

BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

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| Policy: Disclosure of Client Information (10B) | | Application: BCCMHA Staff |
| Reviewed | Revised 9/21/2022 | First Effective 5/13/1996 |

PURPOSE

To define the limits and procedures for disclosing information about Barry County Community Mental Health Authority (BCCMHA) clients outside the agency.

POLICY

All information in the client's record and other information acquired in the course of providing mental health and substance abuse services shall be kept confidential and shall not be open to public inspection.

The court or other entity that issues a subpoena or order and the Attorney General's Office, when involved, shall be informed if subpoena 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, which, by law, permit or require disclosure.

Confidential information may be disclosed outside the agency only in the circumstances and under the conditions set forth in the Michigan Mental Health Code, and the Health Information Portability and Accountability Act of 1996. The confidential information disclosed shall be limited to that which is germane to the authorized purpose for which disclosure was sought.

Records associated with the provision of substance abuse services are further protected by Federal Confidentiality Rules (42 CFR Part 2). The Federal Rules prohibit individuals and organizations from making any further disclosure of protected information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The Federal Rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse client.

When confidential information is 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. The person making the disclosure shall inform the receiver that disclosure of the information by the receiver to another party is strictly prohibited unless consistent with the authorized purpose for which the information was obtained.

Only information generated by BCCMHA may be released. Any other information contained in a client's record must be requested from its source. Each person (or parent or guardian) seeking behavioral health services shall be asked to sign Consent for Use and Disclosure of Personal Health

Information for Treatment, Payment and Health Care Options statement that will include a summary of Section 748. See Attachment Packet. This form shall be retained as a part of each person's record.

STANDARDS

A BCCMHA "Consent to Share Behavioral Health Information", see Attachment Packet, properly executed, will be required before release of information, except as provided by law.

Client records shall not leave the agency except where required by law or under order of the subpoena of a court or record. The Executive Director will be notified of any and all subpoenas. A reviewing area shall be made available for uninterrupted review of a client's record, by those persons entitled to information contained in the record when a request is made.

Any authorized and entitled person reviewing a client record will do so under the supervision of the agency Executive Director or his/her designee in order to prevent any alteration of the client record.

PROCEDURE

The Medical Records Department will:

1. Receive in writing the request for confidential information from the requesting party.
2. Check to make sure that there is an up-to-date and properly executed Consent to Share Behavioral Health Information, see Attachment Packet.
3. Check to make sure that the client confidential information has the agency approved written warning stamped on the front page of the documents. This written warning shall indicate liability for inappropriate further disclosure.
4. Check to be sure the client confidential information is being mailed to the specific individual and place designated on the current Consent to Share Behavioral Health Information, see Attachment Packet.
5. An entry into the EHR of all released information will be completed and documented in the disclosure/request log.

Information shall be shared among service units of BCCMHA only on a "need to know" basis and only as is necessary for adequate service planning and coordination.

Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings. 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 an express waiver of privilege or by law, which permits or requires disclosure.

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, which cannot be disclosed in court under section 750(2) of the act or 42 CFR Part 2.

The court or other entity that issues a subpoena or order and the Attorney General's Office, when involved, shall be informed if subpoena 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 or privilege or because of other conditions which, by law, permit or require disclosure.

A prosecutor may be given non-privileged information or privileged information which may be disclosed pursuant to section 750(3) of the act if it contains information relating to participation in proceedings under the act, including all of the following:

- Names of witnesses to acts, which support the criteria for involuntary admission;
- Information relevant to alternatives to admission to a hospital or facility; and
- Other information designated in policies by governing body.

