

(was MCCMH Policy 3-02-020)

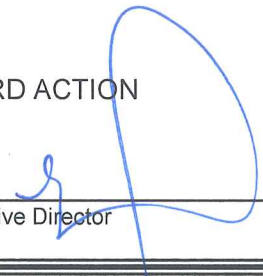
Chapter: **CONFIDENTIALITY**

Title: **RELEASE OF CONFIDENTIAL INFORMATION -- GENERAL**

Also see MCCMH MCO Policies 6-002, "Release of Confidential Information - Alcohol and Drug Abuse"; 6-003, "Release of Confidential Information -- Court Orders and Subpoenas"; 6-004, "Facsimile Document Transmission"; 6-005, "Notice of Confidentiality"; 6-006 "Consumer Access to Clinical Records"; 9-610, "Privileged Communications"; 9-900, "Release of Clinical Records to Michigan Protection and Advocacy Services"; 9-810, "Duty to Warn Third Parties," and 10-030, "Protection of Electronic Confidential Information."

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Approved by: BOARD ACTION


Executive Director


Date

I. Abstract

This policy establishes standards for the internal and external general release of personal health information regarding consumers of services at Macomb County Community Mental Health Board (MCCMH Board) directly-operated and contract network providers (MCCMH service system.) Provisions of this policy shall be applied in conjunction with the Macomb County community Mental Health (MCCMH) Managed Care Organization (MCO) standards and procedures for compliance with the release of confidential information pursuant to other provisions of law.

II. Application

This policy shall apply to all MCCMH Board workforce members, including not limited to, administrative and directly-operated network provider employees, independent contractors, and volunteers; and MCCMH board contracted network provider workforce members, including but not limited to, employees, independent contractors, and volunteers.

III. Policy

It is the policy of the MCCMH Board that:

- A. The consumer (parent/guardian as applicable) is the owner of the information in his/her clinical record; MCCMH is the holder of all information in the consumer's clinical record;
- B. MCCMH is the owner of the physical record containing assessments, reports, treatment plans, progress notes, and other documentation of treatment or services provided to the consumer including information received from other agencies;

- C. The release of personal health information from consumer clinical records shall only be made pursuant to valid consumer release authorizations or for specific and limited purposes as established by law or administrative rules.
- D. MCCMH directly-operated and contract network providers shall establish standards and procedures to comply with the Michigan Mental Health Code and the Privacy Rules of the Health Insurance Portability and Accountability Act (HIPAA).
- E. All MCCMH staff shall respect the confidentiality of each consumer's medical condition;
- F. Information in consumer clinical records, including third party information obtained from external services by MCCMH with a consumer release, may be shared between programs/staff members and contract providers within the MCCMH service system on a "need to know" basis without the execution of a release authorization;
- G. Strictest confidentiality shall be maintained for all clinical records which pertain to drug/alcohol treatment information, pursuant to 42 CFR Part 2; and AIDS, ARC, and the HIV infection, pursuant to the Public Health Code; and strictest confidentiality shall be maintained for all clinical records which pertain to AIDS, ARC, and the HIV infection, pursuant to MCL 333.5131.

IV. Definitions

- A. **MCCMH service system**
The single, county community mental health service system entity that consists of the MCCMH Board and all of its directly-operated and contract network providers of mental health, developmental disabilities or substance use disorder services, and to the administration of those services.
- B. **Confidential Information**
All information in the clinical record of a consumer, and other information acquired in the course of providing mental health services to a consumer, including, but not limited to:
 - 1. Information acquired in diagnostic interviews or examinations;
 - 2. Results and interpretations of tests ordered by a mental health professional or given by a facility; and
 - 3. Entries and progress notes by mental health professionals and support professionals.

