

WASHTENAW COMMUNITY HEALTH ORGANIZATION

CONFIDENTIALITY AND ACCESS TO INTEGRATED CLINICAL RECORDS

I. PURPOSE

The WCHO employs the practice of treatment for co-occurring disorders whereby recipients can receive mental health and substance abuse services within one provider system. The documentation of these services is incorporated into one clinical record. This policy provides guidelines for protecting information and maintaining the confidentiality of an integrated recipient record, and to identify circumstances under which protected health information may be disclosed.

II. APPLICATION

All WCHO staff, students and volunteers and those of organizations under contract to WCHO.

III. DEFINITIONS

Confidentiality – To keep all personally identifiable information about a recipient private and not allow such information to be seen or used by anyone who does not have a need to know and/or specific authorization to do so.

Consenter – The person who has the legal authority to authorize consent to release protected health information. This includes an adult recipient; a recipient's empowered legal guardian; a minor; a parent of a minor (only if the minor also consents); and a parent of a child.

Court Order - An official proclamation by a judge (or panel of judges) that defines the legal relationships between the parties before the court and requires or authorizes the carrying out of certain steps by one or more parties to a case.

Data Use Agreement – An agreement that assures that the recipient of a limited data set will only use or disclose the protected health information for limited purposes. The Agreement must establish permitted uses and disclosures of the limited data set, establish who is permitted to use or receive the limited data set, and provide for the confidentiality of the limited data set.

Electronic Record – any protected health information that is maintained in an information technology system or a web-based database. Electronic records are held to all the same standards delineated in this policy.

Empowered Legal Guardian – A person who by law has the ability to make treatment decisions for recipients, including the ability to give consent to release protected health information about a recipient, according to the legal responsibilities given to them by law or the court. For the purposes of this policy, this role can include a custodial parent, a legal guardian, a guardian ad litem, a personal representative of a deceased consumer's estate, and a parent/person in local parentis.

Holder of the Record - The agency charged with responsibility for maintaining and safeguarding each recipient's primary record. WCHO is the holder of the record for all recipients receiving services from WCHO or from an organization providing services under contract with WCHO. WCHO may delegate to organizations under contract the responsibility of maintaining portions of the record.

Integrated Clinical Record – A clinical record that includes documentation of both mental health and substance abuse services provided by an agency.

Limited Data Set – Protected health information that excludes direct identifiers of the recipient or of relatives, employers, or household members of the recipient. Direct identifiers are: name, postal address information, phone and fax numbers, e-mail address, social security numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers, device identifiers or serial numbers, URL's, internet protocol address numbers, biometric identifiers, and photographic or any comparable images.

Privileged Information - Information obtained by a psychiatrist, psychologist or other staff member in connection with examination, diagnosis or treatment of a recipient.

Protected Health Information (a.k.a. confidential information) - All personally identifiable information and material about a recipient in any form or medium, and the information that an individual is or is not receiving services.

Subpoena – An order directed to an individual commanding appearance in court on a certain day to testify or produce documents in a pending lawsuit.

Quality Service Organization Agreement/Business Associate Agreement – A mechanism that allows programs to disclose information, without the recipient's consent, to an outside organization that provides services to the program, or the program's recipients. HIPAA refers to these outside organizations as "business associates" (BA's) while 42 CFR Part 2 uses the term "qualified services organizations" (QSOs).

QSOAs cannot be signed with law enforcement agencies or with other drug or alcohol treatment agencies that are providing the same services that the program is providing to its own recipients.

III. POLICY

In the course of providing services, the WCHO creates and/or receives protected health information related to the individuals we serve. It is the policy of the WCHO to protect the confidentiality of protected health information in our possession to the highest extent possible. Information in the record of a recipient, and other information obtained while providing services to a recipient, will be kept confidential, including the fact that a person is or is not receiving services. Protected health information in paper form will be stored in a locked room or locked file cabinet, and will be accessed only on a need to know basis. Access to electronic protected health information will be limited to those with authorized access, in the form of a user name and password, and a need to know.

Confidential information may be disclosed outside the WCHO and its contractual agencies only pursuant to a properly executed Release of Information form signed by the consentor, unless

disclosure is required by law and outlined in this policy. Confidential information may be exchanged among WCHO staff and with contractual agencies which provide mental health services, or qualified service organizations which provide substance abuse services, without obtaining a Release of Information to the extent that such exchange of information is necessary for the provision of services and set forth in the WCHO Notice of Privacy Practices.