Confidential information shall be disclosed only under one or more of the following circumstances:

1. Pursuant to orders or subpoenas of a court or record, or subpoenas of the legislature, unless the information is made privileged by law.
2. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by the Mental Health Code.
3. To an attorney for the recipient, with the consent of the recipient, the client's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.
4. When necessary in order to comply with another provision of law, e.g., Children's Protective Services Act.
5. To the Department of Health and Human Services (DHHS) when the information is necessary in order for the department to discharge a responsibility placed upon it by law.
6. To the office of the Auditor General when the information is necessary for that office to discharge its constitutional responsibility.
7. To a surviving spouse, or if none, closest relative of the recipient in order to apply for and receive benefits, but only if spouse or closest relative has been designated the personal representative or has a court order.
8. To the Secret Service.
9. To disclose information that enables a client to apply for or receive benefits only if the benefits shall accrue to the state or shall be subject to collection for liability for mental health services. Consent to disclose information shall be in writing on approved BCCMHA forms.

All written disclosures will be documented in the client's record to include the following: purpose stated by person requesting information, the date the information was sent, to whom it was released, what information was sent, if it was germane to the stated purpose, the part of law under which the disclosure was made and a statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released [AR 7051(2)(a-e)].

Verbal disclosures shall only be made with written consent of the client/guardian and will be documented within the client file.

All confidential mental health documents released by this agency will be stamped "This information is confidential and further disclosure of this information must only be made pursuant to SEC. 748 of the Mental Health Code and Rule 7051.3 of the Administrative Rules of the Department of Health and Human Services."

All confidential substance use disorder documents released by this agency will be stamped "This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2." A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

SUBPOENAS

BCCMHA staff receiving a subpoena shall immediately inform their supervisor, the Recipient Rights Officer and the Executive Director.

The originator of the subpoena shall be informed by the responsible worker that the requested information is made privileged by the Mental Health Code and/or 42 CFR Part 2 and may not be disclosed without proper authorization which is either:

- a. A valid consent executed by the client; or
- b. An order from the presiding judge/court after hearing testimony on the privileged nature of the information

In consultation with Administration and Recipients Rights, the person(s) receiving the subpoena shall disclose privileged communications upon request:

- a. When the privileged communication is relevant to a physical or mental condition of the client, which the client has introduced as an element of his or her claim or defense in a civil or administrative case or proceeding or which, after the death of the client, has been introduced as an element of his or her claim or defense by a party to a civil or administrative case or proceeding.
- b. When the privileged communication is relevant to a matter under consideration in a commitment proceeding, but only if the client was informed that any communications could be used in the proceeding.
- c. In actions, civil or criminal, against the psychiatrist or psychologist or malpractice.
- d. When the communications were made during an examination ordered by a court, prior to which the client was informed that a communication would not be privileged, but only with respect to the particular purpose for which the examination was ordered.

- e. When the communications were made during treatment, which the client was ordered to undergo to render him or her 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 client to stand trial.
- f. When other law supersedes the Mental Health Code or 42 CFR Part 2 such as staff's requirements under Public Acts 519, 32, and 372 to report their knowledge of suspected abuse or neglect of adult and minor recipients of service.
- g. If required by federal law, BCCMHA will grant a representative of Disability Rights Michigan access to the records of all of the following:
 - A recipient, or other empowered representative, has consented to the access.
 - A recipient, including a recipient who has died or whose whereabouts are unknown, if all the following apply:
 1. Because of mental or physical condition, the recipient is unable to consent to the access.
 2. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
 3. Disability Rights Michigan 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.
- h. A recipient who has a guardian or other legal representative, if all of the following apply:
 - A complaint has been received by the protection and advocacy system if there is probable cause to believe the health and safety of the recipient is in serious and immediate jeopardy.
 - Upon receipt of the name and address of the recipient's legal representative. Disability Rights Michigan has contacted the representative and offered assistance in resolving the situation [MHC1748(8)/RR Standard F18].
 - The representative has failed or refused to act on behalf of the recipient.

OTHER DISCLOSURES

- a. No identifying information will be disclosed for purposes of outside research or statistical reporting.
- b. Record reviews will be permitted for the purposes of evaluation and accreditation from external governing and accreditation bodies.
- c. Redisclosure is permitted within the purpose of the Privacy Rule for treatment purposes.

