

# BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

Policy: Confidentiality (10A)		Application: BCCMHA Staff & Providers
Reviewed 8/17/2022	Revised 12/21/2022	First Effective 1/2/1997

## **I. PURPOSE**

To define the limits and procedures for disclosing information about community mental health and substance use disorder services outside the agency.

## **II. POLICY**

It is the policy of the BCCMHA Board to adhere to and follow the statutes set forth regarding confidentiality in Chapter 7 of the Mental Health Code, Sec 330.1748(a); Health Information Portability and Accountability Act of 1996 (HIPAA); 42 CFR Part 2; and R 325.14302 to R325.14306.

All information in the client’s case record, and other information acquired in the course of providing mental health services shall be kept confidential and shall not be open to public inspection [MHC 1748(1)/RR Standard F1].

The information may be disclosed outside the agency only in the circumstances and under the conditions set forth in Sections 748, 748(a) and 750 of the Michigan Mental Health Code (PA 258 of 1974, as amended), the Health Information Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), American Recovery and Reinvestment Act of 2009 (ARRA), and 42 CFR Part 2. The confidential information disclosed should be limited to that which is germane to the authorized purpose for which disclosure was sought.

The holder of the record shall not decline to disclose information if a client or other empowered representative has consented, except for a documented reason (only applies before March 28, 1996). If a holder declines to disclose because of a possible detriment to the client or others, there shall be a determination whether part of the information can be released without detriment. A determination of detriment shall not control if the benefit of the disclosure to the client outweighs the detriment. A decision not to disclose may be appealed to the Recipient Rights Officer by the person seeking disclosure, a recipient, a legally empowered guardian, or parents of a minor who consent to disclosure. Detriment does not apply to competent adults for all information after March 28, 1996.

BCCMHA prohibits unauthorized audio or video recording due to confidentiality.

The BCCMHA Board administrator and staff will adhere to the rules of the Mental Health Code, Chapter 7, Sec 330.1748 (748, 748(a), and 750), the Health Information Portability and Accountability Act of 1996 as amended, (45 CFR Sections 160, 164, and Subparts A and E), HITECH, ARRA, 42 CFR Part 2, and R325.14302 to R325.14306.

BCCMHA staff will adhere to policy regarding internal record control and understand the concept of “Need to Know”. Please refer to the Record Content Policy regarding record management practices.

All new employees, interns, and independent contract providers will receive specific training regarding confidentiality within 30 days of hire, internship, or initiation of the contract. The Recipient Rights Officer will review the information contained in the agency’s recipient rights policies annually with the entire staff and contracted providers.

### **III. PROCEDURES**

#### **CONSENT TO RELEASE INFORMATION**

BCCMHA will not use or disclose PHI without written authorization except where permitted or required by state and/or federal law(s). In obtaining written authorization for the disclosure of confidential mental health and substance use disorder information for use by all public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder, SWMBH and its provider network shall honor, accept and use MDHHS-5515, “Permission to Share Behavioral Health Information” (hereafter referred to as “Standard Consent Form”), for the electronic and non-electronic sharing of all behavioral health and SUD information, in accordance with PA 129 of 2014, MCL 330.1141a. No other consent forms may be used for such treatment-related disclosures. When obtaining written authorization for disclosures that do not fall under a Health Insurance Portability and Accountability Act (HIPAA) exception, a HIPAA compliant consent form shall be used.

#### **REDISCLASURE**

Specific information in the record obtained from other agencies will be re-disclosed only with a signed Release of Information allowing such re-disclosure, unless precluded by 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. Persons requesting information that cannot be re-disclosed shall be referred directly to the source agency. If the request for re-disclosure is made by the customer, or someone legally authorized to act on behalf of the customer, for the purpose of obtaining access to the customer’s own record, the entire medical and clinical record will be made available, including information obtained from other agencies.

#### **DETRIMENTAL INFORMATION**

In the event the clinician judges that the release of certain information might be detrimental to the client or others, the clinician shall review this judgment with the Executive Director. Should the Executive Director concur with this judgment, the information shall not be disclosed. Documentation of the decision to withhold information and the reasons for withholding it shall be entered into the client’s record.

If a request for information has been delayed, the Executive Director shall review the request and make a determination within three business days if record is on-site or ten business days if record is off-site whether the disclosure would be detrimental [AR 7051(4)(a)/RR Standard F7/RR Standard F8].

This determination can be appealed to the Recipient Rights Officer by the person seeking disclosure [AR 7051(3)/RR Standard F9].

Disclosure of confidential information may be delayed if deemed detrimental, unless disclosed pursuant to the following:

1. Order of subpoena and/or search warrant of a court or Legislature for non-privileged information;
2. Request of a prosecutor as necessary for participation in a proceeding governed by the Mental Health Code;
3. Request of a recipient's or minor recipient's attorney, with consent of the recipient or minor recipient's parent and/or guardian (despite request for delay by a legally empowered guardian or parents of the minor); or
4. Request of the Auditor General.

The holder of the record shall not decline to disclose information if a client or other empowered representative has consented, except for a documented reason. If a holder declines to disclose, there shall be a determination whether part of the information can be released without detriment.

**ATTACHMENTS:**

MDHHS 5515\_Consent to Share Behavioral Health Information

**APPROVED BY:**

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Richard Thiemkey  
Executive Director

Date