

POLICY AND PROCEDURE MANUAL	BCCMHA	PAGE 1 OF 6
CATEGORY - RECIPIENT RIGHTS	CHAPTER 10	SUBJECT A
CONFIDENTIALITY	REVISED 09/29/2020 REVIEWED 09/16/2020	EFFECTIVE 01/02/97

I. PURPOSE

To define the limits and procedures for disclosing information about community mental health and substance use disorder services outside the agency.

II. APPLICATION

The provisions of this policy apply to all Barry County Community Mental Health Authority (BCCMHA) staff and professional independent contractors.

III. POLICY

It is the policy of the BCCMHA Board to adhere to and follow the statutes set forth regarding confidentiality in Chapter 7 of the Mental Health Code, Sec 330.1748(a); Health Information Portability and Accountability Act of 1996 (HIPAA); 42 CFR Part 2; and R 325.14302 to R325.14306.

All information in the client’s case record, and other information acquired in the course of providing mental health services shall be kept confidential and shall not be open to public inspection [MHC 1748(1)/RR Standard F1].

The information may be disclosed outside the agency only in the circumstances and under the conditions set forth in Sections 748, 748(a) and 750 of the Michigan Mental Health Code (PA 258 of 1974, as amended), the Health Information Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), American Recovery and Reinvestment Act of 2009 (ARRA), and 42 CFR Part 2. The confidential information disclosed should be limited to that which is germane to the authorized purpose for which disclosure was sought.

The holder of the record shall not decline to disclose information if a client or other empowered representative has consented, except for a documented reason (only applies before March 28, 1996). If a holder declines to disclose because of a possible detriment to the client 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 client outweighs the detriment. A decision not to disclose may be appealed to the Recipient Rights Officer by the person seeking disclosure, a recipient, a

legally empowered guardian, or parents of a minor who consent to disclosure. Detriment does not apply to competent adults for all information after March 28, 1996.

BCCMHA prohibits unauthorized audio or video recording due to confidentiality.

IV. DEFINITIONS

Client/Consumer: An adult, or legally empowered guardian of a child, or a legally empowered guardian of a person who is legally incapacitated or has a developmental disability.

Covered Entity: A health plan, a healthcare clearinghouse or healthcare provider who maintains any PHI in any form in connection with one of the HIPAA standard transactions.

Privileged Communication: A communication made to a psychiatrist or psychologist, or someone under the supervision of such a person, in connection with the examination, diagnosis, or treatment of a client, or to other persons while they are participating in such examination, diagnosis, or treatment.

Protected Health Information (PHI): Any individually identifiable health information transmitted or maintained in electronic, paper or oral form by a covered entity.

V. STANDARDS

The BCCMHA Board administrator and staff will adhere to the rules of the Mental Health Code, Chapter 7, Sec 330.1748 (748, 748(a), and 750), the Health Information Portability and Accountability Act of 1996 as amended, (45 CFR Sections 160, 164, and Subparts A and E), HITECH, ARRA, 42 CFR Part 2, and R325.14302 to R325.14306.

BCCMHA staff will adhere to policy regarding internal record control and understand the concept of “Need to Know”. Please refer to the Record Content Policy regarding record management practices.

All new employees, interns, and independent contract providers will receive specific training regarding confidentiality within 30 days of hire, internship, or initiation of the contract. The Recipient Rights Officer will review the information contained in the agency’s recipient rights policies annually with the entire staff and contracted providers.

VI. PROCEDURES

A. CONSENT TO RELEASE INFORMATION

BCCMHA will not use or disclose PHI without written authorization except where permitted or required by state and/or federal law(s). In obtaining written authorization for the disclosure of confidential mental health and substance use disorder

information for use by all public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder, SWMBH and its provider network shall honor, accept and use MDHHS-5515, "Permission to Share Behavioral Health Information" (hereafter referred to as "Standard Consent Form"), for the electronic and non-electronic sharing of all behavioral health and SUD information, in accordance with PA 129 of 2014, MCL 330.1141a. No other consent forms may be used for such treatment-related disclosures. When obtaining written authorization for disclosures that do not fall under a Health Insurance Portability and Accountability Act (HIPAA) exception, a HIPAA compliant consent form shall be used.

B. REDISCLASURE

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 customer, or someone legally authorized to act on behalf of the customer, for the purpose of obtaining access to the customer's own record, the entire medical and clinical record will be made available, including information obtained from other agencies.

