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Disclosure Of Confidential or Privileged Information

POLICY

It is the policy of the Detroit Wayne Integrated Health Network (DWIHN) that information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential, shall not be open to public inspection, and shall be disclosed only in the circumstances and under the conditions set forth in this policy

PURPOSE

To provide policy direction to ensure that information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential, shall not be open to public inspection, and shall be disclosed only in the circumstances and under the conditions set forth in law and in this policy

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWIHN Board, DWIHN Staff, Contractual Staff, Access Center, Network Providers, Crisis services vendor
2. This policy serves the following populations: Adults, Children, I/DD, SMI/SEI, SED, Autism
3. This policy impacts the following contracts/service lines: MI-HEALTH LINK, Medicaid, Autism, Grants, General Fund

KEYWORDS

Confidential Information

Consanguinity

Holder of the record

Privileged Communication

Psychiatrist

Psychologist

STANDARDS

Each contractor shall establish procedures for the disclosure of confidential information or privileged communication which comply with Sections 748, 748a and 750 of the Michigan Mental Health Code, and applicable Administrative Rules and which contain, at a minimum, the following provisions:

1. All information in the record of a recipient and all other information acquired in the course of providing mental health services to the recipient is confidential.
2. A summary of section 748 of the Mental Health Code shall be made part of each recipient's file.
3. Confidential information:
 - a. If confidential information is to be disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought and when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought; i.e., disclosure based upon an authorized purpose and the requestor's "need to know".
 - b. Any person receiving confidential information shall disclose that information to others only to the extent consistent with the authorized purpose for which the information was obtained.
 - c. A record shall be kept of disclosures and shall include all of the following:
 1. Information released.
 2. To whom it was released.
 3. The purpose claimed by the person requesting the information and a statement describing how the disclosed information is germane to the stated purpose.
 4. The provision of MCL 330.1748, or other state law, under which disclosure was made.
 5. A statement that the receiver of disclosed information was informed that further disclosure must be consistent with the authorized purpose for which the information was released.
 6. The expiration date for use of information.
 7. In circumstances where consent is required, documentation that such consent was obtained from the recipient or his/her legally authorized representative.

- d. For case record entries made subsequent to March 28, 1996, confidential information in the recipient's record made confidential by MCL 330.1748 shall be disclosed to an adult recipient, upon his/her request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with the adult recipient's request for disclosure as expeditiously as possible, but in no event not later than 30 days after receipt of the request or, if the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.
- e. When requested, confidential information shall be disclosed only under one or more of the following circumstances:
 - 1. Pursuant to order or subpoena of a court of record or legislature for non-privileged information.
 - 2. To a prosecuting attorney as necessary for him/her to participate in a proceeding governed by the Mental Health Code.
 - 3. To an attorney retained by or appointed to represent the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.
 - 4. To the Auditor General.
 - 5. When necessary to comply with another provision of law, e.g., Children's Protective Services Act.
 - 6. To MDHHS if the information is necessary in order for it to discharge a responsibility placed upon it by law.
 - 7. To a surviving spouse of the recipient, or if there is no surviving spouse, to the individual or individuals most closely related to the deceased recipient within the third degree of consanguinity (blood relationship) for the purpose of applying for and receiving benefits, but only if spouse or closest relative has been designated the personal representative or has a court order.
 - 8. To the Michigan Department of Human Services Child Protective Services caseworker/administrator within 14 days following receipt of his/her written request for mental health records and information pertinent to his/her investigation of child abuse or child neglect. (MCL 330.1748a)
- f. Except as provided in subsection 3d preceding, confidential information may be disclosed if consent is obtained from the recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court appointed personal representative or executor of the estate of a deceased recipient to all of the following:
 - 1. Providers of mental health services to the recipient.
 - 2. Any individual or authority if consent has been obtained.
- g. Except as provided in subsection 3d preceding, each contractor shall develop specific procedures for the withholding of information based upon potential detriment to the recipient or others which include at a minimum:

1. Review of the request and determination as to detriment by the director of the provider in charge of the recipient's individual plan of service.
 2. If the director of the provider declines to disclose information because of possible detriment to the recipient or others, then the director of the provider shall determine whether part of the information may be released without detriment.
 3. A determination of detriment shall not be made if the benefit of disclosure outweighs the detriment to the recipient.
 4. If the record is located on-site, a determination of detriment shall be made within 3 business days from the date of the request. If the record is located at another site, the determination shall be made within 10 business days from the date of the request.
 5. The director of the provider shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information.
 6. If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he/she may file a recipient rights complaint.
 7. Information shall be provided to private physician or psychologist appointed by the court or retained to testify in civil, criminal, or administrative proceedings, as follows:
 - i. They shall be notified before their review when the records contain privileged communication, which cannot be disclosed in court, unless disclosure is permitted because of express waiver of privilege or by law, which permits or requires disclosure.
 8. A prosecutor may be given non-privileged information or privileged information which may be disclosed if it contains information relating to names of witnesses to acts which supports the criteria for involuntary admission, information relevant to alternatives to admission to hospital or facility and other information designated in policies of DWIHN.
- h. Information shall be provided to attorneys, other than prosecuting attorneys, as follows:
1. 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.
 2. 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.

