

**PURPOSE**

To assure compliance with applicable state and federal laws and regulations relative to the use and disclosure of confidential information and privileged communications.

**DEFINITIONS****Confidential Information**

All information in the record of a patient and all other information acquired while providing mental health services to the patient.

**Consanguinity**

Kinship by blood, such as, blood relationship. This level of consanguinity in descending order would be child, grandchild, and then great-grandchild of the patient; in ascending order would be parent, grandparent to great-grandparent of patient; in collateral order would be cousin, nephew/niece to second cousin, great nephew/niece.

**Hospital Employee**

An individual who works for the department and receives compensation for that work; an individual who, without compensation other than reimbursement for expenses, performs activities for the department; or an entity under contract to the department.

**Hospital**

An inpatient program operated by the Michigan Department of Health and Human Services (MDHHS) for the treatment of individuals with serious mental or serious emotional disturbance.

**Law Enforcement**

Agencies or entities as defined as such under the Michigan Commission on Law Enforcement Standards Act, Public Act 203 of 1965. For more information see <https://www.michigan.gov/mleom/fallen-law-enforcement-officers/definition-law-enforcement-officer>

**Law Enforcement Information Network (L.E.I.N.)**

A database used by law enforcement to gather and maintain pertinent criminal charge and conviction information regarding individuals.

**Privileged Communication**

A communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient or to another person while the other person is participating in the examination, diagnosis, or treatment, or a communication made privileged under other applicable state or federal law.

**POLICY**

Information in the record of a patient, and other information acquired while providing mental health services to a patient, must be kept confidential, must not be open to public inspection, and must be disclosed only in the circumstances and under the conditions set forth in this policy.

**STANDARDS****1. CONFIDENTIAL INFORMATION**

- A. A summary of section 748 of the Michigan Mental Health Code (MMHC) must be a part of the record for each patient receiving mental health services from the department or any of its contracted mental health service providers.
- B. If confidential information is to be disclosed, the identity of the patient to whom it pertains must be protected and must not be disclosed unless it is germane to the authorized purpose for which disclosure was sought and when practicable, no other information must be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
- C. Any person receiving confidential information must disclose that information to others only to the extent consistent with the authorized purpose for which the information was obtained.

- D. A record must be kept of disclosures and must include all the following:
- 1) Information released.
  - 2) To whom it was released.
  - 3) The purpose claimed by the person requesting the information and a statement describing how the disclosed information is germane to that purpose.
  - 4) The provision of MCL 330.1748, or other state law, under which disclosure was made.
  - 5) A statement that the receiver of disclosed information was informed that further disclosure must be consistent with the authorized purpose for which the information was released.
  - 6) In circumstances where consent is required, documentation that such consent was obtained from the patient or their legally authorized representative.
- E. The records, data, and knowledge collected for or by individuals or committees assigned a peer review function are confidential, must be used only for the purposes of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this policy.

## 2. MANDATORY DISCLOSURE

- A. When requested, confidential information must be disclosed only under one or more of the following circumstances:
- 1) For case record entries made subsequent to March 28, 1996, confidential information in the patient's record must be disclosed to an adult patient, upon their request, if the patient does not have a guardian and has not been adjudicated legally incompetent. The holder of the record must comply with the adult patient's request for disclosure as expeditiously as possible but in no event later than the earlier of 10 days after receipt of the request or, if the patient is

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receiving treatment from the holder of the record, before the patient is released from treatment.

- 2) Pursuant to orders of a court of record, subpoenas accompanied by any necessary authorizations to release the information, or subpoenas of the legislature, unless the information is made privileged by law.
- 3) To a prosecuting attorney as necessary for them to participate in a proceeding governed by the MMHC.
- 4) To an attorney retained by or appointed to represent the patient, with the consent of the patient, the patient's guardian with authority to consent, or the parent with legal and physical custody of a minor patient.
- 5) If necessary to comply with another provision of law, for example, Children's Protective Services Act.
- 6) To the department if the information is necessary for it to discharge a responsibility placed upon it by law.
- 7) To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.
- 8) To a surviving spouse of the patient, or if there is no surviving spouse, to the individual or individuals most closely related to the deceased patient within the third degree of consanguinity (blood relationship) for the purpose of applying for and receiving benefits only if the spouse or closest relative has been designated the personal representative or has a court order.
- 9) To the department children's protective services caseworker/administrator within 14 days following receipt of their written request for mental health records and information pertinent to their investigation of child abuse or child neglect. (MCL 330.1748a).
- 10) A hospital must grant a representative from Disability Rights Michigan access to the records of its patients in accordance with federal law and Section 748 (8) of

the MMHC, being PA 258 of 1974 as amended by PA 290 of 1995.