The holder of the record shall not decline to disclose information if a consentor has authorized such disclosure, except for a documented reason.

When information is disclosed, the identity of the person to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. No other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought and based on the requestor's "need to know".

V. STANDARDS

A. General - Disclosure of Confidential Information

Generally, protected health information shall only be disclosed pursuant to a properly executed Release of Information form, including whether a person is or is not receiving services. Certain circumstances exist when information must be disclosed without a Release of Information form. These circumstances are described in greater detail later in this policy.

Release of Information Form

According to federal law, a properly executed Release of Information must include the following:

- The name of the recipient;
- A description of how much and what kind of information will be disclosed that identifies the information in a meaningful way;
- The name of the person or organization authorized to make the requested disclosure;
- The name of the person or organization to which the disclosure will be made;
- A description of the purpose of the disclosure;
- A date, event, or condition upon which the Release will expire and a statement that the Release may be revoked at any time except to the extent that the program has already acted upon it;
- A statement regarding whether treatment and payment may or may not be conditioned upon a signed Release;
- The potential for information that is disclosed pursuant to the Release to be re-disclosed;
- Signature of the recipient (or their legal representative) and the date of the signature;
- A statement prohibiting re-disclosure.

The Release of Information must be in plain language and a copy must be offered to the recipient or his/her legal representative.

Information regarding persons other than the recipient identified on the Release of Information shall not be disclosed without a properly executed Release of Information from those persons. With regard to family members, a Release of Information signed by the parent of a minor, guardian, or recipient does not permit disclosure of information regarding any other member of the family unless:

1. The Release form specifically includes the other family members and all adult family members have signed a Release of Information form, or
2. The information released is general and does not include specificity on any family member who has not signed a release of information.

Clinical record information released to any agency or individual shall be accompanied by a Notice of Federal and State Laws Against Further Disclosure.

Redisclosure

Specific information in the record obtained from other agencies will be re-disclosed only with a signed Release of Information allowing such re-disclosure, unless precluded by 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. Persons requesting information that cannot be re-disclosed shall be referred directly to the source agency.

If the request for re-disclosure is made by the recipient, or someone legally authorized to act on behalf of the recipient, for the purpose of obtaining access to the recipient's own record, the entire medical and clinical record will be made available, including information obtained from other agencies (see subheading "Recipient Access to Record" in this policy for further information).

Confidential Information Release Log

A record shall be kept on the Confidential Information Release Log of all disclosures of confidential information and shall include the following information:

1. Information released
2. To whom it is released
3. The date it was released
4. The purpose claimed by the person requesting the information and how the disclosed information relates to the purpose.
5. The legal basis under which a disclosure was made.
6. Statement that the persons receiving the disclosed information can only further disclose consistent with the authorized purpose for which it was released, e.g., Notice of Federal and State Laws Against Further Disclosure.

Accounting of Disclosures

A recipient has the right to request an accounting of disclosures of their confidential information made in the six years prior to the date on which the accounting is requested, but no sooner than April 14, 2003. This accounting does *not* have to include: disclosures that were for treatment, payment, and healthcare operations as outlined in the Notice of Privacy Practices; disclosures made without an Authorization that were required by law; disclosures for national security or intelligence purposes; disclosures made as part of a limited data set; or disclosures made pursuant to a properly executed Release of Information.

The accounting must be provided to the recipient within sixty days of receipt of their request and must include disclosures that occurred during the preceding six years (or a shorter time period at the request of the individual), but not prior to April 14, 2003, and must include disclosures made to or by the WCHO and its business associates.

The accounting must include: the date of the disclosure; the name of the person or entity to whom the disclosure was made; a brief description of the confidential information that was disclosed; and a brief statement of the purpose of the disclosure.

B. Communicating with Family and Friends

There may be times when a recipient's family, friend, or other interested party would like to share information with the staff who works with that recipient. While staff can receive such information, staff cannot disclose protected health information to any person without a properly executed Release of Information that authorizes such disclosure. In the event that a recipient has a court-appointed Guardian (or a court-appointed Personal Representative for a deceased recipient), information will be freely shared with that individual only after the appropriate paperwork has been received and made a part of the recipient's record.