3. 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.
- i. Information shall be provided to private physicians or psychologists appointed or retained to testify in civil, criminal, or administrative proceedings as follows:
 1. 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 under section 750(1) of the act.
 2. 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.
 - j. A prosecutor may be given nonprivileged information or privileged information that may be disclosed pursuant to section 750(2) of the act if it contains information relating to participation in proceedings under the act, including all of the following information:
 1. Names of witnesses to acts that support the criteria for involuntary admission.
 2. Information relevant to alternatives to admission to a hospital or facility.
 3. Other information designated in the policies of the provider.
 - k. Confidential information may be disclosed in the discretion of the holder of the record without the consent of the recipient, legally empowered guardian, or parent with legal custody of a minor recipient;
 1. As necessary in order for the recipient to apply for or receive benefits only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service.
 2. As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the recipient can be identified from the disclosed information only if:
 - i. Such identification is essential in order to achieve the purpose for which the information is sought, or
 - ii. If preventing such identification would clearly be impracticable;

but in no event if the recipient is likely to be harmed by the identification.

3. To providers of mental or other health services or a public authority if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.
- l. If required by federal law, the DWIHN-contracted service site shall grant a representative of the Michigan Protection and Advocacy Services (MPAS) access to the records of all of the following in accordance with federal law and Section 748(8) of the Michigan Mental Health Code, being PA 258 of 1974 as amended by PA 290 of 1995.
 1. A recipient if the recipient, guardian of recipient, parent of a minor, or other empowered representative has given consent for the access.
 2. A recipient including a recipient who has died or whose location is unknown if all of the following apply:
 - i. Recipient is unable to consent to this access because of a mental or physical condition.
 - ii. Recipient does not have a guardian or other legal representative or the recipient's guardian is the State.
 - iii. MPAS 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. A recipient who has a guardian or other legal representative if all of the following apply:
 - i. MPAS has received a complaint or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
 - ii. MPAS has contacted the recipient's legal representative and offered assistance in resolving the situation.
 - iii. The representative has failed or refused to act on behalf of the recipient.
- m. 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 Mental Health Code are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this section.

4. Privileged Communications

- a. Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

- b. Privileged communications shall be disclosed upon request under 1 or more of the following:
 1. If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.
 2. If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.
 3. If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communication made could be used in such a proceeding.
 4. If in a civil action by or on behalf of the patient or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.
 5. If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
 6. If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.
 - c. In a proceeding in which subsections b1 and b2. above prohibit disclosure of communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, non-profit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
 - d. Each contractor shall develop written policies and procedures for disclosing privileged communications pursuant to duty to warn which complies with Section 946 of the Michigan Mental Health Code, specifically MCL 330.1946 (1) - (5).
5. The following apply to both confidential and privileged information:
- a. The holder of the record, when authorized to release the 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 medical and clinical record to the provider of mental health services. Reasonable charges for copying the record may be assessed

to the requestor.

- b. A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record.
 1. The recipient, guardian, or parent of a minor recipient shall be allowed to insert into the record a statement correcting or amending the information at issue.
 2. The statement above shall become part of the record.
6. Each contractor, and their subcontractors shall establish procedures to implement the provisions of this policy.

QUALITY ASSURANCE/IMPROVEMENT

DWIHN shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWIHN staff, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

- A. 45 CFR 164.512 (j)
- B. Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1748, 330.1748a, 330.1750
- C. Michigan Administrative Code, R330.7051

RELATED POLICIES

1. Consent to Treatment and Services
2. [Customer Service Medical Record Request Retrieval Procedure](#)
3. Individual Plan of Service/Person-Centered Planning
4. Treatment with Dignity and Respect

CLINICAL POLICY

YES

INTERNAL/EXTERNAL POLICY

EXTERNAL

Approval Signatures

Step Description	Approver	Date
Final Approval Policy	Eric Doeh: President and CEO	03/2023
Stakeholder Feedback	Allison Smith: Project Manager, PMP	02/2023

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