### 3. DISCRETIONARY DISCLOSURE WITH CONSENT

- A. Except as provided in subsection 1.A.1) of this policy, confidential information may be disclosed if consent is obtained from the patient, the patient's guardian with authority to consent, the parent with legal custody of a minor patient, or the court appointed personal representative or executor of the estate of a deceased patient to all of the following:
- 1) Providers of mental health services to the patient,
  - 2) The patient or their guardian or the parent of a minor or any other individual or agency unless in the written judgment of the holder of the record, the disclosure would be detrimental to the patient or others. Procedures for the withholding of information based upon potential detriment to the patient or others include at a minimum:
    - a) Review of the request and determination as to detriment by the individual in charge of the patient's plan of service. A determination of detriment must not be made if the benefit of disclosure outweighs the detriment to the patient. If the record is located on-site, a determination of detriment must be made within three business days from the date of the request. If the record is located at another site, the determination must be made within 10 business days from the date of the request.
    - b) Written documentation as to the justification for withholding information.
    - c) A determination as to whether part of the information requested can be released without detriment.
    - d) If a determination of detriment has been made and the person seeking disclosure disagrees with that decision, they may file a complaint with the Office of Recipient Rights.

- 3) The hospital director, or designee, when authorized to release the entire medical and clinical record for clinical purposes by the patient or the patient's guardian or parent of a minor patient, must release a copy of the medical and clinical record in its entirety to the provider of mental health services. Reasonable charges for copying the record may be assessed to the requestor.

#### **4. DISCRETIONARY DISCLOSURE**

- A. Confidential information may be disclosed without the consent of the patient, legally empowered guardian, or parent with legal custody of a minor patient in the following circumstances:
  - 1) As necessary for the patient to apply for or receive benefits only if the benefits must accrue to the state or must be subject to collection for liability for mental health service.
  - 2) As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the Health Insurance Portability and Accountability Act of 1996.
  - 3) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the patient can be identified from the disclosed information only if either:
    - a) Such identification is essential to achieve the purpose for which the information is sought.
    - b) If preventing such identification would clearly be impracticable; but, in no event if the patient is likely to be harmed by the identification.
  - 4) To providers of mental or other health services or a public agency if there is a compelling need for disclosure based upon a substantial probability of harm to the patient or other individuals.

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**5. DISCLOSURE TO LAW ENFORCEMENT**

- A. Confidential information may be disclosed to law enforcement only in the following circumstances:
- 1) A hospital employee who believes they are the victim of a crime or a witness to the alleged crime may disclose confidential patient information, including identifying information to law enforcement regarding a crime and may provide law enforcement with full and accurate information related to the crime. Only information that is pertinent to the investigation of the crime can be disclosed.
  - 2) Consent or an order from the court is required for access to a patient or for the disclosure of confidential information to law enforcement. If law enforcement requests access to the patient or their confidential information staff are to contact the on-call hospital administrator.
  - 3) Crime victim notification of a patient discharge should only be disclosed to law enforcement according to the crime victim notification on file.
  - 4) A hospital employee must not check LEIN for purposes of determining if a patient has an active warrant.
  - 5) A hospital employee must not disclose confidential patient information pursuant to an arrest warrant.
  - 6) Hospital employees must assure a report is made to the designated law enforcement agency, as required by law (MCL 330.1723 Criminal Abuse and APF 132).

**6. PRIVILEGED COMMUNICATIONS**

- A. Privileged communications must 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 policy.

- B. Privileged communications must be disclosed upon request under one or more of the following circumstances:
- 1) 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.
  - 2) 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.
  - 3) 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 communication made could be used in such a proceeding.
  - 4) If 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.
  - 5) 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.
  - 6) 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.
- C. In a proceeding in which subsections a. and b. above prohibit disclosure of communication made to a psychiatrist or psychologist in connection with the



examination, diagnosis, or treatment of a patient, the fact the patient has been examined or treated or undergone a diagnosis also must not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, non-profit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.

- D. Each hospital must develop written protocols for disclosing privileged communications pursuant to duty to warn which complies with Section 946 of the MMHC, specifically MCL 330.1946 (1) - (5).

## 7. AMENDING THE RECORD

- A. A patient, guardian, or parent of a minor patient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the patient's record.
- B. The patient, guardian, or parent of a minor patient must be allowed to insert into the record a statement correcting or amending the information at issue.
- C. The statement above must become part of the record.

## REFERENCES

- Michigan Mental Health Code, MCL 330.1752
- Michigan Mental health Code, MCL 330.1748
- Michigan Mental Health Code, MCL 330.1748a
- Michigan Mental Health Code, MCL 330.1749
- Michigan Mental Health Code, MCL 330.1750
- Michigan Mental Health Code, MCL 330.1946
- MDHHS Administrative Rule 330.7051
- Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164

## CONTACT

For more information concerning this policy, contact the Office of Recipient Rights.