

SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

POLICY AND PROCEDURE MANUAL

Section: Recipient Rights

Policy Number: 6

Subject: **Confidentiality and Disclosure**

Effective Date: 10/27/97

Last Revision Date: 2/20/09

Page: 1 of 12

Policy

It shall be the policy of the Shiawassee County Community Mental Health Authority (SCCMHA) that a recipient is entitled to confidential treatment of personal and medical records and may refuse the release to a person outside the agency except as required by law, third party payment contract, or transfer to another health care facility; and

That a legally competent adult who is or has been a recipient of services from the Shiawassee County Community Mental Health Authority is entitled to inspect or receive for a reasonable fee a copy of his or her medical record for entries subsequent to March 28, 1996 within thirty (30) days of the request or prior to release from treatment; and

That a third party shall not be given a copy of the recipient's medical record without prior authorization of the recipient. Medical providers will be given the entire content of a file with a properly executed consent form.

Purpose

To ensure that all information in the record of a recipient and other information acquired in the course of providing mental health services to a recipient shall be kept confidential and shall not be open to public inspection. Confidential information to be disclosed outside the scope of this policy shall be the decision of the Chief Executive Officer within the limitations of the Michigan Mental Health Code, Administrative Rules and other applicable laws.

Application

All staff of the Shiawassee County Community Mental Health Authority.

Definitions

Confidential Information: Information in the record of a recipient and other information acquired in the course of providing mental health services, unless the information is privileged. [MCL 330.1748(1) and (4); MSA 14.800(748)(1) and (2)]

Court of Record

- A. One of the following state courts: Probate Court, District Court, Circuit Court, Court of Claims. A state court of record does not include a state administrative

agency, the Bureau of Workmen's Compensation, or a record copy service. [1963 Const, art 6, 19; MCL 600.6404; MSA 27A.6404; MCL 600.6428; MSA 27A.6428; MCL 600.8101; MSA 27a.8101.]

- B. One of the following federal courts: United States District Court, United States Bankruptcy Court, United States Claims Court. A federal court of record does not include an administrative agency or a record copy service.

Disclosure of Information of Documents: To provide a copy of the document, to allow review of the document, or to provide a verbal or written description or summary of the document or information.

Documents: Includes all writings, drawings, graphs, charts, photographs, medical records, information, and other data compilations from which information is obtained (e.g., computerized records). [MCR 2.310(2)]

Non-disclosable Information: Information or documents which cannot be released or provided in response to a subpoena from a state or federal court of record. Information and documents which are non-disclosable include:

- A. AIDS/HIV Infection, Acquired Immunodeficiency Syndrome and related complexes.

All reports, records, and data pertaining to testing, care, treatment, reporting, research, and information pertaining to partner notification under [MCL 333.5114a; MSA 14.15(5114a)], associated with the serious communicable diseases or infections of HIV infection, Acquired Immunodeficiency Syndrome, and Acquired Immunodeficiency Syndrome-related Complex.

AIDS related information can only be disclosed pursuant to a court order or subpoena which is issued by a judge after a hearing in which it is determined that disclosure is permissible under MCL 333.5131; MSA 14.15(5131).

- B. Substance Abuse Treatment, Education, Research and Rehabilitation.

Federal law provides that the following information is non-disclosable: "Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States." [42 USC 290dd-2(a); see also, 42 CFR, Part 2, 42 USC 290a note.]

State law also restricts the release of information relating to substance abuse.

Non-disclosable information under the state law includes: "Records of the identity, diagnosis, prognosis, and treatment of an individual maintained in connection with the performance of a licensed substance abuse treatment and rehabilitation service, a licensed prevention service, an approved service program, or an emergency medical service authorized or provided, or assisted under this article..." [MCL 333.6111; MSA 14.15(6111).]

SCCMHA may, pursuant to a specific court order, disclose that an individual is receiving treatment for substance abuse. [MCL 333.6113; MSA 14.15(6113).] In all other respects, the records and information are subject to the same privilege as physician-patient.

Substance abuse information can only be released for the purposes provided and under the circumstances set forth in MCL 333.6112, MSA 14.15(6112), and MCL 333.6113, MSA 14.15 (6113), and MCL 333.6111; MSA 14.15 (6111).

Substance abuse information identified by state and federal laws as non-disclosable can be released pursuant to a court order granted after a hearing in which it is determined that release of information is proper. [42 USC 290dd-2, 42 CFR 2.61 et seq., and MCL 333.6113; MSA 14.15 (6113).]

Where the information is subject to both state and federal restrictions, the agency requires compliance with both state and federal laws. The information may also be released pursuant to a valid release.

C. Peer Review; Review of Professional Practices; Review of Quality and/or Appropriateness of Care.

The records, data and knowledge collected for or by individuals or committees which review professional practices in the facility for purposes of improving the quality of patient care in the facility including records, data and knowledge regarding the quality and appropriateness of the care cannot be released, pursuant to a subpoena. [MCL 330.1143a; MSA 14.800(143a), and MCL 330.1748(8); MSA 14.800(748) (8).

