

(was MCCMH Policy 3-02-025)

Chapter: **CONFIDENTIALITY**
Title: **RELEASE OF CONFIDENTIAL CONSUMER INFORMATION --
COURT ORDERS / SUBPOENAS**

Prior Approval Date: 12/22/04
Current Approval Date: 3/3/10

Approved by: _____
Executive Director

_____ 03/03/10
Date

I. Abstract

This policy establishes standards and procedures for the internal and external release of confidential information regarding of services of the Macomb County Community Mental Health (MCCMH) Board pursuant to subpoenas and court orders.

II. Application

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

III. Policy

It is the policy of the MCCMH Board that confidential information from consumer clinical records shall be released upon the presentation of court orders or subpoenas only pursuant to the provisions of this policy.

IV. Definitions

A. Privileged Communication

A communication that is protected by law from compelled disclosure in a legal proceeding, or that cannot be used against the person who made it. Examples include:

1. Communications made between a consumer and a psychiatrist or psychologist (or someone under his/her supervision) while engaged in the examination, diagnosis or treatment of a recipient for a mental condition) or between other persons while they are participating in such examination, diagnosis, or treatment.

2. Communications made between a consumer and a licensed master's social worker, limited licensed master's social worker, licensed bachelor's social worker, limited licensed bachelor's social worker, registered social service technician, or limited registered social service technician, or an agency of which the mental health professional is an agent, during the course of professional services.
 3. Communications made between a consumer and a licensed professional counselor or a limited licensed counselor during the course of professional service.
- B. Other definitions are contained in MCCMH MCO Policy 6-001, "Release of Confidential Information -- General."

V. Standards

- A. Where information is transmitted by facsimile (fax), the provisions in MCCMH MCO Policies 6-004, "Facsimile Document Transmission," and 6-005, "Notice of Confidentiality," shall be followed.
- B. The consumer clinical record is comprised of all information pertaining to services provided to the individual by directly-operated or contract network providers of the MCCMH Board. Individual providers may hold any or all portions of the record on behalf of the Board for the purpose of providing services to the consumer or subsequent to the termination of services prior to archival record storage.
- C. Confidential information regarding an identifiable consumer of MCCMH services shall be released upon presentation of a valid court order or subpoena for production of records or testimony issued by a court of record, unless the information is privileged by law. Privileged communications shall not be disclosed by order or subpoena of a court of record or legislature unless disclosure is permitted under a release of information because of an express waiver of privilege or because of other conditions that, by law, permit or require disclosure (see MCCMH MCO Policy 9-610, "Privileged Communications.")
- D. Consumer record information shall be released only as specifically described in the court order/subpoena. Caution shall be exercised to determine what (if any) materials should not be released on the basis of detrimental impact on the consumer's or third persons. A list shall be maintained in the consumer's clinical record indicating the materials released, to whom they were released, and the date on which release was made.
 1. The MCCMH Clinical Records office shall be provided with the original of all court orders or subpoenas for the production of records regarding services to a Board consumer's by the receiving provider immediately upon receipt.

2. The appropriate provider manager shall be provided with copies of all court orders or subpoenas for production of records regarding services to a MCCMH consumer by the receiving provider or the MCCMH Clinical Records office immediately upon receipt, with a copy placed in the individual consumer's clinical record.
3. All original court orders or subpoenas for testimony regarding an MCCMH consumer shall remain with the person who was served.
4. County Corporation Counsel, the MCCMH Deputy Director, and the appropriate provider manager shall be provided with copies of all court orders or subpoenas for testimony regarding services to a Board consumer's by the receiving provider or the Clinical Records office immediately upon receipt, with a copy placed in the individual consumer's clinical record.
5. In the event that a lawsuit is initiated against MCCMH or an employee, any pertinent clinical records which are due for disposal shall not be destroyed until resolution of the lawsuit.

VI. Procedures

- A. Procedures shall be contained in Provider manuals.

VII. References / Legal Authority

- A. MCL 330.1748
- B. 1990 MDMH Administrative Rules, R 330.7051
- C. MDCH Guidelines for Disclosure of Confidential or Privileged Information, XX-X-XXXX / GL (11-19-96) (dft)
- D. Commission on Accreditation of Rehabilitation Facilities (CARF) 2009 Standards Manual, §I.K., "Rights of Persons Served," 9., p. 83; and §5.B., "Records of the Persons Service," 2 - 3, pp. 241 - 242.
- E. MCCMH MCO Policy 6-001, "Release of Confidential Information -- General"
- F. MCCMH MCO Policy 6-003, "Release of Confidential Consumer Information -- Court Orders / Subpoenas"
- G. MCCMH MCO Policy 6-004, "Facsimile Document Transmission"
- H. MCCMH MCO Policy 6-005, "Notice of Confidentiality"

MCCMH MCO Policy 6-003
**RELEASE OF CONFIDENTIAL CONSUMER INFORMATION --
COURT ORDERS / SUBPOENAS**
Date: 3/3/10

VIII. Exhibits

- A. MCCMH #113, "Documentation for Release of Consumer Information Not Requiring Consumer Authorization" (sample)
- B. Cover Letter (sample)

Date

Heading

Dear _____:

Pursuant to MCCMH policy, the following materials are being released in accordance with your request for "all records" of the herein identified consumer: (list them) _____, _____, and _____. If additional materials are desired, please submit another request specifically indicating what materials you need and the time period for which the information is being requested.

Sincerely,

Your Name,

Your Title

Enclosure(s)