

## NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

**CHAPTER:** Five – Member Services  
**PROCEDURE NAME:** CONFIDENTIALITY USE AND DISCLOSURE  
**EFFECTIVE DATE:** September 1, 2019

### **PURPOSE**

To establish guidelines for maintaining confidentiality of recipient record and to identify circumstances under which information may be disclosed.

### **APPLICATION**

All North Country Community Mental Health direct service programs and contracted service providers.

### **DEFINITIONS**

**Privileged communication:** 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.

**Protected Health Information:** all information in the record of a recipient and any information acquired in the course of providing mental health services to the recipient.

### **PROCEDURE**

A summary of Section 748 of the Mental Health Code shall be part of each recipient's clinical record.

Upon receipt of a properly executed and procedurally correct request for information, the agency shall provide copies of the record in either paper or electronic format (if available) to the requestor. NCCMH may impose a reasonable, cost-based fee for copies according to the nature of the request and the ability to pay. A recipient will not be denied a reasonable request due to inability to pay. NCCMH honors the medical record access fees that are set annually by MDHHS. An individual may appeal any charge to Customer Services, the Chief Executive Officer, or the NCCMH Board.

A record shall be kept of all disclosures and shall include all of the following information:

- Information released.
- To whom it was released.
- The purpose claimed by the person requesting the information and a statement indicating how disclosed information is germane to the stated purpose
- The subsection of Section 748 of the Michigan Mental Health Code, or other state law, under which the disclosure was made.
- A statement that the receiver of the disclosed information was informed that further disclosure shall be consistent with the authorized purpose for which the information was released.

When requested, information ***shall*** be disclosed:

- Pursuant to orders or subpoenas of court of record, or subpoenas of the legislature, unless the information is made privileged by some provision of law.
- To a prosecuting attorney as necessary for him or her to participate in a proceeding governed by the Michigan Mental Health Code. Specifically, a prosecutor may be given either privileged or non-privileged information if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission,

information relevant to alternatives to admission to a hospital or facility, or other information designated in the policies of the governing body

- To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to give consent, or the parent with legal **and** physical custody of a minor recipient.
  - 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.
  - Absent a valid consent or release, 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.

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 a consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.

To the office of the auditor general when the information is necessary for that office to discharge its constitutional responsibility.

- When necessary to comply with another provision of law.
- To Michigan Department of Health and Human Services (MDHHS) when the information is necessary in order for the department to discharge a responsibility placed upon it by law.
- To a surviving spouse, or if none, to the individual(s) most closely related to the deceased recipient within the third degree of consanguinity as defined in civil law, to apply for and receive benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order.

For clinical record entries made subsequent to 03/28/96 information made the Mental Health Code shall be disclosed to an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. Release will be completed as expeditiously as possible, but in no event later than the earlier of 30 days of the request or prior to release from treatment.

Except as otherwise provided for in #4 above, if consent has been obtained from:

- the recipient,
- the recipient's guardian who has the authority to consent,
- a parent of a minor with sole or joint legal custody, (Note: the physical custody and/or,
- parenting time of the child are not a factor in this determination. A parent who does not,
- have legal custody must have the consent of the other parent to request and receive,
- information regarding a shared child), or
- court appointed personal representative or executor of the estate of a deceased recipient,

Information made confidential by Sec. 748 **may** be disclosed to the following:

- a provider of mental health services to the recipient, or
- the recipient, his or her guardian, the parent of a minor, or another individual
- or agency unless, in the written judgement of the holder of the record (NCCMH), the disclosure would be detrimental to the recipient or others.

#### DETERMINATION OF DETRIMENT:

The Chief Executive Officer (CEO) of NCCMH/designee, upon notification from a clinical staff member, may make a determination that disclosure of information may be detrimental to the recipient or others.

- If the CEO/designee declines to disclose information because of possible detriment to the recipient or others, then the CEO/designee shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.
- If the record of the recipient is located on-site, the CEO shall make a determination of detriment within 3 business days from the date of the request. If the record of the recipient is at another location, the CEO shall make a determination of detriment within 10 business days from the date of request.
- The CEO shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information.
- If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he or she may file a recipient rights complaint.

Information **may** be disclosed in one or more of the following circumstances:

- NCCMH may disclose information without the consent of the recipient or legally authorized representative in order for the recipient to apply for or receive benefits, but only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service.
- 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, Public Law 104-191. (HIPAA)
- As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information can be identified only when such identification is essential in order to achieve the purpose, but in no event when the subject of the information is likely to be harmed by the identification.
- To providers of mental or other health services, or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the recipient, or others.
- 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, an MDHHS Child Protective Services' caseworker or administrator directly involved in the investigation shall notify NCCMH that an investigation has been initiated involving a person who has received services from NCCMH and shall request in writing mental health records and information that are pertinent to that investigation [Form DHS-1163-P]. Upon receipt of this notification and written request, the primary case holder will review NCCMH's records to determine if there are records or information which are pertinent to the CPS investigation. Within 14 days after receipt of the written request, NCCMH shall release those pertinent mental health records and information to the CPS caseworker or administrator directly involved in the child abuse or neglect investigation.

Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows:

- 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 that cannot be disclosed in court.
- 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 that, by law, permit or require disclosure.

A prosecutor may be given nonprivileged information or privileged information that may be disclosed if it contains information relating to participation in proceedings under the act, including all of the following information:

- Names of witnesses to acts that support the criteria for involuntary admission
- Information relevant to alternatives to admission to a hospital or facility.
- Other information designated in the policies of the provider.

A recipient, guardian, or parent of a minor recipient, after having gained access to records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in that record. That individual will be allowed to insert into the record a statement correcting or amending the information at issue and this will become a part of the recipient record.

If required by federal law, the agency shall grant a representative of the Michigan Protection and Advocacy System (MPAS) access to the records of all of the following:

- A recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal custody has consented to access.
- A recipient, including a recipient who has died or whose whereabouts are unknown, if all the following apply:
  - Because of mental or physical condition, the recipient is unable to consent to the access.
  - The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
  - The protection and advocacy system have 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.
- A recipient who has a guardian or other legal representative if all of the following apply:
  - 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.
  - Upon receipt of the name and address of the recipient's legal representative, the protection and advocacy system has contacted the representative and helped in resolving the situation.
  - The representative has failed or refused to act on behalf of the recipient.

The agency, when authorized to release information for clinical purposes by the recipient or the recipient's guardian, or parent of a minor recipient, shall release a copy of the entire NCCMH medical and clinical record to the provider of mental health services. Information gained from outside providers will not be released without specific consent from the recipient or person with the authority to consent.

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function (including the review function under section 143a(1) of the Code) are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena. This includes documents related to Risk Management such as CQI reviews and Incident Reports.

**REFERENCE:** Michigan Mental Health Code 330.1700, 330.1748, 330.1752  
MDHHS Administrative Rule R 330.7051  
Medical Records Access Act MCL 333.26269

**REVIEWED:** 03/24/08; 05/30/10; 07/01/13

**REVISED:** 08/27/07; 07/06/15; July 5, 2019

**APPROVED BY SIGNATURE:**

*Christine Gebhard*

Chief Executive Officer

*09/10/2019*

Date

*Kim Rappleyea*

Director of Recipient Rights

*09/10/2019*

Date