

(was Administrative Policy 9-09-050)

Chapter: **DIRECTLY-OPERATED PROGRAM MANAGEMENT**
Title: **INDIVIDUAL'S RIGHT TO RESTRICT DISCLOSURES
ON THE USE OF PERSONAL HEALTH INFORMATION**

Prior Approval Date: N/A
Current Approval Date: 12/6/07

Approved by: _____

Executive Director

Date

Donald J. Hallock 12/6/07

I. ABSTRACT

This policy establishes the standards and procedures of the Macomb County Community Mental Health Board (MCCMH) for compliance with the Privacy Rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by establishing the conditions under which it will agree to consumer-requested restrictions on the use and disclosure of personal health information for treatment, payment, and operations.

II. APPLICATION

This policy shall apply to the MCCMH administrative offices and to all directly-operated network providers of the MCCMH Board.

III. POLICY

While the MCCMH Board is not required by the HIPAA Privacy Rules to agree to consumer requested restrictions on the disclosure of personal health information, it is the policy of the MCCMH Board to grant those consumer requested-restrictions on the use and disclosure of personal health information for treatment, payment, and operations it determines to be in the best interests of its consumers.

IV. DEFINITIONS

A. None.

V. STANDARDS

- A. The right of a consumer to ask for a restriction on the use and disclosure of their personal health information for treatment, payment and operations is included in the MCCMH Privacy Notice.
- B. The Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information for Treatment, Payment or Operations, MCCMH #306 (Exhibit A), shall be used to document the request and the restriction that has been granted to the consumer, or its denial.
- C. If documentation other than the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information for Treatment, Payment or Operations is used, it must be attached to the form and include the consumer's oral or written consent, the reason for the disclosure, the date and signature of the clinical person responsible for the disclosure, and the consumer's signature, if possible.
- D. MCCMH shall abide by all of the restrictions that we grant, except as described below.
- E. When the individual is in need of emergency treatment and the restricted personal health information is needed to provide the emergency treatment, MCCMH shall disclose the personal health information that is required for treatment and to attach to the personal health information documentation that there be no further uses or disclosures of the restricted personal health information.
- F. In non-emergency situations, when MCCMH receives a request for personal health information that is restricted but required for appropriate treatment, staff shall discuss with the consumer the need to send the personal health information and attempt to obtain his/her agreement. The consumer's agreement should be documented by a note in his/her clinical record.
- G. MCCMH may terminate restrictions without the consumer's agreement. In these cases, only personal health information developed after the date of the restriction will be free of the restriction.

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- H. In any case where staff believe the consumer's restriction can no longer be honored, MCCMH shall terminate the restriction.
- I. The consumer may agree to terminate the restriction either on a one-time basis for a specific purpose or, as treatment progresses, he/she may more clearly understand the impact of the restriction on his/her treatment and may wish to permanently remove the restriction.
- J. Even though consumer agreement is not required, staff shall discuss the change of circumstance with the consumer, ask for his/her agreement and document that agreement on the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information for Treatment, Payment or Operations that is in the clinical record.
- K. Should the consumer refuse to agree to the termination of the restriction, MCCMH shall implement a unilateral termination. This shall also be documented on the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information for Treatment, Payment or Operations.
- L. The personal health information that is created or received during the term of the restriction will be flagged to assure that future uses and disclosures of it are made in accordance with the restrictions which were in place for that period.

VI. PROCEDURES

- A. Approval, Notification, and Acting On a Restriction Request
 - 1. If a consumer asks about requesting a restriction:
 - a. MCCMH staff shall inform the consumer that MCCMH will not accept any restriction that would prevent billing, interfere with the consumer's treatment, or prevent MCCMH from complying with the Privacy Rule, or other laws and regulations; and
 - b. Should a consumer request a restriction that would prevent billing, interfere with the consumer's treatment, or prevent MCCMH from complying with the Privacy Rule, or other laws and regulations, MCCMH staff shall inform the

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consumer of the possible or potential consequences, if relevant, of the restriction to his/her treatment, and the basis for denial of the request.

2. MCCMH staff shall ask the consumer to complete and sign the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information, MCCMH #306 (Exhibit A). **No restriction can be in force unless the consumer has signed the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information.**
3. The MCCMH Program Supervisor or designee, will review the form, make a recommendation whether or not to approve the restriction, and, within ten business days, send the form to the Privacy Officer for final review.
4. The Privacy Officer shall review the form, make a recommendation whether or not to approve the restriction, and within ten business days, return the form to the Program Supervisor.
5. The Program Supervisor or designee shall:
 - a. Inform the consumer of the decision;
 - b. Communicate the content of the approved restriction to appropriate staff;
 - c. Develop a plan for staff to abide by the approved restrictions while performing services;
 - d. Ensure that:
 - 1) The completed Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information is filed in the consumer's clinical record;
 - 2) A copy of the completed form is sent to the Privacy Officer; and
 - 3) The outside of the consumer's clinical record is flagged "RESTRICTED USES AND DISCLOSURES APPROVED," including start and end dates for the restriction.