Whenever possible, and wherever clinically appropriate, staff will pursue obtaining a release of information form to speak with family members about pertinent recipient information.

Please note that parents of minor recipients will be communicated with according to state and federal laws that pertain to minors. This is covered under the subheading "Minors" in this policy.

C. Minors

For the purposes of this section of the policy, a child is defined as under the age of 14. A minor is defined as an individual 14 to 18 years of age.

Children and Mental Health/Substance Abuse Treatment

A parent may request services for a child without the child's consent if the child is less than 14 years of age. A program may provide services for a child without the child's consent if the child is less than 14 years of age and if the request for services is made in writing.

Minors and Mental Health/Substance Abuse Treatment

A minor who is 14-18 years of age may request and receive services, and a professional may provide such services on an outpatient basis without the consent or knowledge of the empowered legal guardian (minor's parent, guardian, or person in loco parentis) unless there is a compelling need for disclosure.

Outpatient mental health sessions for each episode of care shall be limited to not more than twelve (12) sessions or four (4) months for each request for service. After that time, the mental health professional shall terminate that episode of care or, with the consent of the minor, shall notify the parent, guardian or person in loco parentis to obtain consent to provide ongoing outpatient services.

A recipient minor's parents/guardians may only be contacted if:

1. The minor has signed a consent form, OR
2. The WCHO/Program Director determines that:

- a) The minor lacks the capacity because of an extreme youth, mental, or physical condition to make a rational choice as to whether to give consent to make a disclosure to a parent, AND
 - b) The minor's situation poses a substantial probability of harm to the minor or another individual, the threat of which may be reduced by communicating the relevant facts to the minor's parent/guardian, and if the minor is notified of the mental health professional's intent to disclose.
3. Pregnancy termination referral services and the use of psychotropic drugs require the knowledge and consent of the minor's parent, guardian or person in loco parentis.
4. Unless otherwise noted, the minor must give written consent for all disclosures, regardless of whether the parent/guardian requested services for the minor.

D. Recipient Right to Access His/Her Own Record

Information in the Clinical Record on or after March 28, 1996

A legally competent adult recipient has the right to see all information entered into his/her clinical record on or after March 28, 1996, including reports obtained from other agencies, without regard to possible detriment, unless such information will be used to initiate or substantiate any criminal charges against the recipient or to conduct any criminal investigation of the recipient.

Access shall be made as expeditiously as possible, but in no later than 30 days from the date of the request or prior to release from treatment.

A recipient who requests access to his/her own record shall be asked to provide a written request to see part or all of the record, and provide appropriate identification before seeing the record. The assigned staff, supervisor, Program Administrator, or designee shall be available to review the contents of the record with the recipient.

If a recipient requests a copy of his/her record, the record shall be copied onto watermarked paper and made available to the recipient within thirty (30) days of receipt of the request. Recipients will be given up to two requested copies per year without cost to the recipient. Any requests made thereafter shall incur a per-page cost. Such costs shall be calculated annually and will be available from the Office of Recipient Rights/designee. Upon receipt of copy, the recipient shall sign a statement that confirms receipt and advises the recipient that WCHO cannot protect the confidentiality of records that are released into his/her possession; the recipient will be responsible for protecting the confidentiality of those records.

Information in the Clinical Record on or before March 27, 1996

A recipient has the right to see all information entered into his/her clinical record on or before March 27, 1996, including reports obtained from other agencies. Access will be denied in whole or in part, however, if in the judgment of the WCHO Director or Program Administrator:

1. The access is reasonably likely to endanger the life or physical safety of the recipient or another person; or
2. The record makes reference to another person (who is not a health care provider) and providing access to the record is reasonably likely to cause substantial harm to such other person; or

3. If the request is made by the recipient's personal representative and the provision of access to such personal representative is reasonably likely to cause substantial harm to the recipient or another person; or
4. The records contain psychotherapy notes or information compiled in anticipation of, or for use in, a civil, criminal, or administrative action; or
5. If the information is created or obtained in the course of research that includes treatment, then access may be temporarily suspended for the period the research is in progress, provided the recipient agreed to denial of access when consenting to participate in the research, and the recipient is informed of his/her right to access will be reinstated once the research is completed; or
6. The information is contained in records that are subject to the Privacy Act, 5 U.S.C. & 552a, and the denial of access meets the requirement of that Act; or
7. The information was obtained from someone other than a health care provider under a promise of confidentiality, and the access would likely reveal the source of the information.

