


(was MCCMH Policy 9-06-010)

Chapter: **RECIPIENT RIGHTS**
Title: **PRIVILEGED COMMUNICATIONS**

Also see MCCMH MCO Policies 6-001, "Release of Confidential Information – General"; 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"; 9-900, "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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I. Abstract

This policy establishes standards and procedures of the Macomb County Community Mental Health (MCCMH) Board regarding the privileged communications made by recipients of the MCCMH service providers during the delivery of mental health services.

II. Application

This policy shall apply to all directly-operated and contract network providers of the MCCMH Board.

III. Policy

It is the policy of the MCCMH Board that recipient communications are confidential and protected by professional privilege. Such communications shall not be disclosed, including in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the recipient has waived the privilege, except in the circumstances set forth in this policy.

IV. Definitions

- A. **Privileged Communication (Psychiatrist, Psychologist)**
Communications made between a recipient and a psychiatrist or psychologist (or someone under his/her supervision) while engaged in the examination, diagnosis or treatment of a recipient for a mental condition) or between other persons while they are participating in such examination, diagnosis, or treatment. See MCL 330.1700(h), as well as the definitions of each in D and E of this Section below.
- B. **Privileged Communication (Social Worker)**
Communications made between a recipient and a a registered social service technician who is supervised or a licensed social worker or an agency of which the registered social service technician or licensed social worker, or is an agent, during the course of professional services. See MCL 330.1100b(16)(d), MCL 333.18501 and MCL 333.18513
- C. **Privileged Communication (Counselor)**
Communications made between a recipient and a licensed professional counselor or a limited licensed counselor during the course of professional service. See MCL 330.1100b(16)(e), MCL 333.18101(b) and (c), MCL 333.18105, MCL 333.18106, and MCL 333.18117
- D. **Psychiatrist**
A physician whose specialty is the diagnosis and treatment of people suffering from mental disorders. See MCL 330.1100c(9)
- E. **Psychologist**

An individual who possesses a full license by the State of Michigan to independently practice psychology, or a master's degree in psychology (or a closely related field as defined by the state licensing agency) and licensed in the State of Michigan as a limited-licensed psychologist (LLP); or a master's degree in psychology (or a closely related field as defined by the state licensing agency) and licensed by the State of Michigan as a temporary-limited-licensed psychologist.

V. Standards

The following standards represent the Board's assessment, based on information from Corporation Counsel, of the application of the concept of privileged communication in the provision of mental health services. Specific provisions within the pertinent enabling legislation may vary or may not be explicitly addressed within each Act, but the Board believes that these provisions would be uniformly interpreted in applicable legal proceedings without distinction as to specific professional credential. (See Exhibits A-E.)

- A. Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings or in proceedings preliminary to such cases or proceedings unless the recipient has expressly waived the privilege, except in the following circumstances, where the privileged communication(s) shall be disclosed upon request:

1. When the privileged communication is relevant to a physical or mental condition of the recipient which the recipient has introduced as an element of his/her claim or defense in a civil or administrative case or proceeding, or which, after the recipient's death, has been introduced as an element of his/her claim or defense by a party to a civil or administrative case or proceeding.
 2. When the privileged communication is relevant to a matter under consideration in a proceeding governed by the Michigan Mental Health Code, but only if the recipient is informed that any communications could be used in the proceeding (i.e., civil commitment hearing).
 3. When the privileged communication is relevant to a matter under consideration in a proceeding to determine a recipient's legal competence or the need for a guardian, but only if the recipient is informed that any communication made could be used in such a proceeding.
 4. In civil or criminal actions arising from the treatment of the recipient against a provider for malpractice.
 5. When the privileged communication was made during an examination ordered by a court, prior to which the recipient was informed that the communication would not be privileged, but only with respect to the particular purpose for which the examination was ordered; (i.e., court-ordered evaluation).
 6. When the privileged communication was made during treatment the recipient was ordered to undergo to render him/her competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with competence of the recipient to stand trial.
 7. In instances where disclosure of privileged communications is prohibited, the fact that the recipient has been examined or treated or undergone diagnosis shall also not be disclosed, unless relevant to a determination by a health care organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
- B. Privileged communications have not been waived nor confidentiality violated where the disclosure is part of required supervisory process by a provider.
- C. Privileged communications have not been violated where privileges have been waived by the recipient or a person authorized to act on the recipient's behalf.
- D. A designated staff member shall submit to the appropriate court a written evaluation of the prospect or prognosis of a particular case without divulging a fact or revealing a confidential disclosure when requested by a court for a court action. An attorney representing a recipient who is the subject of an evaluation shall have the right to receive a copy of the report.

- E. If required for the exercise of a public purpose by a legislative committee, the designated provider staff representative may make available statistical and program information without violating the confidentiality of recipients.
- F. Privileged communications may be disclosed pursuant to the Michigan Mental Health Code and Public Health Codes. (See MCCMH MCO Policy 9-810, "Duty to Warn Third Parties".)

VI. Procedures

- A. None.

