

# BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

Policy: Duty To Warn (10G)		Application: BCCMHA Staff
Reviewed 7/6/2022	Revised 7/6/2022	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**

A mental health professional who determines, in good faith, that a situation meets the Duty to Warn criteria and takes the appropriate steps to warn the identifiable third person is NOT in violation of Sections 748 or 750 of the Michigan Mental Health Code (MHC) or of other confidentiality or patient privilege statutes as when there is a duty to warn - the Duty to Warn section of the MHC acts as an exception to Section 748. Pursuant to Michigan Mental Health Code (PA 258 of 1974, MCL 330.1946), a mental health professional employed by or under contract with BCCMHA or any of its contracted providers has a duty to take action to protect a consumer and to warn others if all of the following occur:

1. A consumer communicates to that mental health professional a threat of physical violence; and
2. The threat is made against a reasonably identifiable third person; and
3. The consumer has the apparent intent to carry out that threat in the foreseeable future; and
4. The consumer has the apparent ability to carry out that threat in the foreseeable future.

If a threat of physical violence against a third person and/or physical threat to harm self occurs, the Mental Health Code, Section 496, requires one or more of the following occur in a timely manner:

- a. Hospitalize the client or initiate proceedings to hospitalize.
- b. Make a reasonable attempt to communicate the threat to a third person, or other appropriate person(s), and communicate the threat to the local police or sheriff's departments, or the state police.

The law further states that if the person threatened is a minor or is incompetent by reason other than age; you must do all of the following:

- a. Contact the local police, sheriff, or state police.
- b. Communicate the threat to the Department of Health and Human Services (DHSS) and Protective Services in the county where the minor resides.
- c. Communicate the threat to the minor's custodial or non-custodial parent, or legal guardian.

If BCCMHA clinician is not a “mental health professional” under Section 330.1100b of the Michigan Mental Health Code:

1. If there is a question that there may be a Duty to Warn or take other action using the criteria listed in the policy above, the clinician shall immediately contact their immediate supervisor, another supervisor, or the consumer's psychiatrist if assigned. The clinician

shall also contact a Recipient Rights staff member or the Compliance Officer for consultation when necessary for clarification of policy and statute.

2. This consultation shall determine if the clinician must call and report to law enforcement under section 748(7)(c) and if law enforcement should be contacted to assist in the facilitation of a Preadmission Screening unless the presenting information is clear that the Duty to Warn criteria are not met typically a report shall be made consistent with section 748 (7)(c).

### **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 such as:

- a. On written permission by the client.
- b. In the case of a lawsuit, direct questions can be answered when instructed to do so by an appointed judge.
- c. Under threat of harm to self or to others.
- d. Referrals to Child/Adult Protective Services.

### **PROCEDURE**

Once evidence of a clear threat to a specific person(s) is identified, the following will occur:

1. If possible, contact the client (by phone or in person) and get more information and express your duty and intention to warn others. If direct contact is not possible in a short time, proceed with the further steps.
2. Notify and consult with your supervisor and the Executive Director; if they are unavailable, contact the Medical Director. Do not attempt to deal with this crisis alone.
3. If after consultation, the decision is made that the duty to warn is required, the Recipient Rights Officer and/or Compliance Officer will be notified or consulted to provide clarification of the policy/statue. At this point, legal counsel may be advised.
4. Evaluate for involuntary (or voluntary) hospitalization based on Chapter 4 and 4a of the Michigan Mental Health Code, and implement this if appropriate as a first choice. Consistent with state law if the person making the threat is hospitalized, you do not have to warn the person being threatened or law enforcement of the threat.
5. If it is determined as a result of the Preadmission Screening, the individual not meet the Chapter 4 or 4a criteria for involuntary/voluntary admission, or the clinician is unable to complete a Preadmission Screening, and the threat to a third person still exists, directly notify the identified victim(s) of the threat of harm including the name of the person who made the threat, what the person said and confirming that police are also being notified. Do not otherwise divulge the mental status of the client or therapeutic content of the case.
6. Notify appropriate police or sheriff authorities, and parents/guardians if applicable. Law enforcement shall be provided the following information when available:
  - a. Date
  - b. Person/Recipient Communicating the Threat (Name, street address if known, phone, date of birth, gender, and other known information.)
  - c. Reasonably Identifiable Third Person or Subject of the threat (Name, street address, if known, phone number, gender, and other known information.

- d. Specific Violence Threatened (words used)
  - e. Intent and Ability
7. Document everything in a Crisis Note (including information provided to law enforcement and dates, times and names of law enforcement contact, reasons for not hospitalizing, attempts to communicate the threat to third person, and if a minor Communication to MDHHS and custodial parent or legal guardian, specific findings regarding the threat and its elements; who was contacted inside and outside the agency and what was discussed with them; interventions considered and which ones were implemented and their outcomes.
  8. If the person is not physically present when this threat is made the mental health professional shall follow BCCMHA policy and practice to attempt to arrange a preadmission screening to determine if involuntary or voluntary hospitalization is required. Based on the results of the preadmission screening, the mental health professional shall follow steps above. If there are questions the mental health professional should contact their immediate supervisor, another supervisor, or the consumer's psychiatrist if assigned. The mental health professional shall also contact a Recipient Rights workforce member or the Compliance Officer for consultation when necessary for clarification of policy and statute.
  9. An Incident Report will be filed every time the duty to warn is discharged.
  10. Appropriate records of disclosure, when taking action to warn third parties or agencies, shall be completed. These records of disclosure shall state to whom the information was released and the reason release is made.

**ATTACHMENTS**

[MDHHS-5515 Consent to Share Behavioral Health Information 613787 7.dot](#)  
[10-G Duty to Warn attachments.pdf](#)

**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:**

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Richard Thiemkey  
Executive Director

Date