

(was MCCMH Policy 3-02-030)

Chapter: **CONFIDENTIALITY**
Title: **CONSUMER ACCESS TO CLINICAL RECORDS**

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Current Approval Date: 8/06/13

Approved by: _____ Executive Director
Date: 08/06/13

I. Abstract

This policy establishes the standards of the Macomb County Community Mental Health Board (MCCMH) to ensure that consumers have access to the information contained in their clinical records

I. Application

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

III. Policy

It is the policy of the MCCMH Board that a consumer is the owner of the information contained in his/her clinical record. The MCCMH Board is the owner of the physical record and is the holder of the information.

IV. Definitions

A. Clinical Record
A confidential file of information maintained for each consumer of MCCMH services/treatment. The record shall contain, at minimum, information pertinent to the services/treatment provided to the consumer, financial information, informed consent documents, statistical information pertinent to the legal status of the consumer, (demographics, etc.) information required by the Michigan Mental Health Code or other provision of law, and information required by MCCMH MCO policies.

V. Standards

A. Confidential information entered into a consumer's clinical record **subsequent to March 28, 1996** shall be disclosed to a competent adult consumer, upon the consumer's written request (see, for example, Exhibit A).

1. The provider holding the consumer's clinical record, or the one which provided the most recent service and closed the clinical record, shall respond to a completed written request for access.
 2. Release shall be done as expeditiously as possible but in no event later than 30 days following the request.
- B. Where the consumer has been adjudicated legally incompetent and has been appointed a guardian, or where the record is to be released to third parties, the MCCMH Board or its agents may exercise discretion in withholding from access specific information authorized pursuant to a release based on provisions of federal or state law concerning the detrimental impact of the specific information on the consumer or third parties. Examples of detrimental impact include, but are not limited to, information pertaining to other family members who are involved in therapy; the criminal activity of a third person which was alleged in therapy, but not proven; or confidential information about a third party that was placed into the record without his/her knowledge or consent.
1. The provider director, supervisor, or designee may make a determination of detrimental impact within 3 business days from the date of the request if the record is on site or within 10 business days from the date of the request if the record is off site.
 2. The response shall take one of the following forms:
 - a. Granting access to the information, with the review/release to occur in the presence of the supervisor or his/her designee.
 - b. Granting access to a portion of the information, with documentation of material withheld pursuant to law being inserted in the clinical record and with the review/release to be as prescribed in V.B.2.a.
 - c. Denying access in writing, with documentation of the reasons for the decision being provided to the individual who submitted the request.
 - d. Issuing a written notice to extend the response period to permit the clinical record information to be received and copied if the record has been converted to microfilm (or other microform).
 3. Appeal of a decision to withhold from access information contained in the clinical record of a consumer must be submitted in writing, stating the reason(s) for the appeal, to the MCCMH Office of Recipient Rights.
- C. The consumer (parent/guardian) may challenge the accuracy, completeness, timeliness, or relevance of factual information in the clinical record and may submit additional information, correcting information, or views which differ from those expressed in materials in the record.

- D. Information regarding HIV, AIDS, ARC and substance abuse / treatment that pertains to third parties is separately statutorily protected by 42 CFR Part 2, the Public Health Code, or MCL 333.5131, and is not “detrimental information” under the provisions of this policy. The confidentiality of HIV, AIDS, ARC or alcohol and drug abuse information protected by 42 CFR Part 2, the Public Health Code or MCL 333.5131, does not prohibit a consumer’s access to his/her own clinical records, including the opportunity to inspect and copy the records. However, access to such information pertaining to third parties shall not be released with the clinical record without specific release from those respective parties.
- E. Documentation of the access to the record shall be maintained in the clinical record, including materials disclosed, date of disclosure, and a copy of the written request on the basis of which access to the clinical record was made.

VI. Procedures

- A. The consumer (parent/guardian/attorney) shall request a copy of his/her clinical record information, in writing (see Exhibit A for an example of a consumer request for access to clinical record information). The request shall contain the following:
 - 1. The name of the requestor;
 - 2. The name of the consumer (if different);
 - 3. The requestor’s relationship to the consumer;
 - 4. Whether the consumer has a court appointed legal guardian; and
 - 5. The nature of the request (review/copy/both) and recognition of the qualified right of the holder of the record to limit access to confidential information where applicable pursuant to federal or state law.
- B. If the consumer (parent/guardian) requests or appears to need assistance, MCCMH provider staff shall help complete the application form.
- C. The consumer (parent/guardian) shall submit the request to the provider director, supervisor or designee.
- D. Where the requesting party is a competent adult consumer (i.e. he/she has no court appointed legal guardian):
 - 1. The provider director, supervisor or designee shall authorize the review/release as requested by checking the appropriate box on example form, Exhibit A, and providing the date and his/her signature in Section II of the application.
 - 2. The provider director, supervisor or designee shall schedule a time with the competent adult consumer for review/release of the confidential information as expeditiously as possible, but in no event later than thirty (30) days after the request or prior to the consumer’s release from treatment, whichever occurs first.