- C. Release
Communication of information regarding a consumer or services provided to that consumer, or another individual or program external to the provider's service system using any written, printed, oral or electronic means of transmission.
- D. Internally Initiated Release
1. An authorization, prepared within the MCCMH service system for information held by individuals or organizations external to the MCCMH service system to be released to the MCCMH service system; or
 2. An authorization, prepared within the MCCMH service system, for information held within the MCCMH service system to be released to external person(s)/organization(s).
- E. Externally Initiated Release
An authorization, prepared by a person or agency external to the MCCMH service system, for the release of information from the MCCMH service system to such person(s)/organization(s).
- F. Personal Health Information
All clinical records and other information, including demographic information or even the fact that an individual is a MCCMH consumer, collected from a consumer in any form, and held by or disclosed by the MCCMH service system, whether communicated electronically, on paper, orally or any other means that:
1. Relates to the past, present, or future physical or mental health or condition of a consumer, the provision of health care to a consumer, or the past, present, or future payment for the provision of health care to a consumer and
 2. Identifies the individual; or provides a reasonable basis for the belief that the information can be used to identify a consumer.
- G. Valid Original Release
A document on which the inked signature of a consumer (parent or legal guardian) has been affixed and which authorizes the MCCMH service system or its agents to receive, share or transmit confidential information to or from a specific individual or organization for a specific purpose, and which complies with the requirements provided in this policy pursuant to V.D. herein.
- H. Release Not Requiring Authorization
Release of confidential information regarding an identifiable consumer for which specific authorization is not required pursuant to the provisions of the Michigan Mental Health Code.

V. Standards

- A. All information in the clinical record of a consumer, and other information acquired in the course of providing mental health services to a consumer, is confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this policy and in accordance with applicable state and federal laws.
- B. The consumer clinical record is comprised of all information pertaining to services provided to the individual under the auspices of the MCCMH service system, including confidential information received from external sources. Individual providers may hold any or all portions of the record on behalf of MCCMH for the purpose of providing services to the consumer or until the termination of services and closure of the case.
- C. Removal of Clinical Records from MCCMH Administrative Offices or Providers
 1. No consumer-related materials are to be taken from the MCCMH Administrative Offices or MCCMH providers without explicit authorization of a supervisor.
 2. Under no circumstances are such materials to be taken or authorized to be taken to the personal residence or alternative place of business of a provider employee, independent contractor, volunteer, or intern. This includes clinical records, financial records, fee cards, remittance advice documents, and any other material which can in any way identify an individual as a consumer or potential consumer of the MCCMH service system.
 3. Any violation of Standards V.C.1.-2., above, shall be interpreted as a violation of confidentiality and will result in disciplinary action up to and including the discharge of MCCMH workforce members or contract termination of independent contractors or contract network providers.
- D. Minimum necessary disclosures of MCCMH consumers' personal health information shall be released only as provided by the following:
 1. With the presentation of a valid original release of confidential information (for example, see Exhibit A), signed by the consumer, a parent with legal custody of a minor consumer, the consumer's guardian with authority to consent, or the court-appointed personal representative or executor of the estate of a deceased consumer; or a document for the release of information which does not require consumer authorization (for example, see Exhibit B);

2. As necessary in order for a consumer to apply for or receive benefits when the benefits accrue to the consumer, MCCMH service system, or are subject to collection for liability for mental health services;
3. 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.
4. To the surviving spouse of the consumer, or if there is none, to the closest relative of a deceased consumer in order for the surviving spouse/relative to apply for and receive benefits, but only if the spouse or, if none, the closest relative has been designated the personal representative or has a court order for disclosure of the consumer's personal health information.
5. If disclosure is necessary to comply with a provision of the Mental Health Code or other state or federal law, rule, or regulation; e.g., the Child Protection Act; or the Patriot Act/FISA.
6. To the Michigan Department of Health and Human Services (MDHHS) if the information is necessary for MDHHS to discharge a responsibility placed upon it by law;
7. To a provider of health services when the consumer is determined to be in need of medical emergency services;
8. As necessary for outside research, evaluation, accreditation, or statistical compilation, provided that the individual who is the subject of the confidential information can be identified from the disclosed information only if such identification is essential in order to achieve the purpose for which the information is sought or if preventing such identification would clearly be impractical, but in no event if the subject of the information is likely to be harmed by the identification;
9. To the office of the Auditor General if the information is necessary for that office to discharge its constitutional responsibility;
10. To providers of mental or other health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the consumer or other individuals;
11. To a private physician or psychologist appointed or retained to testify in a civil, criminal, or administrative proceeding upon the presentation of identification and either a valid release or a certified true copy of a court order appointing the physician or psychologist to examine a consumer for the purpose of diagnosing the consumer's present condition. The clinical record must be viewed at a provider site within the MCCMH service system. The physician or psychologist shall be notified prior to the record review whenever the clinical record contains privileged communications

unless there is an express waiver of privilege or a law permits or requires disclosure.

