the request is on government letterhead; or
      - 3) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation.
    - b. To verify the authority of public officials or persons acting on behalf of public officials to disclose PHI, the designated resource expert may rely on:
      - 1) A written statement of the legal authority under which the information is requested, or, an oral statement if a written statement is impracticable; or
      - 2) If a request is made according to a warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal it is presumed to constitute legal authority.
    - c. The verification requirements shall be met if the designated expert resource relies on the exercise of professional judgment allowing an opportunity for the individual to agree or to object to the disclosure; or acts of good faith belief for law enforcement purposes.
  2. Other covered entities (besides public health departments, social service or protective service agencies, the Food and Drug Administration) may include a consumer's employer which provides health care to the consumer if it is:

- a. Conducting an evaluation relating to medical surveillance of the workplace; or
  - b. Evaluating whether the consumer has a work-related illness or injury;
  - c. PHI that is disclosed regarding findings concerning a work-related illness or injury or a workplace-related medical surveillance.
3. A professional who is either a Workforce Member, a MCCMH contract provider staff member, or a business associate and the request is for the purpose of providing professional services to the covered entity and the professional has asserted that the PHI requested is the minimum necessary for their stated purpose; and
  4. Payers for the purposes of conducting the HIPAA standard transactions including all required elements of those transactions. The optional elements shall be subject to the minimum necessary standard and shall be dealt with as a routine or non-routine disclosure as described below.

## **VI. Procedures**

- A. Workforce Member Access to PHI and Routine and Recurring Disclosures Using the Minimum Necessary Standard
  1. The Privacy Officer and Compliance Officer shall prepare a recommended Access Matrix for presentation to the MCCMH Executive Staff for final approval.
  2. All Workforce Members are responsible for reviewing the Access Matrix and for understanding how it impacts their role within MCCMH.
  3. Any Workforce Members who believes that any other Workforce Member or MCCMH division is not complying with the Access Matrix must report those concerns to his/her supervisor, to the Privacy Officer, and to the Corporate Compliance Officer.
- B. Non-Routine and Non-recurring Disclosures
  1. MCCMH shall designate at least one clinical professional at each site to be an expert resource for Workforce Members regarding non-routine, non-recurring disclosures.
  2. The designated expert resource shall make determinations that the minimum necessary PHI is being used or disclosed for each consumer in accordance with the HIPAA Privacy Regulations.

3. The determination shall include verification of the identity of any public official who requests PHI.
4. All Workforce Members requesting a review of non-routine, non-recurring disclosures from the designated expert resource should have the following information available:
  - a. The authorization or request;
  - b. The Workforce Member's assessment of the PHI that should be disclosed and why; and
  - c. Any back-up documentation, for example, the clinical record, which can assist the reviewer in making the determination.
5. The decision by the designated expert resource, with signature and date, shall be documented along with the request for the PHI and retained in the clinical record.

#### **VII. References / Legal Authority**

- A. Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191
- B. 45 CFR §§ 160.103, 164.501, 164.502(b), 164.514(d)

#### **VIII. Exhibits**

- A. MCCMH Role-Based Access to Personal Health Information Matrix