If a recipient is denied access to his/her record, the WCHO must, to the extent possible, exclude only the information for which there is grounds to deny access, and provide access to any other requested information. The WCHO must provide the recipient with a written denial within 30 days and offer the recipient the option of obtaining a review of the denial. The written denial must describe the basis for the denial and a description of how the recipient can complain to the WCHO or to the Secretary of Health and Human Services, including the name, title, and telephone number of the contact person at the WCHO who will handle such complaints.

If the recipient chooses to have the denial reviewed, the Director will designate a licensed psychologist, master's level social worker, or master's level psychologist, who did not participate in the original decision to deny access, to act as a reviewing official. The WCHO must provide written notification to the recipient of the reviewing official's determination, and must provide or deny access in accordance with the determination made by the reviewer.

If the WCHO does not maintain the record that is the subject of the recipient's request for access, and the WCHO knows where the requested record is maintained, the WCHO must inform the recipient where to direct the request for access.

E. Recipient Right to Amend Record

A recipient, guardian, or parent of a minor may add a notation at any time in the clinical record, and this statement shall become part of the clinical record. A recipient, guardian or parent of a minor may challenge the accuracy, completeness, timeliness, or relevance of factual information in the record and may insert into the record a statement correcting or amending the information at issue, and this statement shall become part of the clinical record within 30 days of its receipt.

The WCHO must make reasonable efforts to inform and provide the amendment to any health care provider the recipient identifies as being in need of the amendment, and to persons, including business associates, that the WCHO knows have the record that is subject to amendment and that may have relied, or could foreseeable rely, on the information to the detriment of the recipient.

The WCHO has the right to deny a recipient's request for an amendment if the information that is subject to the request was not created by the WCHO, unless the recipient provides a reasonable basis to believe that the originator of the record is no longer available to act on the request for amendment. If the request is denied in whole or in part, the WCHO must:

1. Provide a timely written denial containing the basis for the denial and, if possible, informing the recipient where to direct the request for amendment.
2. Notify the recipient that he/she may either submit a statement of disagreement or that he/she may request that the WCHO provide the request for amendment and denial with any future disclosures of the confidential information that is the subject of the amendment.
3. Provide a description of how the individual may complain to the WCHO or to the Secretary of Health and Human Services, including the name, title, and telephone number of the contact person at the WCHO who will handle such complaints.

F. Report of Potential Physical Harm and Duty to Warn

If a staff member assesses that a situation exists or that information received indicates that "substantial or serious physical harm may come to the recipient or to another person in the near future" s/he shall immediately inform the Program Administrator or his/her designee and complete a Report of Potential Physical Harm. The Director shall be immediately notified and the Report of Potential Physical Harm submitted to him/her. Then, confidentiality policies may be waived to disclose necessary information to the local police agency or to others.

If the threat of physical violence is against a reasonably identifiable person, and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the staff member or Director/designee has a duty to take one or more of the following actions in a timely manner:

1. Hospitalize the recipient or initiate proceedings to hospitalize the recipient.
2. Make a reasonable attempt to communicate the threat to the threatened person and communicate the threat to the local police department for the area where the threatened person resides. Such communication should not identify the recipient as a person receiving treatment for alcohol or drug abuse unless the staff member has obtained a court order authorizing such disclosure.
3. If the staff member or Director/designee has reason to believe that the threatened person is a minor or is incompetent by other than age, they will communicate the threat to the threatened person's parent, legal guardian, or whoever is appropriate in the best interests of the threatened person, in addition to communicating the threat to the threatened person, if appropriate, and to the local police department. Such communication should not identify the recipient as a person receiving treatment for alcohol or drug abuse, unless the staff member has obtained a valid court order authorizing such disclosure.

A copy of the Report of Potential Physical Harm shall be included in the recipient's record.

G. Child Abuse Reporting Requirements

Staff are required by law to report suspected abuse or neglect to the Family Independence Agency (FIA) when there is reason to suspect actual or imminent harm to the child. Such reports must be made immediately, but not more than 24 hours from when staff became aware of the information. Staff shall also complete an incident report and route that incident report per agency procedures. Staff cannot make reports of suspected abuse/neglect solely on the basis that a parent is abusing drugs or alcohol.

