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Chapter: **CONFIDENTIALITY**  
Title: **RELEASE OF CONFIDENTIAL CONSUMER INFORMATION --  
SUBSTANCE USE DISORDER TREATMENT**

See also MCCMH MCO Policies 6-001, "Release of Confidential Information - General"; 6-003, "Release of Confidential Consumer Information – Court Orders/Subpoenas", and 9-810, "Duty To Warn Third Parties"

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Approved by: \_\_\_\_\_

  
Executive Director

04/27/16  
Date

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**I. Abstract**

This policy establishes standards and procedures for the internal and external general release of confidential information regarding consumers of services of the Macomb County Community Mental Health Board (MCCMH). MCCMH maintains compliance regarding the release of confidential information pursuant to all applicable laws, rules, and regulations.

**II. Application**

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

**III. Policy**

Pursuant to 42 CFR Part 2, it is the policy of the MCCMH Board that strictest confidentiality shall be maintained for all clinical records which pertain to drug/alcohol treatment information.

- 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 and its providers shall establish standards and procedures to comply with the Michigan Mental Health Code, the Privacy Rules of the Health Insurance Portability and Accountability Act (HIPAA), and 42 CFR Part 2.
- E. All MCCMH workforce members shall respect the confidentiality of each consumer's medical condition;
- F. 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. **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.
- B. **Program**  
An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment.
- C. **Release**  
Communication of information regarding a consumer or services provided to that consumer to 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. Protected Health Information (PHI)

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 PHI to or from a specific individual or organization for a specific purpose.
- H. Release Not Requiring Authorization

Release of confidential PHI regarding an identifiable consumer for which specific authorization is not required pursuant to the provisions of the Michigan Mental Health Code and/or 42 CFR Part 2.
- V. **Standards**
  - A. These standards apply to any information which would identify a consumer as having a substance use disorder.
  - B. Confidential PHI regarding substance use disorder treatment of an identifiable consumer of MCCMH services shall be released without a valid authorization for release only for the reasons set forth below:

1. To medical personnel who have a need for information about a consumer for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention;
  2. To Federal Drug Administration (FDA) medical personnel who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying consumers or their physicians of potential dangers;
  3. For research, audits, or program evaluation following the procedures set forth in 42 CFR § 2.52 or 2.53.;
  4. Pursuant to court orders based on the PATRIOT Act and the Foreign Intelligence Surveillance Act of 1978 (FISA) (one amendment of the USA-PATRIOT Act) which require the production of any tangible things (including books, records, papers, documents, and other items), including consumer records;
  5. Pursuant to a court order authorizing disclosure and a subpoena compelling disclosure which meet the criteria set forth in 42 CFR Part 2, Subpart E; or
  6. To prevent the consumer from committing or threatening to commit a crime either at MCCMH or against any person who works for MCCMH.
- C. Alcohol or drug abuse information about a consumer may be disclosed to the criminal justice system, if MCCMH participation is a condition of the disposition of any criminal proceedings against the consumer or of the consumer's parole, or other release from custody if:
1. The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the consumer's progress (e.g., a prosecuting attorney who is withholding charges against the consumer, a court granting pre-trial or post-trial release, probation or parole officers responsible for supervision of the consumer); and
  2. The consumer has a signed written consent meeting the requirements in MCCMH MCO Policy 6-001, "Release of Confidential Information - General" and the requirements of subsections a. and b., below, have been satisfied.
    - a. The duration of consent shall be reasonable, but shall last no longer than one year from the date it was signed, and shall take into account:
      - 1) The anticipated length of the treatment;

- 2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and
  - 3) Such other factors as the MCCMH provider, the consumer, and the person(s) who will receive the disclosure consider pertinent.
- b. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.
  - c. A person who receives consumer information under this section may redisclose and use it only to carry out his/her official duties with regard to the consumer's conditional release or other action in connection with which consent was given.
- D. Substance use disorder information may be released pursuant to terms of a properly completed and signed written consent to release information.
1. 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.
  2. 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 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. See Policy 6-001, Release of Confidential Information, Exhibit A for a copy of the form. (For more information, see the [MDHHS website](#).)
- E. Disclosure of confidential PHI may be made to prevent the multiple enrollment of consumers in detoxification and maintenance treatment programs following the procedures set forth in 42 CFR § 2.34.
- F. PHI obtained by MCCMH for the purpose of diagnosis, treatment, or referral for treatment of substance use disorder shall not be used to bring criminal charges against a consumer for a crime.