12. In the absence of a valid consent or release, to an attorney who presents a certified copy of an order from a court directing disclosure of information concerning the consumer. 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.
 13. Non-privileged information or privileged information may be disclosed to a prosecutor 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 other MCCMH MCO policies; and
 14. For clinical records made subsequent to March 28, 1996, information made confidential by Section 748 of the Mental Health Code shall be disclosed to an adult consumer upon the consumer's request, if the consumer has not been adjudicated legally incompetent and does not have a guardian. Release shall be done as expeditiously as possible, but in no event later than the earlier of either 30 days after receipt of the request or, if the consumer, is receiving treatment from a MCCMH provider, prior to his/her release from treatment. (See the "note" in section V.M. herein, and also MCCMH MCO Policy 6-006, "Consumer Access To Clinical Records.")
- E. All public and private agencies, departments, corporations, or individuals involved with the treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability or substance use disorder are required to honor and accept a properly completed and signed MDHHS "Consent to Share Behavioral Health Information for Care Coordination Purposes" form as a valid consent to share health information regarding behavioral or mental health services and/or referrals and treatment for alcohol and substance use disorder.
1. MCCMH and its provider network must use, accept, and honor a properly completed and signed MDHHS "Consent to Share Behavioral Health Information for Care Coordination Purposes" form (formerly known as "MDCH Consent to Share Your Health Information") as a valid consent to share health information regarding behavioral or mental health services and/or referrals and treatment for alcohol and substance use disorder.
- F. Contents of Valid Authorization for Release of Information pursuant to the MDHHS "Consent to Share Behavioral Health Information for Care Coordination Purposes" Form (For more information see the [MDHHS website](#)):
1. The original signature of the consumer (parent/legal guardian/person authorized to sign in lieu of the consumer) which matches the signature on file, or a waiver of the original signature;

2. An indication to whom (name and title or organization(s)) the information is to be disclosed/released;
 3. The authorized purpose(s) for which the information is to be disclosed/released consistent with provisions of the Michigan Mental Health Code, the Michigan Public Health Code, or other state or federal law under which disclosure is made;
 4. A summary description of the information (kind and amount) to be disclosed/released;
 5. Sufficient information for accurate identification of the consumer, including name, date of birth, and an ID number (Medicaid ID, Social Security, etc.);
 6. A statement that the persons/organizations receiving the disclosed information could further disclose the information only consistent with the authorized purpose for which it was released;
 7. A statement that the consent is subject to revocation at any time except to the extent that the provider or person within the MCCMH service system, which is to make the disclosure, has already acted in reliance on the consent;
 8. An option for the consumer to withdraw his or her consent. A consumer may withdraw consent verbally or in writing.
 9. If applicable, specific authorization for disclosure of information pertaining to alcohol or drug abuse consistent with 42 CFR Part 2;
 10. The date on which the consent was signed;
 11. The date when the release expires, which may not exceed 12 months from the date of authorization for release of confidential information; and
 12. A statement that the release of information cannot be used for an agency that provides services for domestic violence, sexual assault, or stalking.
- G. All releases of information shall be carefully reviewed to ensure that the document satisfies MCCMH requirements for validity pursuant to V.D. 1-13., above, prior to release of confidential consumer information.
- H. A record of disclosures shall be maintained in the consumer's clinical record which contains the information in V.F. above.
- I. Providers shall grant consumer requests for accountings of disclosures of their personal health information.

- J. A summary of section 748 of the Mental Health Code (see, for example, Exhibit C) must be provided to each consumer and shall be included in each clinical file.
- K. When confidential information is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose(s) for which disclosure was sought. When practicable, no other (non-confidential) information shall be disclosed unless it is also germane to the authorized purpose for which disclosure was sought. The persons/organizations who receive the disclosed information shall further disclose the information only consistent with the authorized purpose for which it was released.
- L. Consumers shall be informed that as consumers of the MCCMH service system, their Social Security Numbers and associated demographic, diagnostic, and service information will be released to the Michigan Department of Health and Human Services.
- M. Disclosure with Written Consent for Release
 - 1. Except as otherwise provided in V.D.13., with the execution of a valid written release from the consumer, the consumer's guardian with authority to consent, the parent with legal custody of a minor consumer, or the court-appointed personal representative or executor of the estate of a deceased consumer, confidential information may be disclosed to the consumer/guardian/parent of a minor consumer or an individual (other than an attorney) or agency unless in the written judgment of provider director, supervisor, or designee the disclosure would be detrimental to the consumer or others.
 - 2. To a consumer's or minor consumer's retained or court-appointed attorney (other than a prosecuting attorney) who presents identification, with the valid written release of the competent consumer, or the consumer's guardian with authority to consent, or the parent with legal and physical custody of a minor consumer. The attorney shall be allowed to review the clinical record at the program or administrative site within the MCCMH service system.
 - a. 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.
 - b. 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 the disclosure of information to that attorney or unless a consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.
 - 3. The holder of a consumer's record, when authorized to release information for clinical purposes by the consumer or the consumer's guardian or a parent of a minor consumer, shall release a copy of the