Staff can only make initial reports of child abuse or neglect and can only give written information that verifies that initial report. This means that staff can make a verbal report to FIA, and follow up that verbal report by completing the FIA-3200 form (“Report of Actual or Suspected Child Abuse or Neglect”) and sending the original form to FIA. (See Exhibit B of this policy.) A copy of the FIA-3200 form shall be kept at the agency in a file separate from the clinical record, and additional copies of the completed form may be forwarded to other internal departments as needed, according to agency procedures.

Any additional information cannot be given to FIA and the court unless there is a valid release signed by the recipient/empowered legal guardian, or there is a proper court order (see the Court Orders section of this policy for further information).

Whenever possible and wherever clinically appropriate, staff will seek to obtain a release of information from the recipient/empowered legal guardian to share information with FIA-CPS.

H. Adult Abuse Reporting Requirements

Staff are also required by state law to report any suspected abuse or neglect of vulnerable adults. Reports are made by phone to the Family Independence Agency (FIA). Such reports cannot reveal any information related to a recipient’s drug or alcohol use, including whether a recipient is diagnosed, receiving treatment for, or uses drugs or alcohol.

Reports of suspected abuse/neglect of vulnerable adults can be made anonymously to FIA. Staff may also give the name of the community health center where they work in making a verbal report, as long as staff do not disclose any information related to the recipient’s use of, or treatment for, alcohol or drugs.

Any additional information cannot be given to FIA and the court unless there is a valid release signed by the recipient/empowered legal guardian, or there is a proper court order (see the Court Orders section of this policy for further information).

Whenever possible and wherever clinically appropriate, staff will seek to obtain a release of information from the recipient/empowered legal guardian to share information with FIA-APS.

I. Disclosure of Information to Michigan Protection and Advocacy (MP&A) Staff

If a staff member receives a request for information from MP&A staff, that Program’s Administrator or his/her designee shall be informed immediately. The Program Administrator/designee shall inform the WCHO Director or his/her designee prior to the disclosure of confidential information.

Whenever possible and wherever clinically appropriate, staff will seek to obtain a release of information from the recipient/empowered legal guardian to share information with MP&A.

Any request for information from a MP&A representative must meet the following conditions:

1. Request must be in writing, including the reason for the request.
2. In the interest of ensuring that the record is not disclosed inappropriately, the WCHO Director/designee must determine if, in the Director's professional judgment, the purpose of the MP&A request for access to the record is due to reasonable cause to suspect that the recipient has been or is being subjected to abuse or neglect.
3. The WCHO must limit the disclosure to the relevant information expressly authorized by statute or regulation.
4. The WCHO must maintain documentation of all disclosures.

MP&A Access to a Clinical Record with a Release

If the above conditions are met, AND a representative of MP&A has a properly executed Release of Information signed by the recipient or empowered legal guardian, an MP&A representative shall have access to the following:

- a. The clinical records of a recipient, including information related to substance abuse treatment or drug and alcohol use if the release allows for the disclosure of this information.
- b. A copy of the recipient's clinical record if this has been requested by MP&A.

The WCHO must still maintain documentation of all disclosures even when there is valid written release.

MP&A Access to a Clinical Record Without a Release

If the above conditions for a request are met (see 1-4 of this section), and MP&A receives a complaint or has probable cause to suspect abuse but they do not have a properly executed Release of Information signed by the recipient/empowered legal guardian, MP&A may have access to conduct an on-site audit of the clinical record as permitted by 42 C.F.R. (see Code of Federal Regulations Part 2, Section 2.53(a) (1)).

The on-site audit of the clinical record by a MP&A Representative does not include providing the representative with copies of the record. In order to obtain a copy of the record a MP&A Representative must have a properly executed Release of Information.

A representative of MP&A shall also have access to an on-site audit of a recipient's clinical record, including a recipient who has died or whose whereabouts are unknown, if all of 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. MP&A 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 or neglect.
- d. A complaint has been received by MP&A or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
- e. Upon receipt of the name and address of the recipient's legal representative, MP&A Services has contacted the representative and offered assistance in resolving the situation.
- f. The representative has failed or refused to act on behalf of the recipient.

