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| CHAPTER: 1 | SECTION: 11 | SUBJECT: RECIPIENT RIGHTS |
| TITLE: CONFIDENTIALITY & DISCLOSURE | | |
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| ISSUED AND APPROVED BY:  EXECUTIVE DIRECTOR | | |

I. PURPOSE:

To define the limits and procedures for disclosing confidential information about CMHOC consumers outside the agency.

II. APPLICATION:

All CMHOC staff and contract agency staff as specified by contract.

III. DEFINITIONS:

Client/Consumer: An adult, responsible parent, or legally empowered guardian of a child, or a legally empowered guardian of a person who is legally incapacitated or developmentally disabled.

Privileged Communication: A communication made by a psychiatrist or psychologist, or by someone under the supervision of such a person, in connection with the examination, diagnosis, or treatment of a consumer, or to other persons while they are participating in such examination, diagnosis, or treatment.

Proper Authorization:

1. A valid consent executed by the consumer; or
2. An order from the presiding judge/court on the privileged nature of the information.

IV. POLICY:

It is the policy of CMHOC that all information in the consumer'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. This confidential information will include:

- A. Information acquired in diagnostic interviews or examination
- B. Results and interpretations of tests ordered by a mental health professional or given by a facility
- C. Entries and progress notes by mental health professionals and support personnel.

The information shall be provided as necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. The

confidential information disclosed shall be limited to that which is germane to the authorized purpose for which disclosure was sought.

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.

V. PROCEDURE:

A. Informing Consumers of Rights to Confidentiality:

Each individual (or parent or guardian) seeking mental health services shall be asked to sign consent for Mental Health Evaluation/Acknowledgement of Recipient Rights Information and will include a summary of Section 748. A summary of Section 748 shall be retained as a part of each person's record.

An individual evaluated at the request of a peace officer pursuant to Section 427 of the Mental Health Code shall be informed of his or her rights, and if clinically appropriate shall be asked to sign Consent for Evaluation/Acknowledgement of Recipient Rights Form.

A psychiatrist, physician, or psychologist examining an individual for medical certification shall inform the individual of intended disclosure of information to the Probate Court according to the instructions on the certificate.

B. Sharing Information Within CMHOC/Contractual Programs:

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

In the event that a consumer's care is transferred from one service to another within the network, the essential and relevant components of the medical record will "follow" the consumer to the new service unit. The "essential" components would include:

- a "referral/transfer" form supporting the transfer
- psychosocial assessment (including history of illness)
- all assessments from relevant professionals (including crisis assessments)
- plan for treatment/care/support
- status reports
- progress reports
- physical/medication documents
- current releases of information
- evidence of correspondence and/or coordination of care
- demographic information
- billing/insurance information
- authorization for service documentation

Other information will be shared as needed on an individual basis. Otherwise, information shall be shared among CMHOC and contractual providers only on a "need to know" basis and only within the parameters defined in each contract.

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.

C. Consent To Release Information:

Except as otherwise provided in 1748(4), confidential information may be provided to providers of mental health services, to the consumer, or to any individual or agency if consent has been obtained from:

- Consumer
- Consumer's guardian with authority to consent
- Parent with legal custody of a minor consumer
- Court approved/appointed personal representative or executor of the estate of a deceased consumer.

Unless, in the written judgement of the holder of the record, the disclosure would be detrimental to the consumer or others.

For case records made subsequent to March 28, 1996, information made confidential by Section 1748 of the Mental Health Code shall be disclosed to a competent adult consumer upon the consumer's request. Release shall be done as expeditiously as possible but in no event later than the earlier of 30 days of the request or prior to discharge from treatment.

For all other records, minor or adult consumers with guardians, information placed in the record prior to March 28, 1996 may be disclosed to the consumer, attorney for the consumer, or any other person or agency, provided that the consumer consents and the disclosure would not be detrimental. All requests for such information shall be coordinated through the Case Manager/Supports Coordinator/Therapist. Except as provided otherwise in this procedure, when requested, confidential information shall be disclosed only under 1 or more of the following circumstances:

1. Pursuant to orders or subpoenas of a court of 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 consumer, with the consent of the consumer, the consumer's legal guardian (if they have authority to consent), or the parent of a minor who has legal and physical custody.
4. When necessary, in order to comply with another provision of law.
5. To the Michigan Department of Health and Human Services (MDHHS) 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 of the consumer for purposes of applying for and receiving benefits or, if there is no surviving spouse, to the person or persons most closely related to the deceased consumer 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 disclose information that enables a consumer to apply for or receive benefits.
9. Upon written request, to MDHHS/Child Protective Services (CPS), to review and provide pertinent records and information within 14 days of the written.
10. As otherwise required by law.

All requests for the release of confidential information will be reviewed by the Case Manager/Supports Coordinator/Therapist and forwarded with the record to the Medical Records Assistant for copying and dispersal.

With proper consent to release information for clinical purposes, by the consumer or the consumer's guardian or parent of a minor, a copy of the entire medical and clinical record may be released to a consumer or a provider of mental health services.