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6. Any staff member accessing or copying a record must:
 - a. Check in every case to see if there is a restriction on uses and disclosures of personal health information;
 - b. Thoroughly read the restriction and determine if it applies to the use intended (any staff member who is unsure should consult the Privacy Officer, Program Supervisor or the Corporate Compliance Officer before proceeding); and
 - c. Determine how best to proceed while complying with the restriction, e.g. removing certain documents before copying, not disclosing certain information at treatment team meetings, and so forth.
7. If a request for a disclosure comes from an outside entity asking for information that is restricted in part or in full, the MCCMH staff person responsible for the disclosure should send back information requested that is not restricted, if any, and attach a note or orally inform the requestor that:

“Your request for a disclosure has been partially fulfilled because you have requested information that the consumer has asked us to restrict. Any additional questions should be directed to the consumer.”

or

“Your request for a disclosure has been not been fulfilled because you have requested information that the consumer has asked us to restrict. Any additional questions should be directed to the consumer.”

B. Terminating a restriction with the consumer's agreement

1. One-time termination
 - a. If the consumer agrees to a one-time termination of the restriction for a specific purpose, staff shall:
 - 1) Document the disclosure on the Consumer Request For Restriction on

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the Uses and Disclosures of Personal Health Information or attach other documentation to the form.

- 2) Retain a copy of the documentation in the paper clinical record; and
- 3) Send a copy of the documentation to the Privacy Officer.

2. Permanent termination

- a. MCCMH staff may suggest permanent termination of the restriction to the consumer.
- b. If the consumer agrees to removal of the restriction, the staff member shall:
 - 1) Document the removal of the restriction on the original Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information or attach documentation to the form stating that the restriction is being removed for all personal health information;
 - 2) Complete the end date for the restriction on the flag on the front of the clinical record;
 - 3) Retain a copy of the documentation in the clinical record; and
 - 4) Send a copy of the documentation to the Privacy Officer.

C. Terminating a restriction without the consumer's agreement

1. Before terminating a restriction without the consumer's consent, MCCMH staff shall first contact the consumer and seek his/her agreement with the termination.
2. Termination of the restriction may be based on one or more of the following reasons:
 - a. The restriction is interfering with the consumer's treatment to a degree that service quality or consumer health and safety may be negatively impacted;

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- b. The restriction compromises the organization's ability to provide medically necessary care; or
 - c. The restriction requires the organization to do something that may be a violation of regulation or law.
 3. The Program Supervisor should consult with the Privacy Officer or the Corporate Compliance Officer regarding whether there is adequate basis for restriction termination.
 4. MCCMH staff shall:
 - a. Inform the consumer either orally or in writing that the restriction will be terminated. If notified orally, the clinician should document the notice on an attachment stapled to the Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information. The documentation should include the reason for termination, consultation held with the Privacy Officer or the Corporate Compliance Officer, the method for notifying the consumer, the effective date of the termination; and
 - b. Note the date of termination of the restriction on the flags in the clinical record and other databases, but leave the flags in place regarding the personal health information developed prior to the termination date of the restriction.
- D. Terminating a restriction in emergency situations
1. Although, in emergency situations, agreement by the consumer is not required, MCCMH staff must make a reasonable attempt to secure the consumer's agreement to release the restricted information if the consumer can consent and the termination will not interfere with treatment. MCCMH staff should document the attempt to secure consumer agreement in a progress note.
 2. If the disclosure is oral, MCCMH staff shall inform the emergency provider that the personal health information disclosed includes restricted information and that any subsequent disclosures must be made in compliance with the restriction. Documentation of the communication with the emergency provider shall be contained in a progress note in the clinical record.

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3. If the restricted information is sent electronically or in writing, the clinician should give notice in writing (or electronically) to the emergency provider that the disclosure contains restricted information and that any subsequent disclosures must be made in compliance with the restriction. A copy of this written notice shall be contained in the clinical record.

VII. REFERENCES / LEGAL AUTHORITY

- A. Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191
- B. 45 CFR Part 164, §§ 502, 504, 506, 508, 510, 512, 514, and 522.

VIII. EXHIBIT

- A. Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information, MCCMH #306

Macomb County Community Mental Health

Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information

Consumer Name: _____
Social Security Number: _____
DOB: _____ Telephone Number: _____
Address: _____

Restriction requested: _____

Signature of Consumer (required): _____

INTERNAL USE:

Reviewed with consumer on _____ by _____

Print/type name of reviewer and position: _____

Face to Face: _____ Phone call: _____

Unit Supervisor Recommendation Approve Restriction
 Do Not Approve

Signature of Unit Supervisor/Designee: _____ Date: _____

Name of Unit Supervisor/Designee: _____

Privacy Officer Decision Approve Restriction
 Do Not Approve

Signature of Privacy Officer: _____ Date: _____

Name of Privacy Officer: _____

MCCMH #306 (4/03)

**Consumer Request For Restriction on the Uses and Disclosures of Personal Health Information, MCCMH #306
MCCMH MCO Policy 10-330, Exhibit A**