Physician: Any person authorized to practice medicine, osteopathic medicine, or surgery. [MCL 600.2157; MSA 27A.2157].

Physician Assistant: Any person who acts at the direction of or under the supervision of a physician. [MCL 333.17078(1); MSA 14.15(17078)].

Psychiatrist: A physician who devotes a substantial portion of his or her time to the practice of psychiatry and who has practiced psychiatry for one continuous year out of any three years immediately preceding his or her certification or any individual under MCL

330.1400, et seq; MSA 14.800(400), et seq, and MCL 330.1400(i); MSA 14.800(400)(i). The term "psychiatrist" shall also mean: "A person under the supervision of a psychiatrist while engaged in the examination, diagnosis, or treatment of a patient for a mental condition." [MCL 330.1750(a); MSA 14.800(750)(a)."

Psychologist: A person licensed with other than a limited license to engage in the practice of psychology and who devotes a substantial portion of his or her time to the diagnosis and treatment of individuals with mental or emotional disorders. [MCL 330.1400(j); MSA 14.800(400)(j), and MCL 333.18201(a); MSA 14.15(18201)(a).]

Privileged Communication:

- A. **Physician-Patient Communication**: Any information a physician has acquired in attending a patient in a professional character, if the information was necessary to enable the physician to prescribe, treat, or do any act for the patient as a physician. [MCL 6..02157; MSA 27A.2157]
- B. **Physician's Assistant-Patient Communication**: Communications made to a physician's assistant which may be used by a physician to prescribe for the recipient or do any act as a physician. The communication is treated as if it were made to the supervising physician. The communication is privileged to the same extent as communication to a physician. [MCL 333.17078; MSA 14.15(17078).
- C. **Psychiatrist-Patient Communication**: Communication made to a psychiatrist in connection with the examination, diagnosis, or treatment of a recipient or to another person while that person is participating in the examination, diagnosis or treatment of the recipient. This includes the fact that the recipient has been examined, treated or undergone diagnosis. [MCL 330.1750(1)(c) and (4); MSA 14.800(750)(1)(c) and (4).

Because a psychiatrist is licensed to practice medicine, the provisions relating to physicians and physician assistants also apply to psychiatrists and to any person who acts at the direction of, or under the supervision of, a psychiatrist.

- D. **Psychologist Assistant-Patient Communication**. See Psychologist-Patient Communication.
- E. **Psychologist-Patient Communication**: Information acquired from an individual consulting with a psychologist in his or her professional capacity, which is necessary to enable the psychologist to render services. This includes any communication made in connection with the examination, diagnosis or treatment of a recipient. Any information disclosed to a person under the supervision or direction of the psychologist is also included when the individual is participating in

the examination, diagnosis or treatment of the patient. [MCL 333.1837; MSA 14.800(18237). See also, Psychiatrist-Patient Communication, subpart (a). [MCL 330.1750(1)(c); MSA 14.800(750)(1)(c).]

- F. Pharmacist-Patient Communication: Communication of the content of, and/or copies of, prescriptions. [MCL 333.17752; MSA 14.800(1752).]
- G. Social Worker-Client Communication: Communications by a recipient to a social worker and advice given by the social worker to the recipient. [MCL 339.1610(a); MSA 18.425(1610)(1).
- H. Release: A written document which authorizes the disclosure of information, documents and/or medical records. It may authorize the dissemination, inspection, and/or copying of the information, documents, and/or medical records in the possession or control of the agency.
- I. Social Worker: A person registered as a certified social worker, social worker, or social worker technician. The term "social worker" also includes an officer or employee of an agency which employs a certified social worker, social worker, or social worker technician. [MCL 339.1610; MSA 18.425(1610).]
- J. Treatment: The care, diagnosis, and therapeutic services, including the administration of drugs, and any other services for the treatment of an individual. [MCL 330.1400(e), MSA 14.800(400)(e).]

Standards

- A. All information in the record of a recipient is confidential. The record shall include all of the following information:
 - 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.
 - 3. Entries and progress notes by mental health professionals and supporting personnel.
- B. A summary of section 748 of the Mental Health Code shall be made a part of each recipient file.
- C. A record shall be kept of disclosures and shall include all of the following information:

1. Information released.
 2. To whom it is released.
 3. The purpose claimed by the person requesting the information and a statement disclosing how the disclosed information is germane to the purpose.
 4. The subsection of section 748 of the Mental Health Code, or other state law, under which a disclosure was made.
 5. A statement that the receiver of disclosed information was informed that further disclosure shall be consistent with the authorized purpose for which the information was released.
- D. The agency as holder of the record shall disclose confidential information only under one or more of the following provisions:
1. An order or a subpoena of a court or the legislature for non-privileged information.
 2. A request of a prosecutor as necessary for participation in a proceeding pursuant to the act.
 3. A request of a recipient's attorney with the recipient's consent or consent of other empowered representative.
 4. A request of the auditor general.
 5. When necessary to comply with another provision of law.
 6. To DCH when necessary in order for the department of discharge a responsibility placed upon it by law.
 7. To a surviving spouse, or if none, closest relative of the recipient in order to apply for and receive benefits, but only if spouse or personal representative has a court order. Per [45CFR 164.502(g)(4)].
 8. 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 family independence agency 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 professional shall review all mental health records and information in the mental health professional's possession to determine if there are mental health records or 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.