C. DETRIMENTAL INFORMATION

In the event the clinician judges that the release of certain information might be detrimental to the client or others, the clinician shall review this judgment with the Executive Director. Should the Executive Director concur with this judgment, the information shall not be disclosed. Documentation of the decision to withhold information and the reasons for withholding it shall be entered into the client's record.

If a request for information has been delayed, the Executive Director shall review the request and make a determination within three business days if record is on-site or ten business days if record is off-site whether the disclosure would be detrimental [AR 7051(4)(a)/RR Standard F7/RR Standard F8].

This determination can be appealed to the Recipient Rights Officer by the person seeking disclosure [AR 7051(3)/RR Standard F9].

Disclosure of confidential information may be delayed if deemed detrimental, unless disclosed pursuant to the following:

- Order of subpoena and/or search warrant of a court or Legislature for non-privileged information;
- Request of a prosecutor as necessary for participation in a proceeding governed by the Mental Health Code;
- Request of a recipient's or minor recipient's attorney, with consent of the recipient or minor recipient's parent and/or guardian (despite request for delay by a legally empowered guardian or parents of the minor); or
- Request of the Auditor General.

The holder of the record shall not decline to disclose information if a client or other empowered representative has consented, except for a documented reason. If a holder declines to disclose, there shall be a determination whether part of the information can be released without detriment.

D. CLIENT REQUESTS FOR DIRECT ACCESS TO THE RECORD

For case record entries made subsequent to March 28, 1996, confidential information in the client's record shall be disclosed to a competent adult recipient upon the recipient's request.

Release is done as expeditiously as possible but in no event later than 30 days of the request or prior to release from treatment.

For case record entries made BEFORE March 28, 1996, the following applies:

The general rule is that the client is to be allowed access to the record, after material judged to be detrimental to the client or to others has been excluded. In this case, the client is to be informed that some material is being withheld. The following procedures are to be followed in implementing client access to their record:

1. Information contained in the record but acquired from another service provider will not be released. The client may be informed of the records from other providers and instructed or assisted in making request for those records to the provider, but this material is not to be released.
2. Written documentation of a client's request will be recorded in the EHR. The regular Authorization to Release Information letter may be used for this.
3. Information contained in the record is shared with the client. However, any time there is a substantial and documented reason to believe that release of requested information would be detrimental to

the client or to others; this information may be withheld from the client.

Because of the sensitivity and complexity of the issues involved, a clinician familiar with the client or the Recipient Rights Officer should review the request before access is granted. The client must be provided with a timetable by which this review can be completed and information released.

It must be documented that the record was reviewed for material that would be detrimental. The summary of this review, including specification of material to be withheld, will be attached to the release letter from the client. The client must be informed if any information is withheld.

If the client objects to withholding of information, the client should be referred to the Recipient Rights Officer to appeal the decision.

The summary of the record review will also specify the information that is released. For example, “all progress notes from 5/86-8/87, exclusive of a medication review progress note written 7/87,” or “the Initial Assessment dated 2/14, with the diagnostic formulation deleted.”

If the request is to read the record, all material that is to be withheld is first to be removed from the record. The client will then be provided a private office in which the remaining records can be read. A member of the clinical staff shall be with the client at all times to supervise the client’s handling of the record and to answer questions or discuss any material about which the client has concerns. The client may take notes.

If the client requests a copy of the record, the copy will be made available in an electronic or hardcopy format based upon the individual request. If the client requests a copy of the record, the charge to the client for the copying is a 10-cent per page copying fee. Copies of the specified documents will be made for the client by the designated Support Staff or Recipient Rights Officer and noted in the record. The actual cost of copies may be charged to individuals requesting copies.

ATTACHMENTS:

[MDHHS-5515 Consent to Share Behavioral Health Information 613787_7.dot](#)
[Notice of Privacy Practice.pdf](#)

QUALITY IMPROVEMENT

This policy/procedure will be evaluated by the Quality Improvement Committee on an annual basis to enhance and improve the quality.

At any time, employees can request in writing, on the form provided, that this policy or items in this policy be reviewed by the Quality Improvement Committee. Employee's written request can be given to any Quality Improvement Committee member.

When an area for improvement is indicated, the process for improvement as identified in the Quality Improvement Plan will be followed.

APPROVED BY:

Richard Thiemkey
Executive Director

Date

Holly Hess, BS, QIDP, QMHP
Recipient Rights Officer

Date