entire medical and clinical record to the provider of mental health services.

Note: Information regarding HIV, AIDS, ARC and substance abuse / treatment that pertains to third parties is separately statutorily protected by 42 CFR Part 2, the Public Health Code, or MCL 333.5131, and is not “detrimental information” under the provisions of this policy. Release of such information along with the clinical record shall not be made without a specific release from those respective parties.

N. Restrictions on the Disclosure and Use of Confidential Information

1. Consumers may request restrictions on the use and disclosure of their personal health information for treatment, payment and operations. Providers shall consider the requests and grant those determined to be in the best interests of their consumers.

2. Determination of Detrimental Impact

Except as provided in V.D.13.:

- a. The Board or its agents may exercise discretion in withholding specific information authorized pursuant to a release based on provisions of the Mental Health Code, or, when applicable, the Public Health Code, concerning the detrimental impact of the specific information on the consumer or third parties.
- b. If the provider director, supervisor or designee declines to disclose information because of possible detriment to the consumer or others, then he/she shall determine whether part of the information may be released without detriment.
- c. The provider director, supervisor or designee shall make a determination of detrimental impact within 3 business days from the date of the request if the record is on site or within 10 business days from the date of the request if the record is off site.
- d. The provider director, supervisor or designee must state in writing the reason(s) he/she believes disclosure would be detrimental. Examples of detrimental impact include, but are not limited to, information pertaining to other family members who are involved in therapy; the criminal activity of a third person which was alleged in therapy, but not proven; or confidential information about a third party that was placed into the record without his/her knowledge or consent.
- e. The individual seeking the disclosure (the requestor) may file a recipient rights complaint with the MCCMH Office of Recipient Rights if he or she disagrees with a determination of detriment made by the provider director, supervisor or designee.

Note: Information regarding HIV, AIDS, ARC and substance abuse / treatment that pertains to third parties is separately statutorily protected by 42 CFR Part 2, the Public Health Code, or MCL 333.5131, and is not “detrimental information” under the provisions of this policy. Release of such information along with the clinical record shall not be made without a specific release from those respective parties.

3. **The records, data, and knowledge collected for or by individuals or committees assigned a quality assurance peer review function, including the review function under section 143a(1) of the Michigan Mental Health Code are confidential, are used only for the purpose of a quality assurance utilization peer review, are not public records, are not subject to court subpoena, and shall not be released.**
4. Disclosure of Confidential Information Regarding Child Abuse
 - a. The restrictions on the disclosure and use of confidential information do not preclude mental health professional(s) from reporting incidents of suspected child abuse and neglect to appropriate authorities.
 - b. Confidential records and information shall be disclosed within 14 days after receipt of a written request to comply with a Department of Human Services / Children’s Protection Services or Adult Protective Services investigation.
 - c. There is no duty to report the child abuse of an adult consumer who has disclosed that he/she was abused as a child unless there is reasonable cause to suspect that there is a **current threat** of harm to a child.
5. Disclosure of Confidential Information Regarding Criminal Abuse
 - a. The restrictions on disclosure and use of confidential information do not preclude mental health professional(s) from reporting suspected criminal abuse (assault, murder, criminal sexual conduct, and vulnerable adult abuse) of a consumer.
 - b. The suspected criminal abuse must have occurred within one (1) year of the date on which the mental health professional learned of it - unless the mental health professional has knowledge that the criminal abuse has already been reported to the appropriate law enforcement agency.
- O. Any consumer authorization for release of personal health information may be rescinded, in whole or in part, by the consumer (parent/legal guardian) at any time by notification orally or in writing to the provider. If done orally, staff shall place documentation of the rescission in the clinical record.

