

The Right Door for Hope, Recovery and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		130.1
Subject Title	Adopted 03/20/02	Last Revised 1/26/18	Reviewed
Confidentiality and Disclosure			9/13/16 3/29/10 09/05/06 05/12/05 06/02/03 1/4/17 1/11/18 1/26/18

PROCEDURE

Application

This procedure shall apply to The Right Door for Hope, Recovery and Wellness and all services operated by or under contract with it. This procedure shall serve as a guide to assure compliance with Board policy regarding Recipient Rights.

- 1.0 The separate programs of The Right Door for Hope, Recovery and Wellness, including independent contractors, shall share information, based on a need-to-know basis, within their own systems of services without compromising the consumer's right to confidentiality or violating HIPAA, HITECH or 42 CFR Part 2.
- 2.0 All information in the record of the consumer, and other information acquired in the course of providing mental health or substance use services to a consumer, shall be kept confidential and shall not be open for public inspection.
- 3.0 Information, data, and records collected for or by individuals or committees for peer review/quality assurance purposes are confidential and used only for peer review and not subject to court subpoena nor considered public records.
- 4.0 The information may be disclosed outside The Right Door for Hope, Recovery and Wellness only under the conditions set forth in these policies and procedures and after being stamped confidential not for re-release.
- 5.0 A summary of Section 330.1748 of the Michigan Mental Health Code shall be made a part of each consumer file.
- 6.0 A record shall be kept of disclosures in the record of the consumer and shall include:
 - 6.1 Information released;
 - 6.2 To whom it was released;
 - 6.3 Purpose stated by person requesting the information;

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6.4 Statement indicating how disclosed information is germane to the stated purpose; and

6.5 The part of law under which disclosure was made.

7.0 Any person receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained and as legally allowable.

8.0 The following are specific requirements for processing each of the three types of requests for release of information. Any other requests under Administrative rules or other applicable law must be under the direct discretion of the CEO, under compliance with MH 748, Administrative Rule 7051 and 42 CFR Part 2.

8.1 General Release of Information

8.1.1 The request for release of information can only be processed if a valid consent form is received, unless the request for information is initiated by the Department of Human Services under specific circumstances. The consent form must include:

- (1) The person or agency to whom disclosure is to be made.
- (2) The purpose of the release of information.
- (3) The specific information requested (i.e., substance abuse records must be specifically requested).
- (4) The signature of the consumer or legal representative.
- (5) The date the release was signed. (This date must be within the last 12 months).
- (6) The period of time for which the release is valid. This time period may not extend for longer than 12 months.
- (7) The signature of one witness.

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(8) That the consent may be revoked at any time.

8.1.2 If the Department of Health and Human Services (DHHS) is investigating an allegation of abuse, neglect, exploitation or endangerment of a consumer of The Right Door for Hope, Recovery and Wellness services, a valid consent form from the consumer is not required (see Attorney General's Opinion No. 6700). Under these circumstances, the following procedures shall be followed:

- (1) When a request for information is received from a DHHS child or adult protective services worker, either by telephone or in writing, the request shall be referred to the primary provider OR provider of last services. The agency has 14 calendar days to return a request for information once received by DHHS. The primary worker and Medical records must work closely together to ensure this occurs.
- (2) ONGOING CASE: When the request is received from DHHS, the responsible primary worker must contact DHHS as soon as possible to determine if the request is for an initial investigation OR if it is in relation to an ongoing open monitoring of a case. If MDHHS is investigating an allegation of abuse, neglect, exploitation or endangerment of a consumer of DHHS, then the primary worker must follow the procedure on disclosure as outlined below. However, if DHHS is monitoring a case, then the primary worker is responsible for:
 - a. Identifying exactly what DHHS is asking to obtain.
 - b. Getting a release of information signed by the consumer/parent/guardian on what they are willing to release. The Right Door for Hope, Recovery and Wellness will then follow our disclosure procedure.