All written disclosures will be documented in the client's record to include the following: 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 the 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.

Verbal disclosures shall be made only with written consent of the consumer/guardian and will be documented in a progress note.

All confidential documents released by this agency will be stamped "Confidential, for restricted use only. This information is released subject to the confidentiality provisions of Section 748 of Public Acts 258 of 1974. Not to be forwarded or copied."

D. Detrimental Information:

In the event the Case Manager or Supervisor judges that the release of certain information placed in the record prior to March 28, 1996 for competent adult consumers, and all records for minor and incompetent adult consumers might be detrimental to the consumer or others, the Case Manager/Supports Coordinator/Therapist shall review this judgment with the Program Supervisor. Should the Program Supervisor 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 in the consumer's record.

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

- Order of subpoena of a court or Legislature for non-privileged information.
- Request of a prosecutor as necessary for participation in a proceeding governed by the MHC.

- Request of a consumer's or minor consumer's attorney, with consent of the consumer or minor consumer.
- Request of the Auditor General.

The holder of a record shall not decline to disclose information if a consumer 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. This determination will be made with the involvement of the County's Corporation Counsel.

Within 24 hours of request for information which has been delayed, the Director shall review the request and make a determination within three (3) business days if the record is on-site or ten (10) business days if record is off-site whether the disclosure would be detrimental to the consumer or others if such information is made available.

This determination can be appealed, by filing a complaint with the Recipient Rights Officer by the person seeking disclosure if he/she disagrees with the decision of the director.

E. Consumer Requests for Direct Access to the Record:

With written request a competent adult consumer is allowed access to all CMHOC service information placed in the record after March 28, 1996. Information placed in the record prior to March 28, 1996 will be reviewed and material judged to be detrimental to the consumer or others may be excluded. In this case, the consumer is to be informed that some material is being withheld.

The following procedures are to be followed in implementing consumer access to their record:

1. The consumer should be asked to make the request in writing. The regular Authorization to Release Information letter may be used for this.
2. It must be documented that the record was reviewed for material that would be detrimental. The summary of this review, including specification of material to be withheld, will be attached to the release letter from the consumer. The consumer must be informed if any information is withheld. The consumer must be provided with a timetable by which this review can be completed and information released. If the consumer objects to the withholding of information, the consumer should be referred to the Director to appeal the decision.
3. The summary of the record review will also specify the information that is released. For example, "all progress notes from 05/86 - 08/87, exclusive of a medication review progress note written 07/87," or "the intake assessment dated 02/15, with the diagnostic formulation deleted."
4. If the request is to read the record, all material that is to be withheld is first to be removed from the record. The consumer will then be provided a private office in which the remaining records can be read. A member of the clinical staff should be with the consumer at all times to supervise the client's handling of the record and to answer questions or discuss any material about which the consumer has concerns. The consumer may take notes.

5. If the consumer requests a copy of the record, the charge to the consumer for the copying costs should be handled in the same way as service costs that are, based on ability to pay. The Finance Director may be asked to assist in setting an equitable fee. Copies of the specified documents will be made for the consumer by the Medical Records Assistant and noted in the record.
6. The consumer, guardian, or parent of a minor, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the record and will be offered an opportunity to insert into the record a statement correcting or amending the information at issue. This statement will then become a part of the record.

F. Peace Officer & Courts:

Information regarding an evaluation of an individual in protective custody shall be disclosed to a peace officer as necessary to assist the peace officer in determining an appropriate course of action.

All information related to proceedings of the Probate Court as governed by the Mental Health Code shall be made available upon request to the Court and to the Prosecuting Attorney.

Attorneys representing consumers may review records only upon representation and identification and the consumer's consent or a release executed by the parent or guardian shall be permitted to review the record on the provider's premises.

An attorney who has been retained or appointed to represent a minor pursuant to an objection of hospitalization of a minor shall be allowed to review the records.

Attorneys who are not representing consumers may review records only if the attorney presents a certified copy of an order from a court directing disclosure of information concerning the consumer to the attorney.

Attorneys shall be refused information by phone or in writing without the consent or release from the consumer or the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney.

In the event that any court orders an evaluation of an individual for any court purpose, the results of such an evaluation shall be disclosed to the Court if the individual was informed prior to the evaluation that the information would be made available to the Court.

Information shall be provided to the 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 consumer for the purpose of diagnosing the consumer's present condition shall be permitted to review, on the provider's premises, a record containing information concerning the consumer. 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.

2. The court or other entity that issues a subpoena 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 which, by law, permit or require disclosure.
3. 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:
 - a. Names of witnesses to acts which support the criteria for involuntary admission.
 - b. Information relevant to alternatives to admission to a hospital or facility.
 - c. Other information designated in policies of the governing body.