- P. The original release of personal health information regarding an MCCMH consumer shall be retained in the individual consumer's clinical record by the program/office authorized to release the information indicated thereon.
- Q. Where information is transmitted by facsimile (fax), the provisions in MCCMH Policies 6-004, "Facsimile Document Transmission," and 6-005, "Notice of Confidentiality," shall be followed.
- R. Where information to be disclosed pertains to drug or alcohol abuse treatment, the provisions in MCCMH Policy 6-002, "Release of Confidential Information - Drug and Alcohol Abuse," shall be followed.
- S. In accordance with the Michigan Department of Health and Human Services (MDHHS), information regarding a consumer and AIDS, ARC, and the HIV infection is confidential and **shall not be released unless it is specifically requested** on a valid authorization for release of information, such as Exhibit A, or equivalent. For example, requests for information regarding "any serious communicable disease" shall be deemed insufficient for lack of specificity regarding the particular disease condition. If the consent does not specifically provide for release of information pertaining to alcohol or drug abuse or AIDS, ARC, or the HIV infection, designated staff must review the clinical record and excise such information before the authorized portion(s) of the record are released.
- T. A single release form may be used to disclose confidential information to multiple persons/organizations. (See, for example, Authorization for Release of Information, Exhibit A, part 2). The authorization for release of information to specific person(s)/organization(s) may be rescinded, in whole or in part, by the consumer (parent/legal guardian) at any time by notification orally or in writing to the provider which states the person(s)/organization(s) which are still authorized for release and eliminating those particular person(s)/organization(s) which were on the prior authorization which are no longer authorized to receive confidential information.
- U. The presence of an identified consumer at a MCCMH program is personal health information and may be acknowledged only with execution of a valid written release or with an authorizing court order.
- V. Each provider shall consider consumers' requests for confidential mailings and telephone calls from the provider and grant reasonable requests.

VI. Procedures

- A. Procedures shall be contained in Provider manuals.

VII. References / Legal Authority

- A. 42 USC 290dd-2
- B. Health Issues Portability & Accountability Act (HIPAA) P.L. 104 – 191
- C. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA-PATRIOT) Act of 2001, Pub. L. No. 107-56 (2001)
- D. Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. 1861 et seq.
- E. 42 CFR Part 2
- F. 45 CFR Part 164
- G. MCL 330.1141a
- H. MCL 330.1748
- I. MCL 330.1748aa
- J. MCL 330.1749
- K. MCL 333.18237
- L. MCL 333.5131
- M. 1998 MDHHS Administrative Rules, R 330.7051
- N. OAG, 1997, No 6,934 (March 19, 1997)
- O. OAG, 1993, No 6,764 (August 11, 1993)
- P. OAG, 1980, No 5,709 (May 20, 1980)
- Q. Letter from Corporation Counsel, Jill Smith, dated December 8, 2009, "Withholding of Detrimental Information"
- R. Commission on Accreditation of Rehabilitation Facilities (CARF) 2013 Standards Manual, §1.K., "Rights of Persons Served"
- S. MCCMH Policy 6-002, "Release of Confidential Information – "Substance Use Disorder Treatment"
- T. MCCMH Policy 6-003, "Release of Confidential Information -- Court Orders and Subpoenas"
- U. MCCMH Policy 6-004, "Facsimile Document Transmission"
- V. MCCMH Policy 6-005, "Notice of Confidentiality"

- W. MCCMH Policy 6-006, "Consumer Access to Case Records"
- X. MCCMH Policy 9-610, "Privileged Communications"
- Y. MCCMH Policy 9-600, "Informed Consent"
- Z. MCCMH Policy 9-900, "Release of Clinical Records to Michigan Protection and Advocacy Services"
- aa. MCCMH Policy 9-810, "Duty to Warn Third Parties"
- bb. MDHHS-MCCMH Medicaid Managed Specialty Supports and Services Concurrent 1915(b)/(c) Waiver Program Contract, FY 16
- cc. MDHHS-MCCMH CMHSP Managed Mental Health Services and Supports Contract, FY 16

VIII. Exhibits

- A. Authorization for Release of Information, (sample)
- B. Documentation for Release of Consumer Information Not Requiring Consumer Authorization (sample)
- C. Summary of Section 748 of the Mental Health Code (sample)