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c. If the consumer/parent/guardian is unwilling to release any records, the primary worker will notify Medical Records of this. Medical Records will then send DHHS a letter notifying them that the consumer has not consented to the release of their records.

d. If the consumer is willing to consent to the release of records to DHHS in an ongoing case, then Medical Records will compile the records and request that the primary worker and/or supervisor review the record for removal of any potentially damaging information.

(2) INVESTIGATION: The responsible provider shall contact the DHHS worker to determine what information would be relevant to the investigation.

(3) Once this determination is made, the provider shall send the DHHS worker a completed release of information form for his/her signature. The form shall delineate the specific information to be released including the treatment (time) period for which the request is being made. The form shall also be signed by the responsible provider.

(3.1) You may not disclose substance use status in a response to request for records. You may only disclose when reporting abuse or neglect initially.

(3.1.1) The confidentiality of alcohol and drug abuse patient records maintained is protected by Federal law and regulations. Generally, The Right Door for Hope, Recovery and Wellness may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

- (1) The patient consents in writing,
- (2) The disclosure is allowed by a court order; or

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(3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a The Right Door for Hope, Recovery and Wellness is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations. Refer to 42 CFR Part 2 for further clarification.

(3.2) After a clinician has a discussion with DHHS, they must complete the release of information with specific details of what can and cannot be released. A blank release should not be sent back to DHHS.

(4) The DHHS worker shall be advised that the signed form is to be returned to the Medical Records Coordinator who shall then process the request.

8.1.3 Requests for the entire medical record by another behavioral health care provider with a valid release of information shall be honored.

8.1.4 CLOSED AGENCY CASES:

8.1.4.1 If there is a request for a file from DHHS that is in regard to a closed case, then the supervisor of the program the consumer was last open to will be notified and requested to follow the above procedure regarding responding to the request.

8.2 Subpoena

8.2.1 When a subpoena is received, the CEO or designee must be notified. The CEO or designee will direct whether or not legal council needs to be consulted and what the next steps are in response.

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8.2.2 The validity of the subpoena should be checked to ensure that it includes the following elements:

- (1) A properly identified consumer name;
- (2) The signature of the attorney or county clerk (this signature may be rubber stamped, typed or printed);
- (3) The title of the court in which the matter is pending;
- (4) The title of action in which the person is expected to testify;
- (5) A file number assigned by the court; and
- (6) The subpoena must be served at least two days prior to the trial or deposition.
- (7) In the case that the subpoena is for the records of a consumer receiving or who has received substance or drug use services from The Right Door for Hope, Recovery or Wellness, then 42 CFR Part 2 must be followed.
 - The confidentiality of alcohol and drug abuse patient records maintained is protected by Federal law and regulations. Generally, The Right Door for Hope, Recovery and Wellness may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser Unless:
 - (1) The patient consents in writing,
 - (2) The disclosure is allowed by a court order; or
 - (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.
 - Violation of the Federal law and regulations by a The Right Door for Hope, Recovery and Wellness is a crime.

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Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

8.2.3 The following items must accompany the subpoena:

- (1) A properly executed consent which includes the name of the person to whom disclosure is to be made;
- (2) The purpose of the information being requested by subpoena;
- (3) The specific information requested (i.e., substance abuse records must be specifically requested);
- (4) A signature from the consumer, legal guardian, or the legal representative of a consumer less than 18 years of age or 12 years of age in substance abuse cases;
- (5) The date of the subpoena; and
- (6) The signature of one witness.

8.2.4 If the request for records is not specific or the request is for the release of the entire record, the agency shall contact the consumer for clarification.

8.2.5 Witness fees and mileage (payment for the services of the responsible mental health provider as an expert witness and his or her travel expenses) should also accompany the subpoena.