Furthermore, the MP&A representative shall be provided with the name, address, and telephone number of a guardian, conservator, or parent in order for an MP&A representative to determine whether a recipient is subject to a guardianship or conservatorship order and to determine who has the power to authorize a release of information. Such information shall be provided if MP&A makes a written request and presentation of a statement that a complaint has been received, or that MP&A has probable cause to believe the recipient has been subjected to abuse or neglect or that the health or safety of the recipient is in serious and immediate jeopardy.

J. Medical Emergencies

There may be times when a recipient's health and safety is at risk to the extent where they need emergency medical attention. At these times, staff may provide protected health information to emergency medical personnel in order for a recipient to receive the necessary medical treatment. At these times, staff may only provide information that medical personnel need to know in order to provide the necessary care to a recipient (i.e. medications, physician's name, etc.). Any information outside that which is required to treat the medical emergency requires a valid release of information signed by the recipient/empowered legal guardian.

Staff cannot provide emergency medical personnel with specific information regarding the HIV/AIDS status/diagnosis of a recipient without a specific disclosure of information related to HIV/AIDS. (see Section K of this policy)

K. Disclosure of Information Regarding HIV/AIDS Status

A Release of Information form that specifies consent is given for disclosure of information regarding HIV/AIDS status must be obtained before releasing such information. A general consent to release medical or health information is not sufficient.

State law allows information regarding a recipient's HIV/AIDS status to be released without a Release of Information to those staff, students, or volunteers of WCHO or organizations under contract to WCHO who are diagnosing or caring for the recipient. These are the only staff, students, or volunteers who have a "need to know" this information, and includes only those who are providing direct treatment or managing the treatment of the consumer's physical and mental health care. Disclosure to anyone else will require a signed Release of Information form that consents to the disclosure of information related to HIV/AIDS.

Disclosure may be made to the local Department of Public Health regarding HIV/AIDS status without a Release Authorization if necessary to:

1. Protect the health of an individual.
2. To diagnose and care for a recipient.
3. To prevent further transmission of the virus.

Disclosure to the local Department of Public Health shall not contain information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of the virus and does not identify the individual, directly or indirectly, as an alcohol or drug abuser.

L. Privileged Information

Privileged information shall not be disclosed in civil, legislative, or administrative cases or proceedings or preliminary proceedings, unless the client has waived the privilege. To demonstrate that privilege has been waived, the holder of record must receive a written statement and accompanying documentation that:

1. The party requesting the privileged information has made a good faith effort to provide written notice to the recipient;
2. The notice included sufficient information about the proceedings in which the information will be used, and the recipient was given an opportunity to object to the court or tribunal;
3. The time for objections has passed and the recipient did not raise any objections, or the objections raised have been resolved by the court or tribunal.

If the holder of record does not receive the above assurances, privileged information shall be disclosed only if the parties to the dispute have agreed to a qualified protective order that prohibits the parties from using or disclosing the information for any purpose other than the proceedings for which the information was requested; and requires the return to the holder of record or the destruction of the information (including all copies made) at the end of the proceeding.

However, privileged information shall be disclosed if it is relevant to a recipient's physical or mental condition which the recipient has introduced in a claim or defense in a civil or administrative case proceeding; or in the case of a deceased recipient, has been introduced as an element of the recipient's claim or defense by a person who is party to the civil or administrative case or proceeding.

Privileged information may be disclosed, pursuant to a court order, if it relates to proceedings under the Michigan Mental Health Code (MMHC):

1. Information that supports the criteria for involuntary admission if the recipient was informed that any communications could be used in the proceeding.
2. Information relevant to a matter under consideration in a proceeding to determine legal competence or need for a guardian, if the recipient was informed that such information could be used in such a proceeding.
3. If the privileged communication was made during treatment that the recipient was ordered to undergo, in order to render the recipient competent to stand trial on a criminal charge. Information released must be related to issues to be determined in proceedings concerned with the competence of the recipient to stand trial.
4. Information relevant to alternatives to admission to a hospital or facility.
5. Other information designated in WCHO policies that may allow for other relevant disclosures of privileged information in court proceedings under the MMHC.