VII. References / Legal Authority

- A. MCL 330.1750
- B. MCL 333.16244
- C. MCL 330.1946
- D. MCL 330.1100b(16)(d) and (e)
- E. MCL 330.1100c(9) and (10)
- F. MCL 330.1700(h)
- G. MCL 333.18201
- H. MCL 333.18101 (b) and (c)
- I. MCL 333.18105
- J. MCL 333.18115
- K. MCL 333.18117
- L. MCL 600.2157
- M. MCL 333.18237
- N. MCL 333.18501
- O. MCL 333.18513
- P. MCCMH MCO Policy 9-810, "Duty to Warn Third Parties"

Q. Michigan Medicaid Provider Manual

VIII. Exhibits

- A. MCL 330.1750
- B. MCL 333.18237
- C. MCL 333.18513
- D. MCL 333.18117
- E. MCL 600.2157

330.1750 Privileged Communications

Sec. 750. (1) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

(2) Privileged communications shall be disclosed upon request under 1 or more of the following circumstances:

(a) If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.

(b) If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.

(c) If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.

(d) In a civil action by or on behalf of the patient or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.

(e) If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.

(f) If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.

(3) In a proceeding in which subsections (1) and (2) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, nonprofit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.

(4) Privileged communications may be disclosed under section 946 to comply with the duty set forth in that section.

History: 1974, Act 258, Eff. Aug. 6, 1975 ;--Am. 1984, Act 362, Eff. Mar. 29, 1985 ;--Am. 1989, Act 123, Eff. Sept. 1, 1989 ;--Am. 1995, Act 290, Eff. Mar. 28, 1996.

333.18237 Confidential Information;
Disclosure; Waiver

Sec. 18237.

A psychologist licensed or allowed to use that title under this part or an individual under his or her supervision cannot be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity if the information is necessary to enable the psychologist to render services. Information may be disclosed with the consent of the individual consulting the psychologist, or if the individual consulting the psychologist is a minor, with the consent of the minor's guardian, pursuant to section 16222 if the psychologist reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281. In a contest on the admission of a deceased individual's will to probate, an heir at law of the decedent, whether a proponent or contestant of the will, and the personal representative of the decedent may waive the privilege created by this section.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;--Am. 1993, Act 79, Eff. Apr. 1, 1994 ;--Am. 1998, Act 496, Eff. Mar. 1, 1999 .

Popular Name: Act 368

333.18513 Confidentiality of Communication

Sec. 18513.

- (1) An individual registered or licensed under this part or an employee or officer of an organization that employs the registrant or licensee is not required to disclose a communication or a portion of a communication made by a client to the individual or advice given in the course of professional employment.
- (2) Except as otherwise provided in this section, a communication between a registrant or licensee or an organization with which the registrant or licensee has an agency relationship and a client is a confidential communication. A confidential communication shall not be disclosed, except under either or both of the following circumstances:
 - (a) The disclosure is part of a required supervisory process within the organization that employs or otherwise has an agency relationship with the registrant or licensee.
 - (b) The privilege is waived by the client or a person authorized to act in the client's behalf.
- (3) If requested by the court for a court action, a registrant or licensee shall submit to an appropriate court a written evaluation of the prospect or prognosis of a particular client without disclosing a privileged fact or a privileged communication. An attorney representing a client who is the subject of an evaluation described in this subsection has the right to receive a copy of the evaluation. If required for the exercise of a public purpose by a legislative committee, a registrant or licensee or agency representative may make available statistical and program information without violating the privilege established under subsection (2).
- (4) A registrant or licensee may disclose a communication or a portion of a communication made by a client pursuant to section 946 of the mental health code, 1974 PA 258, MCL 330.1946, in order to comply with the duty set forth in that section.

History: Add. 2000, Act 11, Imd. Eff. Mar. 7, 2000; –Am. 2004, Act 61, Eff. July 1, 2005.

**333.18117 Privileged Communications;
Disclosure of Confidential Information**

Sec. 18117. For the purposes of this part, the confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client of the licensed professional counselor or a limited licensed counselor are privileged communications, and this part does not require a privileged communication to be disclosed, except as otherwise provided by law. Confidential information may be disclosed only upon consent of the client, pursuant to section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281.

History: Add. 1988, Act 421, Eff. Mar. 30, 1989 ;--Am. 1993, Act 79, Eff. Apr. 1, 1994 ;--Am. 1998, Act 496, Eff. Mar. 1, 1999 .

Popular Name: Act 368

600.2157 Physician-Patient Privilege; Waiver

Sec. 2157. Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon. If the patient brings an action against any defendant to recover for any personal injuries, or for any malpractice, and the patient produces a physician as a witness in the patient's own behalf who has treated the patient for the injury or for any disease or condition for which the malpractice is alleged, the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition. If a patient has died, the heirs at law of the patient, whether proponents or contestants of the patient's will, shall be considered to be personal representatives of the deceased patient for the purpose of waiving the privilege under this section in a contest upon the question of admitting the patient's will to probate. If a patient has died, the beneficiary of a life insurance policy insuring the life of the patient, or the patient's heirs at law, may waive the privilege under this section for the purpose of providing the necessary documentation to a life insurer in examining a claim for benefits.

History: 1961, Act 236, Eff. Jan. 1, 1963 ;--Am. 1989, Act 102, Eff. Sept. 1, 1989 ;--Am. 1995, Act 205, Imd. Eff. Nov. 29, 1995 .