- G. Reports of suspected child abuse and neglect **are not precluded** from revealing substance use disorder information about a consumer to appropriate state or local authorities.
- H. Reports of suspected criminal abuse (assault, murder, criminal sexual conduct, and vulnerable adult abuse) of a consumer **may not reveal** any substance use disorder information about a consumer.
- I. Any disclosure of confidential PHI regarding a substance use disorder shall be limited to that information which is necessary to carry out the purpose of the disclosure.
- J. A valid authorization for release of information must include specific authorization for disclosure of information pertaining to alcohol or drug abuse consistent with 42 CFR §2.31.
- K. The consumer may withdraw his or her consent verbally or in writing.

## **VI. Procedures**

- A. A MCCMH or provider workforce member shall at the time of admission, or as soon thereafter, provide the following to a consumer capable of rational communication who is receiving substance use disorder treatment:
  - 1. Communicate to the consumer that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and
  - 2. Give the consumer a summary in writing of the Federal law and regulations, (Exhibit A), which protect the confidentiality of alcohol and drug abuse patient records.
  - 3. Ensure that the form "Prohibition on Re-disclosure of Confidential Information Under 42 CFR Part 2" (Exhibit B) accompanies any disclosure of substance abuse information.
- B. Immediately after the disclosure of substance use disorder confidential information permitted in Standards, Section V.B., C., or E., MCCMH or provider workforce member shall document the disclosure in the consumer's clinical record by writing:
  - 1. The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
  - 2. The name of the individual making the disclosure;

3. The date and time of the disclosure; and
4. The nature of the emergency (or error, if the report was to the FDA).

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

- A. 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)
- B. Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. 1861 et seq. 42 CFR Part 2
- C. MCL 330.1748, 330.1141a, 330.1748a, 330.1749, 333.18237, 333.5131
- D. OAG, 1997, No 6,934 (March 19, 1997)
- E. 42 CFR Part 2
- F. 42 USC §290dd 2
- G. Health Issues Portability and Accountability Act (HIPAA) P.L. 104-191
- H. 45 CFR Part 164
- I. MCCMH MCO Policy 6-001, "Release of Confidential Information – General"
- J. MDHHS-MCCMH Medicaid Managed Specialty Supports and Services Concurrent 1915 (b)(c) Waiver Program Contract, FY 16
- K. MDHHS-MCCMH CMHSP Managed Mental Health Services and Supports Contract, FY 16

## **VIII. Exhibits**

- A. Summary of Federal Law and Regulations for the Release of Drug or Alcohol-Related Confidential Information, Version 04/2016 (sample)
- B. Redisclosure Notice

## **CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS**

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that you attend(ed) the program, or disclose any information identifying you as an alcohol or drug abuser *Unless*:

- (1) You or your legal representative consents in writing;
- (2) The disclosure is allowed by a court order; or
- (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations..

Federal law and regulations do not protect any information about a crime committed by you either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 USC 290dd-3 and 42 USC 29033-3 for Federal laws and 42 CFR Part 2 for Federal regulations.)

**NOTES:** MCCMH Policy 6-100, "Notice of Privacy Practices", which is available at the Administrative Offices and each service site of MCCMH, contains additional restrictions on the uses and disclosures of information in your patient records.

MCCMH shall abide by PATRIOT Act/FISA court orders which require the production of any tangible things (including books, records, papers, documents, and other items), including consumer records.

Version 4/2016



MCCMH MCO Policy 6-002

**RELEASE OF CONFIDENTIAL CONSUMER INFORMATION –  
ALCOHOL AND DRUG ABUSE**

Date: 04/27/2016

**PROHIBITION OF REDISCLOSURE OF CONFIDENTIAL INFORMATION  
UNDER 42 C.F.R. PART 2**

This notice accompanies a disclosure of information concerning an individual in alcohol/drug treatment, made to you with the consent of the individual. This information has been disclosed to you from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit you from making any further disclosures of this information unless further disclosure is expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. 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 an individual involved in any alcohol or drug use.