3. The provider director, supervisor or designee may extend the response time to the consumer for up to five (5) days if a written notice was issued to permit the clinical record information to be copied by and received if the record has been converted to microfilm (or other microform).
 4. At the scheduled meeting, the provider director, supervisor or designee shall be available to review the records with the consumer and explain clinical content and/or medical terminology, as needed. The consumer may choose not to have staff in attendance for the review.
- E. Where the consumer has been adjudicated legally incompetent and has been appointed a guardian, or where the information is to be released to third parties, the provider director, supervisor or designee may exercise discretion in withholding from access specific information that may have a detrimental impact on the consumer or third parties (but see V.D. above), and shall do the following:
1. Within twenty-four (24) hours of receipt of the request for information, the provider director, supervisor or designee shall review the file/material requested and consult with the consumer's therapist/case manager/supports coordinator to determine if disclosure of any of the requested material is, or may be, detrimental to the consumer or others.
 2. No detrimental impact found:
 - a. Within four (4) working days of the decision, the provider director, supervisor or designee shall authorize the review/release as requested by checking the appropriate box on example form, Exhibit A, and providing the date and his/her signature in Section II of the application.
 - b. The provider director, supervisor or designee shall schedule a time with the requestor for review/release of the confidential information as expeditiously as possible, but in no event later than thirty (30) days after the request or prior to the consumer's release from treatment, whichever occurs first.
 - c. The provider director, supervisor, or designee may extend the response time to the requestor (for up to five (5) days) if a written notice was issued to permit the clinical record information to be copied by and received from the Clinical Records office if the record has been converted to microfilm (or other microform).
 - d. At the scheduled meeting, the provider director, supervisor or designee shall be available to review the records with the requestor and explain clinical content and/or medical terminology, as needed. The requestor may choose not to have staff in attendance for the review.
 3. Detrimental impact found:

- a. Within two (2) working days of the decision, the provider director, supervisor or designee shall check the appropriate box in Section II of the application (Exhibit A, example), provide the reason(s) he/she believes disclosure of the information would be detrimental to the consumer and/or others, the date, and his/her signature.
 - b. The provider director, supervisor or designee shall notify the requestor of the decision. The provider director, supervisor or designee shall explain to the requestor that a Privacy Complaint regarding the decision may be made to the Office of the Recipient Rights. The provider director, supervisor or designee shall also explain that the Complaint must be in writing, must specify why the material being contested should be disclosed to the requestor and must be submitted within thirty (30) days of notification of the original decision limiting or denying access.
 - c. If the requestor does not file a Complaint against the decision to authorize, limit, or deny access to the requested materials, the provider director, supervisor or designee, shall schedule a time with the requestor for review/release of the confidential information to explain clinical content and/or medical terminology, as needed. The requestor may choose not to have staff in attendance during the review. Release of the confidential information shall be done as expeditiously as possible, but in no event later than thirty (30) days after the request or prior to the consumer's release from treatment, whichever occurs first.
4. Appealing a finding of detrimental impact:
- a. The requestor may file a Complaint regarding the provider director, supervisor or designee's decision limiting/denying access by submitting a written complaint to the MCCMH Officer of Recipient Rights.
 - b. The Recipient Rights Director shall review the application and investigate the allegations/reasons submitted by the requestor in support of the complaint regarding the decision to withhold any/all of the materials in the consumer's clinical record.
 - c. With thirty (30) working days of receipt of the Complaint, the MCCMH Recipient Rights Director shall make a decision as to the disclosure of the information being contested. The decision may take one of three forms:
 - 1) Upholding the decision of the provider director, supervisor or designee, to limit/deny access;
 - 2) Reversing the decision of the provider director, supervisor or designee, authorizing access; or
 - 3) Modifying the decision of the provider director, supervisor or designee, authorizing access to some portion (specified) of the

contested materials but upholding the decision to withhold other portions of the materials.

- d. Within three (3) additional working days, the MCCMH Deputy Director shall review the decision, and, if in concurrence, provide the requestor, the provider director, supervisor or designee, with written notification of the decision. The Deputy Director may request reconsideration, in whole or in part, by the Recipient Rights Director.
- e. If the request for access to the clinical record is granted in whole or in part, the provider director, supervisor or designee shall schedule a time with the requestor for review / release of the information to explain clinical content and/or medical terminology, as needed. The requestor may choose not to have staff in attendance during the review. Release of the confidential information shall be done as expeditiously as possible., but in no event later than the earlier of fifteen (15) working days after the decision or prior to the consumer's release from treatment.