8.2.6 All information in a consumer file is released with a valid subpoena except for the following:

- (1) Documents from other medical/mental health professionals and hospitals (both private and state hospitals) stamped confidential;

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- (2) Materials/information deemed damaging to the consumer by the responsible mental health provider prior to March 28, 1996. If the responsible mental health provider believes that the record contains information that would be damaging to the consumer, this determination shall be reviewed and approved by the consumer's treatment team. If the consumer's treatment was provided by a single provider, rather than a treatment team, this determination shall be reviewed and approved by the responsible mental health provider's supervisor and the doctor. Using these same procedures, the responsible mental health provider shall determine whether all or part of the information being requested may be released or whether a summary of the information is more appropriate;
- (3) Materials deleted (based on items (1) and (2) above) shall be listed in the cover letter as missing documents and the reason(s) given for deleting this information;
- (4) Once the responsible mental health primary provider has reviewed the file and completed the cover letter, the file and letter shall be returned to the Medical Records Clerk/Designee to release the information and to bill for the file search and copies made; and
- (5) When a subpoena is deficient, the party submitting the subpoena shall be notified of the deficiency(ies). In addition to the requirements of the subpoena, a valid consumer consent shall be included. If the submitting party has failed to comply by enclosing a proper release of information, they shall be notified of such.

8.3 Court Order

8.3.1 The validity of the court order shall be checked to ensure that it includes the following elements:

- (1) A properly identified consumer name;

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- (2) The signature of the county clerk (this signature may be rubber stamped, typed or printed);
- (3) The title of the court in which the matter is pending;
- (4) The title of action in which the person is expected to testify; and
- (5) The file number assigned by the court.

8.3.2 All information in a consumer file shall be released with a valid court order except documents from other medical/mental health professionals and hospitals (both private and state hospitals) stamped confidential and information protected under 42 CFR Part 2. The court is required to follow specific requirements under 42 CFR Part 2.

8.3.3 Materials/information requested by the court order that are deemed damaging to the consumer as determined by the responsible mental health provider, shall be sent; however, the court shall be made aware of the damaging content in a cover letter accompanying the information.

8.3.4 Materials deleted (based on item 7.4.2) shall be listed in the cover letter as missing documents and the reason(s) given for deleting said information.

8.3.5 Once the primary provider has reviewed the file and completed the cover letter, the file and letter shall be returned to the Medical Records Coordinator/Designee to release the information and to bill for the file search and copies made.

9.0 Information may be disclosed at the discretion of the CEO only pursuant to 748 of the Michigan Mental Health Code and R330.7051 of the Administrative Rules, 42 CFR Part 2 or other applicable law.

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9.1 Information may be disclosed to a provider of mental or other health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.

10.0 Disclosure of confidential information may be delayed under the following circumstances:

10.1 If there is substantial and documented reason that disclosure would be detrimental to the consumer or others; or

10.2 If the consumer, legally empowered guardian, or legal representatives of a minor child request that information not be released or decline consent to release information.

For case record entries made subsequent to March 28, 1996, confidential information in the consumer's record shall be disclosed to an adult consumer, upon his/her request, if the consumer does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with the adult consumer's request for disclosure as expeditiously as possible, but in no event later than the earlier of 30 days after receipt of the request or, if the consumer is receiving treatment from the holder of the record, before the consumer is released from treatment.

11.0 Within twenty-four (24) hours of a request for information which has been delayed, the CEO shall review the request and make a determination whether the disclosure would be detrimental to the consumer or others.

The decision of the CEO can be appealed to the Office of Recipient Rights.

12.0 The Right Door for Hope, Recovery and Wellness shall grant a representative of the protection and advocacy system designated by the governor in compliance with Section 972, access to the records of a person with developmental disabilities or a mental illness with consent of the consumer and notice to the CEO in the event:

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- 12.1 A complaint has been received by the protection and advocacy system from or on behalf of the consumer or by the legal representative.
- 12.2 The consumer does not have a legal guardian, the state or the designee of the state is the legal guardian of the consumer or because of a mental or physical condition is unable to consent, or in a case of consumer death or location unknown.
- 12.3 The protection and advocacy system has received a complaint regarding the health and safety of a consumer in serious and immediate jeopardy and the legal representative of the consumer has refused to act.
- 12.4 A consumer with a guardian or other legal representative if all the following are met:
 - 12.4.1 A complaint believing the consumer is in serious jeopardy;
 - 12.4.2 The legal representative has been contacted and offered assistance (upon receipt of the name and address of the legal representative); and
 - 12.4.3 The legal representative has failed or refused to act on behalf of the consumer.
- 13.0 Walk-in or telephone requests for consumer information:
 - 13.1 Agency employees, volunteers, and contract employees who receive a request for consumer information (via telephone or walk-in) from someone other than the consumer shall:
 - 13.1.1 Not provide any information about the consumer including whether the consumer is or has been a consumer of The Right Door for Hope, Recovery and Wellness.
 - 13.1.2 Provide the individual with an Authorization to Release Confidential Information form and request that the individual or agency making the request have the form signed by the

