

The Right Door for Hope, Recovery and Wellness

Chapter Title Recipient Rights	Chapter # RR		Subject # 130
Subject Title Confidentiality and Disclosure	Adopted 6/24/02	Last Revised 6/26/17	Reviewed 4/25/05; 8/28/06; 12/27/07; 1/25/10; 3/28/11; 4/23/12; 6/24/13; 9/22/14; 9/23/15; 6/15/16; 6/26/17

POLICY

Application

This policy shall apply to The Right Door for Hope, Recovery and Wellness and all services operated by or under contract with it.

Purpose

To establish responsibility for developing a process through which The Right Door for Hope, Recovery and Wellness complies with the legal requirements regarding, confidentiality, disclosure, and access by recipients to clinical records.

1.0 Definitions

For the purposes of understanding and implementing this policy, the following definitions of terms apply:

Access: an activity in which a recipient, parent of a minor or a guardian can physically review his or her original clinical record or the clinical record of his/her minor child/ward. In addition, access shall include a copy of the record upon request.

Competent Adult Recipient: a person 18 years or older who is receiving services and who is not currently determined to be incompetent as the result of a legal petition and hearing for same.

Clinical Record: the written documentation of assessment, history, diagnosis, treatment and supports which is made by clinicians and any other supporting

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documents that pertain to the recipient’s history, current condition, clinical care or supports. The clinical record is the property of The Right Door for Hope, Recovery and Wellness. The Clinical Record does not include any of the records, data, or knowledge collected for or generated by the peer review process.

Additions to the clinical record: information added to the clinical record by the recipient and/or family member(s) based on the belief that providing such information to clinicians will improve treatment outcomes, give additional insight on the strengths, needs, and goals of the recipient or correct misinformation.

Restricted access: a situation in which access to the clinical record is limited or denied based on applicable provisions of state or federal law which restrict access for clinical or legal considerations (See Legal References below).

Confidentiality and Disclosure

- 1.1 The separate programs of The Right Door for Hope, Recovery and Wellness, including those of independent contractors, shall share information within their own service systems without compromising the recipient's right to confidentiality.
 - 1.1.1 Information in the record of the recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open for public inspection.

- 1.2 The information may be disclosed outside The Right Door for Hope, Recovery and Wellness only under conditions set forth in this policy.

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- 1.3 A summary of Section 330.1748 of the Michigan Mental Health Code shall be made part of each recipient's file.
- 1.4 When confidential information is disclosed, the identity of the recipient 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.
- 1.5 Documentation shall be kept of disclosures in the recipient's record, including:
 - 1.5.1 Information released;
 - 1.5.2 To whom it was released;
 - 1.5.3 Purpose stated by person requesting the information;
 - 1.5.4 Statement indicating how disclosed information is germane to the stated purpose; and
 - 1.5.5 The subsection of Section 748 of the act or other state law under which disclosure was made.
 - 1.5.6 Statement that persons receiving the disclosed information can only further disclose consistent with the authorized purpose for which it was released.
- 1.6 When requested, confidential information shall be disclosed only under one or more of the following circumstances:

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- 1.6.1 Orders or subpoenas of a court of record, or legislature, unless the information is made privileged by some provisions of law;
- 1.6.2 To a prosecuting attorney to participate in a proceeding governed by Public Act 258 of 1974, as amended;
- 1.6.3 To an attorney for the recipient, with the recipient's written consent; the recipient's guardian with authority to consent; or the parent with legal and physical custody of the minor recipient
- 1.6.4 To the Auditor General if the information is necessary for that office to discharge its constitutional responsibility.
- 1.6.5 To private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings;
 - 1.6.5.1 Physicians or psychologists shall be notified before the review of records when the records contain privileged communications which cannot be disclosed in court under Section 750(s) of the Act; and
 - 1.6.5.2 Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or by law, which permits or requires disclosure.
- 1.6.6 When necessary in order to comply with another provision of law;
- 1.6.7 To the MDHHS when the information is necessary in order for the Department to discharge a responsibility placed upon it by law;

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- 1.6.8 To a surviving spouse of the recipient for purposes of applying for and receiving benefits (but only if the spouse or closest relative has been designated the personal representative or has a court order).
- 1.6.9 Within 14 days after receipt of a written request from MDHHS, pertinent mental health records and information are released.
- 1.6.10 To a prosecutor if the non-privileged or privileged information contains information relating to 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 agency policy.
- 1.7 Information may be disclosed to providers of mental health services to the recipient or to any individual or agency if consent has been obtained from:
 - 1.7.1 Recipient
 - 1.7.2 The recipient’s guardian with authority to consent
 - 1.7.3 Parent with legal custody of a minor recipient, or
 - 1.7.4 The court appointed personal representative or executor of the estate of a deceased recipient;
- 1.8 Information may be disclosed at the discretion of the CEO:

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- 1.8.1 As necessary for the recipient to apply for or receive benefits without the consent of the recipient 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;
- 1.8.2 As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information can be identified from the disclosed information only when such identification is essential to achieve the purpose for which the information is sought or when preventing such identification would clearly be impractical, but in no event when the subject of the information is likely to be harmed by such identification.
- 1.9 Disclosure of confidential information may be delayed under the following circumstances:
- 1.9.1 If there are substantial and documented reasons that disclosure would be detrimental to the recipient or others; or
- 1.9.2 If the recipient, legal guardian, or legal representative of a minor child request that information not be released or decline consent to release information.
- 1.10 For case record entries made subsequent to March 28, 1996, confidential information in the recipient's record 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

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expeditiously as possible but in no event later than the earlier of 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.

1.11 Unless section 748(4) of the act applies to the request for information, The Right Door for Hope, Recovery and Wellness CEO 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 the record is offsite, whether the disclosure would be detrimental to the recipients or others.

1.11.1 The person seeking disclosure, the recipient, a legal guardian, or legal representative of a minor can appeal the decision of the CEO to The Right Door for Hope, Recovery and Wellness Office of Recipient Rights.

1.11.2 Except for MHC 748(4) preceding, if the CEO declines to disclose information for a documented reason, there shall be a determination whether part of the information can be released without detriment.

1.12 The Right Door for Hope Recovery and Wellness shall grant a representative of the Michigan Protection and Advocacy Service access to the records of all of the following:

1.12.1 A recipient, if the recipient or other representative has consented to the access.

1.12.2 A recipient, including a recipient who has died or whose whereabouts are unknown if all of the following apply:

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1.12.2.1 Because of mental or physical condition, the recipient is unable to consent to the access.

1.12.2.2 The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.

1.12.2.3 Michigan Protection and Advocacy Services (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.

1.12.2 A recipient who has a guardian or other legal representative if all of the following apply:

1.12.3.1 A complaint has been received by the protection and advocacy system from or on behalf of the recipient; or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.

1.12.3.2 Upon receipt of the name and address of the recipient's legal representative, MPAS has contacted the representative and offered assistance in resolving the situation.

1.12.3.3 The representative has failed or refused to act on behalf of the recipient.

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- 1.13 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.
- 1.14 The Right Door for Hope, Recovery and Wellness when authorized to release information for clinical purposes by the individual or the individual’s guardian or a parent of a minor, releases a copy of the entire medical and clinical record to the provider of mental health service.
- 1.15 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 or other empowered representative is allowed to insert into the record a statement correcting or amending the information at issue; the statement becomes part of the record.

References

Mental Health Code-330.1748, 330.1750
 MDHHS Administrative Rules 330.7051, 330.7125, 330.7235
 CARF Standards Manual, Rights of Persons Served

Melissa McKinstry, Board Chairperson	Date		

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