F. Consumer Request to Amend Clinical Record

- 1. After the consumer (parent/guardian/attorney) has reviewed the clinical record, he/she may challenge the accuracy, completeness, timeliness, or relevance of information in the clinical record by making a written request to insert into the record a statement correcting or amending the information at issue.
- 2. The provider director, supervisor or designee, or the Privacy Officer, if the clinical record is closed, shall log all Request for Amendments including the date of the request, the date received, name of the consumer, and primary provider.
- 3. The provider director, supervisor or designee, or the Privacy Officer, if the clinical record is closed, should then contact the current (or former) primary provider and notify it of the request and the content of the request.
- 4. The provider, director, supervisor or designee, or the Privacy Officer, if the record is closed, will ensure that appropriate staff are directed to make the corrections by attaching the amended information directly to the personal health information being amended. This action shall occur within ten (10) business days of the receipt of the written request to amend the record.
- 5. Both the amended and original information will be sent together for any future disclosures of this personal health information either internally or externally. The statement shall be part of the consumer's clinical record.
- 6. Upon the consumer's written request, amended information will be sent to a specifically identified entity(ies) which had previously received the original, uncorrected information.
- 7. The consumer shall be informed of all actions taken under this provision.

G. Disposition of the Application for Access to the Clinical Record

1. The provider director, supervisor or designee, or the Privacy Officer, if the clinical record is closed, shall scan the application (Exhibit A, example), into the consumer's FOCUS electronic medical record, under legal documents. The original shall be given to the consumer (parent/guardian/attorney).

VII. References / Legal Authority

- A. Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191
- B. 45 CFR § 164.524; § 160.202
- C. 42 CFR § 2.23
- D. MCL 330.1748
- E. MCL 330.1749
- F. 1998 Michigan Department of Community Mental Health (MDCH) Administrative Rules, R 330.7051
- G. MCCMH Policy 6-001, "Release of Confidential Information - General"
- H. Commission on Accreditation of Rehabilitation Facilities (CARF) 2011 Standards Manual § 1. E., "Legal Requirements," pp. 51-52; §2. G., "Records of the Persons Served," pp. 133-134.

VIII. Exhibits

- A. Consumer Application for Access to Clinical Record Information, (example)

**MACOMB COUNTY COMMUNITY MENTAL HEALTH
APPLICATION FOR ACCESS TO CLINICAL RECORD INFORMATION**

SECTION I:

I, _____, hereby request access to information from the clinical record of _____.
(name of consumer)

My relationship to the consumer is: (check one) consumer / self parent guardian other (explain)

The consumer: (check one) has does not have a court appointed legal guardian.

DOCUMENTATION OF THE RELATIONSHIP TO THE CONSUMER AND PERSONAL IDENTIFICATION MAY BE REQUIRED PRIOR TO DISCLOSURE OF THE INFORMATION REQUESTED.

I am requesting an appointment to review information in the clinical record. I understand and accept that the provider director, supervisor and/or his/her designee will be present when I am reviewing the materials in the record. I understand and accept that I may not remove any materials from the record or destroy any materials in the record. I may submit additional information for the record which may correct information contained in the clinical record or which may express views that differ from those expressed in materials in the record.

I am requesting an appointment to receive a copy of any/all information in the clinical record. I understand and accept that there may be a charge for costs of duplicating the information. Specific information requested, if any:

I understand and accept that the program is the holder of the clinical record and may, if the consumer has a court appointed guardian, or if the information is to be released to third parties, pursuant to the Michigan Mental Health Code, withhold information which it determines to be detrimental to the consumer or other persons. I understand that information about HIV, AIDS, ARC and substance abuse / treatment that pertains to third parties is separately statutorily protected under 42 CFR Part 2, the Public Health Code, or MCL 333.5131, and may not be disclosed to me without a valid release from those third parties.

_____ (date)

_____ (signature)

SECTION II: (TO BE COMPLETED BY THE PROGRAM)

A. RELEASE TO COMPETENT ADULT CONSUMER:

I have verified that the above named individual is authorized to receive the information requested above. An appointment has been scheduled for the review or release on: _____ (date)

B. RELEASE TO CONSUMER WITH COURT APPOINTED LEGAL GUARDIAN OR TO THIRD PARTIES

I have reviewed the information requested above and have recommended that the following information not be disclosed because I believe that such disclosure would be detrimental to the consumer and/or others for the following reasons:

_____ (date)

_____ (signature)

SECTION III: (TO BE COMPLETED BY MCCMH OFFICE OF RECIPIENT RIGHTS)

(if requestor has filed complaint in opposition to withholding information based on detrimental impact)

I have reviewed the recommendation of the provider director, supervisor or designee (pursuant to this request for access) regarding the withholding of information on the basis of detriment to the consumer and/or other persons.

I support the recommendation and authorize the provider director, supervisor or designee to withhold the specified information.

I do not support the recommendation of the provider director, supervisor or designee and authorize him/her to release the specified information.

I am modifying the recommendation of the provider director, supervisor or designee. I hereby authorize the following action with regard to the disclosure of the requested information.

_____ (date)

_____ (signature)

THIS FORM TO BE SCANNED INTO Consumer's Electronic Medical Record

ORIGINAL TO Consumer / Parent / Guardian