

HIAWATHA BEHAVIORAL HEALTH BOARD

Administrative Policy Manual

Chapter: Recipient Rights
Section: Confidentiality/Disclosure (6.3)

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Rescinds 6.3 – Dated 5/21/07

Review Committee: Recipient Rights Advisory Committee
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I. Purpose

To establish conditions under which recipient information may and may not be used and/or disclosed.

II. Policy

It is policy of Hiawatha Behavioral Health Authority to protect all recipients' medical / psychiatric records from disclosure to any and all unauthorized persons and/or agencies, except in emergencies, and as noted herein and following:

III. Definitions

Auditor General: One who audits accounts for an audit which is an inspection of the records and procedures of a business, government unit, or other reporting entity by a trained accountant for the purpose or verifying the accuracy and completeness of the records. It may be conducted by a member of the organization or by an outside member of another organization (independent audit).

Clinical Records Technician: The individual(s) assigned the responsibility of maintaining agency clinical case records.

Closest Relative: The surviving spouse, or if there is no surviving spouse, the individual(s) most closely related to the deceased recipient within the third degree of consanguinity as defined by civil law.

Confidential Information: All information in the record of the recipient including, but not limited to:

1. Information acquired in diagnostic interviews or examinations;
2. Results and interpretations of tests ordered by a mental health professional or given by a facility;
3. All other information acquired in the course of providing mental health services to a recipient.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Legally Authorized Representative: An individual empowered to execute a consent in accordance to a Probate Court Order or the parent of a minor or person designated as Loco Parentis.

Minor: Any individual, unless emancipated in a Court of Record, under legal age (USA legal age is 18 years).

Primary Clinician: The individual responsible for the implementation of the Person-Centered Plan (Individual Treatment Plan).

Recipient: An individual who receives mental health services from the Department of Community Health or an agency such as Hiawatha Behavioral Health or a facility or Provider under contract with Hiawatha Behavioral Health.

IV. Procedure

A. Confidential information shall not be disclosed without written authorization from the recipient, legally authorized representative or guardian with authority. Disclosure shall only occur in the circumstances and under the conditions set forth in this procedure.

B. Internal access to confidential information shall be limited to those staff who have a need to know that specific information to perform their assigned job duties. Access shall ordinarily be limited to staff performing approved peer review, professional consultation, investigation, supervision, or clinical records functions. No consent is required for internal access by authorized staff.

C. General Information Disclosures:

1. All disclosures shall be consistent with Sections 330.1748, 330.1748a and 330.1750 of the Michigan Mental Health Code, 42 CFR Federal Law, 45 CFR Parts 160 and 164 Federal Law, and with agency policy and procedure.
2. The Record of Confidential Information Released Form must be completed including when applicable, the section for emergency release of information.
3. Requests for confidential information shall be directed to the Clinical Records Technician or designee or to the designated person who is responsible for maintaining the clinical record in a residential or treatment environment.
4. If the recipient's record includes information about tests for counseling for, and/or infection with Human Immune Deficiency Virus (HIV), including any care or treatment regarding Acquired Immunodeficiency Syndrome (AIDS), or AIDS Related Complex (ARC), state law requires that the release authorization must specifically authorize release of information regarding HIV infection/AIDS or that portion of the record must be deleted from the record disclosed.
5. To an attorney for the recipient, with the consent of the recipient, or guardian with authority to consent, or the parent with legal custody.

D. Mandatory Disclosures:

1. When requested, confidential information shall be disclosed only under the following circumstances:
 - a. Pursuant to valid orders or subpoenas of a court of record accompanied by any necessary authorizations, eg: Honorable Judge, or recipient, or the legally authorized representative and subpoenas of the legislature, unless the information is made privileged by law;
 - b. Department of Human Services Child and Adult Protective Services: within 14 days of the receipt of a written request for disclosure of records or information pertinent to an investigation of suspected abuse or neglect involving a person who has received services from Hiawatha Behavioral Health records, and information pertinent to the investigation shall be disclosed to the Protective Services Worker directly involved in the investigation.
 - c. To a prosecuting attorney as necessary to participate in a proceeding governed by the Mental Health Code if it is either:
 - i. Confidential information or;
 - ii. Privileged information disclosed pursuant to section 330.1750, including:
 - 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;
 - d. If necessary in order to comply with another provision of law such as: Medical Examiner, non custodial parent of a minor with parental rights.
 - e. To the Department of Community Health if the information is necessary in order for the Department to discharge a responsibility placed upon it by law;
 - f. To the Office of the Auditor General if the information is necessary for that office to discharge its Constitutional responsibility;
 - g. To a surviving spouse or, if there is no surviving spouse, to the closest relative of the recipient for the purpose applying for and receiving benefits but only if the spouse or closest relative has been designated the personal representative or has a court order;
 - h. To an adult recipient if all of the following apply:
 - i. A request has been received from the recipient;
 - ii. The recipient does not have a guardian and has not been adjudicated legally incompetent;
 - iii. The case entry was made subsequent March 28, 1996.
2. The holder of the record shall not deny or delay releasing the information which is:
 - a. A mandatory disclosure as listed above;
 - b. A request from the recipient's attorney even if the legally empowered guardian, or legally authorized representative of the recipient has requested delay.
 - c. A case record entry that was made after March 28, 1996, which is being disclosed to an adult recipient, upon the recipient's 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 recipient'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 recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.