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consumer or the person who has the authority to act on behalf of the consumer.

13.1.3 Upon receipt of the signed and completed Authorization to Release Information form, comply with the Board policy and procedure for disclosure.

14.0 Agency employees requiring information from another organization with no current or valid release on file.

14.1 Agency employees or volunteers requesting information from another agency or individual regarding a consumer if there is not a current release on file shall complete the agency. Authorization to Release Confidential Information form except for the consumer and witness signature.

14.2 When the consumer is present with the agency staff, verbally explain:

14.2.1 What information is being requested;

14.2.2 Why the information is being requested;

14.2.3 Inform the consumer that he/she may refuse to sign; and

14.2.4 That the consent may be revoked in writing at any time by the consumer.

14.3 If the consumer consents to the release, have him/her or his/her authorized representative sign and date the release form.

14.4 Submit the completed release to the Medical Records staff who shall:

14.4.1 Mail a copy of the completed release, along with a form letter, to the agency or individual from which the information is being sought.

14.4.2 Retain the original release in the consumer record with a copy of the form letter.

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- 14.5 When the consumer is not present with the agency employee, the agency employee shall complete the Authorization to Release Information form (except for the consumer and witness signatures) and submit it to Medical Records staff who shall:
 - 14.5.1 Mail the Authorization to Release Information to the consumer;
 - 14.5.2 Retain a copy of the letter and the release in the consumer record;
 - 14.5.3 Enclose a self-addressed envelope for the consumer to use to return the release form; and
 - 14.5.4 Mail out the completed and signed authorization form to the agency or individual from which the information is being sought.
- 15.0 Agency employees requesting information with a current or valid release on file.
 - 15.1 Agency employees or volunteers requesting information from another agency or individual (if there is a current release on file) shall copy the release and submit it to Medical Records staff.
 - 15.2 Medical Records staff shall:
 - 15.2.1 Mail the release to the appropriate agency or individual; and
 - 15.2.2 Retain a copy of the letter in the consumer record.
- 16.0 Media requests for information.
 - 16.1 Agency employees, independent contractors, and their employees or volunteers who receive requests from the media regarding services delivery or information about a consumer shall not confirm or deny whether or not someone is or has received services and immediately refer the request to the CEO.

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16.2 The CEO shall:

16.2.1 Obtain written consent from the consumer before disclosing any information, even if the consumer is not to be identified in the media; and

16.2.2 Take other action as necessary to protect the confidentiality of the consumer from public scrutiny.

17.0 Research/Statistical data shall be released at the discretion of the CEO pursuant to determination of DHHS Administrative Rules 330.7051.12 A-D Behavior Management Committee as Customer Services Committee.

18.0 Any information, including incident reports, collected by committees/individuals for peer review purposes are not public records or subject to court subpoena.

19.0 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 consumer's record.

19.1 The consumer or other empowered representative may insert into the record, to become part of the record, a statement correcting or amending the information at issue.

19.2 A consumer, guardian or parent of a minor may challenge the accuracy, completeness, timeliness, or relevance of factual information in the clinical record. The consumer, guardian, or parent of a minor has the right to submit a statement of correction or amendment of information in the clinical record. This statement shall become part of the record.

References

Mental Health Code - 330.1748, 330.1750
 Department of Health and Human Services Administrative Rules 330.7051, 330.7125, 330.7235
 42 CFR Part 2

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Robert S. Lathers, Chief Executive Officer	Date		