M. Disclosure of Information for Purposes of Evaluation, Accreditation, Compilation of Statistical Information, or Research

Confidential information may be disclosed in the discretion of the holder of the record for the purposes of evaluation, accreditation, or compilation of statistical information:

1. Only if the records containing protected health information are not copied or removed from the program premises,

2. If the protected health information is essential to achieve the purpose for which it is sought,
3. If preventing such identification would clearly be impractical, and
4. If no recipient will be directly or indirectly identified in a report of the audit or evaluation, or in any other manner.

Confidential information shall not be released if the subject of the information is likely to be harmed by its release.

Whenever possible, aggregate data shall be provided which does not identify recipients or disclose confidential information.

Requests for information in connection with evaluation, accreditation or statistical compilation shall be reviewed by the Director or the Director's designee, which shall ensure that:

1. Confidential information is not disclosed in any manner, including inspecting or sampling of information, unless such disclosure is essential to achieve the purpose and is allowed by law.
2. Disclosure is not to be made when identification would be harmful to a recipient.
3. When an evaluator, accreditor or compiler of statistical information asserts that withholding confidential information about a recipient would be too impractical to be prevented, documentation is provided which verifies this assertion before approval for disclosure is given.
4. Records containing protected health information will not be copied or removed from the program premises. If such copying or removal is unavoidable, the person receiving the information must agree in writing to maintain the protected health information in accordance with applicable confidentiality laws; destroy the information upon completion of the audit or evaluation; and disclose protected health information only back to the agency from which it was obtained.
5. Recipient confidentiality shall be safeguarded in any document which is to be disseminated outside the WCHO.

Requests for information in connection with research, investigative activities, and/or utilization of experimental intervention methods or medication are subject to review by an Institutional Review Board as described in WCHO Policy, Research. Confidential information will be disclosed without a Release of Information only if:

1. The researcher is qualified to conduct the research; and
2. An authorization waiver is approved by an Institutional Review Board; or
3. Disclosure is limited to a limited data set where there is a data use agreement in place.

M. Peer Review

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under Sec. 143a(1) of the Mental Health Code, are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena.

N. Freedom of Information Act (FOIA) Requests

A recipient's protected health information, including the clinical record, cannot be released under a FOIA request. All FOIA requests regarding recipient related information or services shall be forwarded to the Office of Recipient Rights or designee.

Emails written by program staff are subject to release through a FOIA request; therefore, staff shall abide by agency policy regarding the writing and use of email communications when communicating any recipient-related information. (See the WCHO Email Policy for further information)

O. Requests from Attorneys or Prosecutors

Information shall be provided by the holder of the record to attorneys, other than prosecuting attorneys, who:

1. Present a properly executed Release of Information signed by the consentor.
2. Are retained or appointed by a court to represent a recipient, and present identification and a properly executed Release of Information.
3. Do not represent a recipient but present a certified copy of an order from a court directing disclosure (see Court orders for specifics).

Whenever possible and wherever clinically appropriate, staff will seek to obtain a release of information from the recipient/empowered legal guardian to share information with attorneys other than prosecuting attorneys.

Generally, protected health information will not be used or disclosed to conduct a criminal investigation or prosecution of a recipient. Protected health information will be released to a prosecutor only in accordance with a valid court order.

P. Subpoenas

If a subpoena is received by any staff person at the WCHO or the CMHP, the subpoena shall be immediately forwarded to the Program Administrator. The Program Administrator shall notify the WCHO Director or designee and shall make available a copy of the subpoena and a description of the actions contemplated by the program. The WCHO Director or designee will then make a final determination about whether to comply with the subpoena.

Protected health information may be disclosed pursuant to a subpoena only if the recipient whose information is being sought has properly executed a Release of Information allowing the disclosure. Whenever possible and wherever clinically appropriate, staff will seek to obtain a release of information from the recipient/empowered legal guardian.

In the event that no Release of Information has been obtained, a valid court order must be present to compel disclosure or testimony. A valid court order must allow the recipient the opportunity to appear and present written objections to the disclosure.

A subpoena must be responded to, even when the organization is refusing to disclose the requested protected health information. Failure to respond may be grounds for a contempt of court finding. If disclosure will not be made, the holder of record must notify the person who issued the subpoena of the grounds for refusing to comply with the subpoena.

Q. Court Orders

If a court order is received by any staff person at the WCHO or CMHP, the court order shall be immediately forwarded to the Program Administrator. The Program Administrator shall notify the WCHO Director or designee and shall make available a copy of the court order and a description of the actions contemplated by the program. The WCHO Director or designee will then make a final determination about how to respond to the court order.