SPECIAL DISCLOSURES

Information may be disclosed to the client, attorney for the client, or any other person or agency, provided that the client, guardian with authority to consent, or the parent with legal custody of a minor recipient, a court approved personal representative or executor of the estate of a deceased recipient consents and the disclosure would not be detrimental [MHC 1776(6)/RR Standard F4]. All requests for such information shall be coordinated through Medical Records

If there is a compelling need for mental health records or information to determine whether child abuse or neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm, a Department of Health and Human Services caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health and/or addiction professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health professional and shall request in writing mental health records and information that is pertinent to that investigation. Upon receipt of this notification and request, the mental health and/or addiction professional shall review all medical records and information in the mental health or addiction professional's possession to determine if there are medical records or information that is pertinent to that investigation. Within 14 business days after receipt of a request made under this subsection, the mental health or addiction professional shall release those pertinent medical records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation [MCH 1847a(1)/RR Standard F21].

For case record entries made subsequent to March 28, 1996, confidential information in the client's record shall be disclosed to the adult recipient, upon his/her request.

For case records made subsequent to March 28, 1996, information made confidential by Sec. 748 of the Mental Health Code shall be disclosed to a competent adult recipient upon the recipient's request. Release is done as expeditiously as possible but, in no event, later than the earlier of 30 days of the request or prior to release from treatment [MHC 1748(4)/RR Standard F6].

Confidential information shall be disclosed only her one or more of the following circumstances: a) an order or subpoena of a court of record or a subpoena of the legislature, unless the information is privileged by law, b) to a prosecuting attorney as necessary for the prosecutor to participate in a proceeding governed by the MHC, c) to a recipient's attorney with the consent of the recipient, the recipient's legal guardian (if they have authority to consent) or parent of a minor who has legal and physical custody, d) to the Auditor General, e) when necessary to comply with another provision of the law, f) to MDHHS as necessary for the department to discharge a responsibility placed upon it by law, or g) to a surviving spouse or if none, closest relative of the recipient in order to apply for and receive benefits, but only if spouse or closest relative has been designated the personal representative or has a court order. [MHC 1748(5) (a-g)/RR Standard F5].

A. 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(3)/RR Standard F7].

The Executive Director will review a request for information that is not covered under 1748(4). The director will determine detriment as stated above and upon determining that the disclosure would be detrimental, the Executive Director will determine if part of the information requested may be released without detriment.t [AR7051(3)/RR Standard F6]

This determination can be appealed to the Recipient Rights Officer by the person seeking disclosure [AR 7051(3)/RR Standard F8.

If the client requests a copy of the record, the copy will be made available in an electronic or hardcopy format based upon the individual request. If the client requests a copy of the record, the charge to the client for the copying is a 10-cent per page copying fee. Copies of the specified documents will be made for the client by the designated Support Staff or Recipient Rights Officer and noted in the record. The actual cost of copies may be charged to individuals requesting copies.

The records, data, and knowledge collected for or by individuals or committees assigned as 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 and/or search warrant [MHC 1748(9)/RR Standard F19].

BCCMHA, when authorized to release information for clinical purposes by the recipient or the recipient's guardian or parent of a minor recipient, shall release a copy of those items outlined within the consent to release information, which may include the request of the entire medical and clinical record to the provider of mental health and/or services [MHC 1748(10)/RR Standard F20].

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.

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. The statement above shall become part of the record [MHC 1749/RR Standard F22].

ATTACHMENTS

DEFINITIONS

[Breach Investigation Tool](#)

[RR Tool](#)

[MDHHS-5515 Consent to Share Behavioral Health Information 613787 7.dot](#)

REFERENCES

BCCMHA

Department of Health and Human Services

Michigan Mental Health Code
CMS
HIPPA
Office of Recipient Rights
Office of Civil Rights
Public Health Code Article 6
SOAHR Administrative Rules (R 325.14302 to 325.14306)
42 CFR Part 2

APPROVED BY:

Richard Thiemkey
Executive Director

Date