G. Disability Rights Michigan:

Representatives of Disability Rights Michigan will be granted access to the records of all of the following:

1. A consumer, if the consumer or other empowered representative has consented to the access.
2. A consumer, including a consumer who has died or whose whereabouts are unknown, if all of the following apply:
 - a. Because of mental or physical condition, the consumer is unable to consent to the access.
 - b. The consumer does not have a guardian or other legal representative or the consumer's guardian is the state.
 - c. Disability Rights Michigan has received a complaint on behalf of the consumer or has probable cause to believe based on monitoring or other evidence that the consumer has been subject to abuse or neglect.
3. A consumer who has a guardian or other legal representative if all of 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 consumer is in serious and immediate jeopardy.
 - b. Upon receipt of the name and address of the consumer's legal representative, Disability Rights Michigan has contacted the representative and offered assistance in resolving the situation.
 - c. The representative has failed or refused to act on behalf of the consumer.

H. Subpoenas:

1. 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.

2. Staff receiving a subpoena shall immediately inform their supervisor and the Recipient Rights Officer.
3. The originator of the subpoena shall be informed by the responsible worker that the requested information is made privileged by Section 750 (1) (c) of the Mental Health Code (see exceptions below) and may not be disclosed without proper authorization.
4. In consultation with Administration and Recipient 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 patient which the patient 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 patient, 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 patient was informed that any communications could be used in the proceeding.
 - c. When the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or his or her need for a guardian, but only if the patient was informed that any communications made could be used in such a proceeding.
 - d. In actions, civil or criminal, against the psychiatrist or psychologist or malpractice.
 - e. When the communications were made during an examination ordered by a court, prior to which the patient was informed that a communication would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
 - f. When the communications were made during treatment which the patient 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 patient to stand trial.
 - g. When other law supersedes the Mental Health Code 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 consumers of service.

I. Billing/ Insurance/ Payment:

New consumers are asked to show proof of income and insurance upon admission to CMHOC and these are documented in the record. They are asked to update that information routinely. Consumers are informed in writing that CMH agrees to “release consumer information which may be required to obtain insurance and other benefits” and they agree to this provision in writing signifying their consent.

Information shall be disclosed as requested by the benefit provider or eligibility determination agent unless the Case Manager and Program Director judge that release of the information might cause harm to the consumer or others. Typically, this information would include information about the service (e.g. the date, provider, time, location, type, length) and information regarding the consumer (e.g. name, identifying case number, date of birth, insurance number/provider).

CMHOC may disclose information that enables a consumer to apply for or receive benefits without consent of the consumer or legally authorized representative only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service.

J. Duty To Warn:

The duty to warn takes effect when there is a threat against a clearly identified or reasonably identified victim and serious intent with foreseeable peril is present as assessed by (1) the specificity of the plan - clarity, severity, imminence; (2) capability of the consumer; (3) opportunity and availability of the means; and, (3) the client's history of known violent behavior (if history is available).

If a threat of physical violence against a third person occurs, the Mental Health Code (Section 946) requires one or more of the following occur in a timely manner (1) hospitalize the consumer or initiate proceedings to hospitalize, and/or (2) make a reasonable attempt to communicate the threat to the third person, 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 other than age; staff must do all of the following: (1) contact the local police, sheriff, or state police (as above); (2) communicate the threat to the Department of Human Services - Protective Services, in the county where the minor resides; and (3) communicate the threat to the minor's custodial or non-custodial parent, or legal guardian.

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

1. If possible, contact the consumer (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; if he/she is unavailable, contact another clinical supervisor. 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 will be notified and appraised of the situation. At this point, legal counsel may be advised.
4. Evaluate for involuntary (or voluntary) hospitalization, and implement this if appropriate as a first choice.
5. If hospitalization does not occur, or the threat to a third person still exists, directly notify the potential victim (s) of the threat of harm. Be as specific as possible about the details of the threat and indicate the appraisal of the degree of dangerousness. Do not otherwise divulge the mental status of the consumer or therapeutic content of the case.

6. Notify appropriate police or sheriff authorities, and parents/guardians if applicable.
7. If the consumer is not hospitalized, continue treatment and consider the following:
 - a. psychiatric consultation, reassess medication, diagnosis, mental status.
 - b. psychological testing.
 - c. evaluating relationship with therapist/Case Manager and/or team.
 - d. increasing consumer level of observation and supervision.
 - e. enrolling consumer in more structured programs.
 - f. contracting with consumer to notify therapist before acting.
8. Finally, document everything. This includes specific findings regarding the threat and its elements (see above); who was contacted inside and outside the agency and what was discussed with them; interventions considered and which ones were implemented, and their outcomes.
9. An Incident Report will be filed every time the duty to warn is discharged.

K. Other Disclosures:

1. No identifying information will be disclosed for purposes of outside research or statistical reporting.
2. Record reviews will be permitted for the purposes of evaluation and accreditation from external governing and accreditation bodies.
3. No other inspection or sampling of confidential information will be permitted without proper consent.
4. No copies of confidential information will be provided without proper consent.

VI. ATTACHMENT:

Disclosure of PHI to Law Enforcement

VII. REFERENCE:

Michigan Mental Health Code
MDHHS-ORR Attachment B