

(was MCCMH Policy 9-07-130)

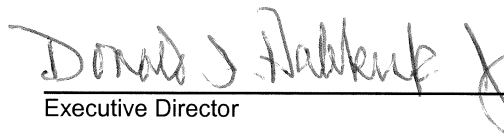
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Chapter: **RECIPIENT RIGHTS**  
Title: **RELEASE OF CLINICAL RECORDS TO MICHIGAN PROTECTION AND  
ADVOCACY SERVICES**

Prior Approval Date: 12/20/06  
Current Approval Date: 8/05/09

Approved by: BOARD ACTION

 8/5/09  
Executive Director Date

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**I. Abstract**

This policy establishes the standards and procedures of the Macomb County Community Mental Health Board (MCCMH) for the release of individual recipient records to the Michigan Protection and Advocacy Service (P & A).

**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 access to individual recipient records by P & A shall be promptly allowed pursuant to provisions of Michigan Statute, Mental Health Code, PA 258 of 1974, as amended.

**IV. Definitions**

**A. Abuse**

An act, or failure to act, by an employee of a facility, which was performed or was failed to be (continued) performed, knowingly, recklessly, or intentionally and which caused, or may have caused, injury or death, including rape, striking, use of excessive force when initiating bodily restraint, and use of bodily or chemical restraint contrary to federal and state laws and regulations.

**B. Complaint**

Formal declaration derived from a competent source which includes a plain and concise statement of the facts constituting the matter, each separate material allegation, and the name of the person aggrieved, and the name of the person, if known, or agency declared to have been responsible for the harm.

**C. Neglect**

A negligent act or omission by any individual responsible for providing services or rendering care or treatment which caused or may have caused injury or death to a person with mental illness or a person with developmental disabilities or which placed such an individual or person at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan, the failure to provide adequate nutrition, clothing, or health care, or the failure to provide a safe environment, including the failure to maintain adequate numbers of appropriately trained staff.

**D. Michigan Protection and Advocacy (P & A) Agency**

The agency designated by the Governor of the State of Michigan, pursuant to the Michigan Mental Health Code to protect and advocate for the rights of persons with mental illness and persons with developmental disabilities, to investigate allegations of abuse and neglect, to be independent from service providers, and pursue legal, administrative or other remedies to ensure the enforcement of federal and state statutes.

**Note:** Definitions of abuse and neglect are statutorily derived and are only for the purposes of release of records to P & A under this policy and are different from those used for internal investigations per MCCMH MCO Policy 9-510, "Recipient Rights Investigation."

**V. Standards**

**A. Access for P & A Representatives**

1. MCCMH and its network providers shall grant P & A representative(s) access to the record of a recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.
2. MCCMH and its network providers shall grant a P & A representative access to the records of a recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:

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- a. Because of mental or physical condition, the recipient is unable to consent to the access.
  - b. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the State.
  - c. The Protection and Advocacy system has 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.
3. The provider shall grant P & A representative(s) access to the record of a recipient who has a guardian or other legal representative if all the following apply:
- a. 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;
  - b. Upon receipt of the name and address of the recipient's legal representative, the Protection and Advocacy system has contacted the representative and offered assistance in resolving the situation; and
  - c. The representative has failed or refused to act on behalf of the recipient.

**B. Special Considerations**

**1. HIV/AIDS/ARC Information**

If the individual's record includes information about tests for, counseling for, or infection with Human Immunodeficiency Virus (HIV), including any care or treatment regarding Acquired Immune Deficiency Syndrome (AIDS), or AIDS Related Complex (ARC), then state law requires that the release authorization must specifically authorize release of information regarding HIV Infection/AIDS/ARC or that portion of the record must be deleted from the record reviewed or released.

**2. Drug or Alcohol Information**

If the facility is a federally assisted provider and holds itself out as providing specialized drug or alcohol abuse services and the individual receives such services, federal law requires that the release authorization must specifically authorize release of information regarding alcohol or drug abuse services or that portion of the record must be deleted from the record reviewed or released.

C. Release Form

1. Authorization for review or release of records of recipients, where required pursuant to this policy, shall be on a release of information form which meets the requirements of state and federal law for former recipients and for deceased and current recipients, in accordance with other requests in the policy or practice of the provider.

D. Charges for Duplication

Costs for copies made for P & A shall be the same as the Michigan Department of Community Health (MDCH) Freedom of Information Act Guideline, 01-C-1116(e) (GL-02).

E. Warning That Further Release is Detrimental.

1. If the provider determines that further release by P & A of a specific portion of an individual's record would create substantial and serious physical or mental harm to the individual, then it shall inform P & A of that fact in writing so that the P & A representative can conform to the requirements of federal and state law.
2. A determination that section(s) of the record are detrimental to the individual shall not preclude the provider from providing P & A access to the complete record, including the section(s) deemed confidential.

**VI. Procedures**

- A. A provider shall determine the individual responsible for responding to a request for records from P & A staff. The designated staff member of the provider, having verified that the conditions for P & A access have been met, shall ensure that P & A staff receive lawful or authorized access to an individual's complete clinical record by allowing review in an appropriate supervised/monitored setting within 24 hours, excluding weekends and holidays.
- B. The designated provider staff member shall promptly complete duplication of the record when requested by P & A with the same priority it would have been given had it been the provider's own request.

**VII. References / Legal Authority**

A. Federal Statutes

1. Protection and Advocacy for Mentally Ill individual's Act, 42 USC 10801 et seq.

2. Developmental Disabilities Assistance and Bill of Rights Act, 42 USC 6001 et seq.
  3. 42 USC 290ee-3
- B. Federal Regulations
1. 42 CFR Part 2
- C. Michigan Mental Health Code
1. MCL 330.1702
  2. MCL 330.1722
  3. MCL 330.1726
  4. MCL 330.1748
  5. MCL 330.1931
- D. MDCH Administrative Rules
1. R 330.7003
  2. R 330.7009
  3. R 330.7035
  4. R 330.7051
- F. Michigan Public Health Code
1. MCL 333.5131
- G. MDCH Guideline for Individual Records: Release to Protection & Advocacy, 07-C-1748 / GL -00 (7-6-92) (draft)

**VIII. Exhibits**

- A. None.