- E. Unless section 748(4) of the act applies to the request for information which has been delayed, the Chief Executive Officer shall review the request and shall make a determination whether the disclosure would be detrimental within three (3) business days of the request unless the record of the recipient is located at another location. In this instance determination will be made within ten (10) business days of the request. The Chief Executive Officer shall provide written notification of the determination of detriment and justification for the determination to the person requesting the information.
- F. The agency as holder of a record shall not decline to disclose information if a recipient or the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court appointed personal representative or executor of the estate of a deceased recipient has consented, except for a documented reason. If the agency declines to disclose because of possible detriment to the recipient or others, there shall be a determination whether part of the information can be released without detriment. A determination of detriment shall not control if the benefit of the disclosure to the recipient outweighs the detriment. If the person seeking the disclosure disagrees with the denial to disclose, he/she may file a recipient rights complaint to the Recipient Rights Officer having jurisdiction.
- G. A staff member shall immediately report to the Chief Executive Officer or his/her designee information provided by a recipient which reveals that substantial or serious physical harm may come to the recipient or to another person in the near future. The person so informed may immediately notify the local policy agency.
- H. Information shall be provided to attorneys, other than prosecuting attorneys, as follows:
 - 1. An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor

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 the records.

2. 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 or if an attorney has a properly executed release.
 3. 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 for release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.
- I. Information shall be provided to private physicians or psychologists appointed or retained to testify in civil, criminal, or administrative proceedings as follows:
1. A physician or psychologist who presents identification and a certified true copy of a court order appointing the physician or psychologist to examine a recipient for the purpose of diagnosing the recipient's present condition shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication which cannot be disclosed in court under section 750(2) of the act.
 2. The court or other entity that issues a subpoena or order and the attorney general's office, when involved, shall be informed if subpoenaed or ordered information is privileged under a provision of law. Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or because of other conditions which, by law, permit or require disclosure.
- J. A prosecutor may be given nonprivileged information or privileged information which may be disclosed pursuant to section 750(3) of the act if it contains information relating to participation in proceedings under the act, including all of the following:
1. Names of witnesses to acts which support the criteria for involuntary admission.

2. Information relevant to alternatives to admission to a hospital or facility.
 3. Other information designated in policies of the governing body.
- K. The agency, as 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.
- L. A governing body shall do all of the following:
1. Establish policies and procedures regarding disclosure of information for purposes of outside research, evaluation, accreditation, or statistical information.
 2. Establish criteria to determine when identification of a subject of information is essential to achieve a purpose or when preventing identification is too impractical to be prevented.
 3. Establish criteria that safeguard against unwarranted identification, including inspecting or sampling of information, and determine when identification would be harmful to a recipient.
 4. Establish other necessary policies and procedures to govern disclosure and for providing copies of the information disclosed.
- M. If required by federal law, SCCMHA shall grant a representative of the Michigan Protection and Advocacy Services access to the records of all of the following:
1. A recipient if the recipient or empowered representative has consented to the access,
 2. A recipient, including a recipient who has died or whose whereabouts is unknown, if all the following apply:
 - a. Because of mental or physical condition, the recipient is unable to consent to the access.
 - b. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the State,
 - c. Michigan Protection and Advocacy Services has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been

subject to abuse and neglect. The following conditions must be met before MPAS may have access to records: [45CFR 164.512©,(e),(f)]

1. Request must be put 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 by statute or regulation.
 4. CMHSP must maintain documentation of all disclosures. [45CFR 164.512©,(e),(f)]
3. A recipient with a guardian or other legal representative if all the following apply:
- a. 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;
 - b. Upon receipt of the name and address of the recipient's legal representative, Michigan Protection and Advocacy Services has contacted the representative and offered assistance in resolving the situation;
 - c. The representative has failed or refused to act on behalf of the recipient.
- N. The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under section 142a(1) of the Mental Health Code, are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena.
- O. When authorized to release information for a clinical purpose(s) by the individual recipient or the recipient's guardian or a parent of a minor, SCCMHA shall release a copy of the entire medical and clinical record to the provider of mental health services.
- P. A recipient, guardian, or a parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of the factual information in the recipient's record, and the recipient or empowered representative may insert into the record a statement correcting the

Section: Recipient Rights
Policy Number: 6
Subject: **Confidentiality and Disclosure**

Page 11 of 12

information at issue with such statement becoming part of the record. The recipient or empowered representative shall be informed of this right.

Approved by: *Jerry Walden*
Board Chairperson

 2/20/09
Date

 Scott Gilman
Chief Executive Officer

 2/20/09
Date