A court may issue an order to disclose protected health information only after it follows certain procedures and makes specific recommendations, including notifying the program and the recipient that a party is requesting the order, and giving them an opportunity to make an oral or written statement to the court. Under 42 CFR a subpoena, search warrant, or arrest warrant, even when it is signed by a judge and labeled a court order, is not sufficient by itself to require or even permit a program to make a disclosure. A subpoena can be used, however, to compel a program to attend a hearing to see whether a court order should be issued.

Before issuing a court order the court must find “good cause” for the disclosure. A court can find “good cause” only if it determines that the public interest and the need for disclosure outweigh any adverse effect that the disclosure will have on the recipient, the therapeutic relationship, and the effectiveness of the program’s services. If the information being sought can be obtained elsewhere, the court should not issue an order. Even when “good cause” is present, disclosure must be limited to the information essential to fulfill the order, and it must be restricted to those persons who need the information for that purpose

R. Requests from Probation/Parole Officers

There are times when a recipient may be participating in treatment as a condition of the disposition of criminal proceedings against the recipient, or as a condition of the recipient’s parole. Protected health information may be disclosed to those persons within the criminal justice system who have a need for the information in order to monitor the recipient’s progress. A properly executed Release of Information is required, which includes the duration of the consent and a statement that it is revocable upon the passage of a certain amount of time or the occurrence of a specified event.

The persons within the criminal justice system who receive the protected health information must be notified that they may re-disclose it only to carry out official duties with regard to the recipient’s conditional release or other action in connection with which the consent was given.

S. Recordkeeping and Storage

Recipient records must be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use, under the supervision of one person designated by the Program

Administrator. File cabinets or record rooms containing recipient records shall be kept locked overnight and when unattended to control access to records.

Each program shall have written procedures which regulate and control access to and use of written records. Each program shall institute a system to control the location of recipient records on the premises.

No records are to leave the program site unless explicit permission has been granted by the Program Administrator and the records are stored in a locked container. Recipient records shall be signed out by staff when the record is removed from the office. Sign-out forms shall be placed in the appropriate file when the recipient record is removed.

Summaries of Sec, 748, Confidentiality, of P.A. 258 as amended, Michigan Mental Health Code, and 42 CFR Part 2 shall be made a part of each recipient's record.

Department of Community Health Guidelines on Record Retention shall be followed with assurance that shredding of documents shall occur. A record shall be retained for at least ten years from the date of case closure.

VI. REFERENCES

- A. Michigan Mental Health Code, Public Act 258 as amended - 330.1748, 330.1749, 330.1750, 330.1946.
- B. Confidentiality of HIV/AIDS Information, MCL 333.5131; Michigan Public Health Code, Public Act 488 of 1988, as amended
- C. DCH Administrative Rules - 330.7051
- D. Your Rights When Receiving Mental Health Services in Michigan, 10/97, Pg. 5
- E. Michigan Department of Community Health Policy, Resident Records: Release to Protection and Advocacy, 07-C-1748/GL-00.
- F. Michigan Department of Community Health Policy, Records Retention and Disposal Schedules, 07-C-1746/GL
- G. 42 C.F.R. (Code of Federal Regulations) Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; Final Rule.
- H. Michigan Public Health Code, Public Act 368 of 1978, as amended.
- I. Michigan Public Health Code, Public Act 224 of 1987, as amended; and Michigan Compiled Law Sections 33.6121-.6124.
- J. Health Insurance Portability and Accountability Act of 1996 (45 CFR, Parts 160 and 164)
- K. Confidentiality and Communication – A Guide to the Federal Drug & Alcohol Confidentiality Law and HIPAA, Legal Action Center, Fifth Edition, 2003.
- L. WCHO Abuse and Neglect Policy.
- M. WCHO Client Information Release Authorization Form.
- N. WCHO Client Information Release Log Form.
- O. WCHO Report of Potential Physical Harm Form.
- P. WCHO Research Policy.
- Q. WCHO Notice of Privacy Practices Policy
- R. WCHO Use of Email for Consumer Related Information Policy

VII. EXHIBITS

- A. Consent for Release of Information form
- B. FIA-3200 Form