3. Emergency Release of Information:

- a. A life threatening medical, surgical or traumatic situation or when a recipient's condition or situation precludes the possibility of obtaining written consent, pertinent medical information shall be released to medical personnel responsible for the recipient's care without the recipient's consent and without the authorization of the Chief Executive Officer or designee, if obtaining such authorization would cause an excessive delay in delivering treatment to the recipient.
- b. The Record of Confidential Information Released Form must be completed including the section for emergency release of information.
- c. The recipient or applicant shall be informed that the information was released as soon as possible.

E. Discretionary - Disclosures:

1. If informed consent is obtained from the recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative or executor of the estate of a deceased recipient, confidential information may be disclosed to all of the following:
 - a. Providers of mental health services to the recipient;
 - b. The recipient or his/her legally authorized representative, or guardian, or any other individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.
2. To enhance treatment, recipients may be requested to authorize disclosure of information to family members, significant others, or other agencies providing services to the recipient. Such consent is voluntary.
3. When information is disclosed for clinical purposes and with appropriate consent, the holder of the record shall release the information reasonably necessary to accomplish the purpose for which discovery is sought.
4. Information may be disclosed in the discretion of the holder of the record without recipient consent:
 - a. As necessary in order 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 services;
 - b. As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation provided that the individual who is the subject of the information can be identified only if such identification is essential in order to achieve the purpose for which the information was sought or if preventing such identification would clearly be impractical, but in no event if the subject of the information is likely to be harmed by the identification;

c. To providers of mental health or other services or a public agency if there is a compelling need for disclosure based upon a probability of harm to the recipient or other individuals.

F. Delays - Disclosures:

1. The Chief Executive Officer with assistance of the primary clinician shall review the request within 3 business days of receiving it, and shall determine whether the disclosure would be detrimental to the recipient or others. If the record is maintained at another site, the determination shall be made within 10 business days from the date of the request. The holder of the record shall not decline to disclose information if a recipient or legally authorized representative has consented except for a substantial and documented reason.
2. If the Chief Executive Officer or his designee declines to make a discretionary disclosure because of detriment to the recipient or others, there shall be a determination whether part of the information can be released without detriment, within 10 business days from the date of request. The CEO shall provide written notification of the determination of detriment which shall include:
 - a. Justification for the determination;
 - b. Notification to the requestor that they may appeal the decision to the Office of Recipient Rights.
3. A determination of detriment shall not be made if the benefit of the disclosure to the recipient outweighs the detriment. The person seeking disclosure, a recipient, or their legally authorized representative who consents to disclosure may appeal this determination to the Office of Recipient Rights with jurisdiction.

G. Protection and Advocacy - Disclosures:

1. If required by federal law, Hiawatha Behavior Health shall grant an identified representative of the Michigan Protection and Advocacy Services, possessing a written request for confidential records, access to records in accordance with Public Law:
 - a. On behalf of a recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal custody of the recipient has consented to the access.
 - b. A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
 - i. Because of mental or physical condition, the recipient is unable to consent to the access;
 - ii. The recipient does not have a guardian or other legal representative, or the guardian is the state;
 - iii. Michigan Protection and Advocacy 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.
 - c. A recipient who has a guardian or other legally authorized representative, if all of the following apply:

- i. A complaint has been received by Michigan Protection and Advocacy or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy;
- ii. Upon receipt of the name and address of the recipient's legally authorized representative, Michigan Protection and Advocacy has contacted the representative and offered assistance in resolving the situation;
- iii. The representative has failed or refused to act on behalf of the recipient.

2. Documentation of all disclosures will be kept on the record of confidential information released maintained in the Clinical Case Record.

H. Peer Review:

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including reviewing the quality and appropriateness of services, shall be used only for peer review and are not subject to court subpoena.

I. Right to Amend:

A recipient, legally authorized representative, or guardian, after having gained access to the treatment record in accordance with agency policy, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record and shall be permitted to insert a statement into the record correcting or amending the information at issue without changing the original documentation. That statement shall become part of the record.

J. Provision of Information to Attorneys, Other Than Prosecuting Attorneys:

1. An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a valid consent or release of information executed by the recipient, legally empowered guardian, or legally authorized representative shall be permitted to review at Hiawatha Behavior Health, the recipient's record. An attorney who has been retained or appointed to represent a minor shall be allowed to review the minor's record;
2. If there is not a valid consent or release, an attorney who does not represent a recipient shall not be allowed access to the record unless the attorney presents a court order with an original signature or a true copy directing a disclosure of information concerning the recipient to the attorney;
3. An attorney shall be refused written or telephoned requests for information unless the request is accompanied with an order from a court with an original signature ordering disclosure of information to that attorney or unless a valid consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.

K. Provision of Information to a Prosecuting Attorney: A Prosecuting Attorney may be given non-privileged information or privileged information which may be disclosed pursuant to section 330.1750 of the Mental Health Code if it contains:

1. Information relating to the names of witnesses to acts which support the criteria for involuntary admission;
2. Information relevant to alternatives to admission to a hospital or facility;
3. Other applicable information contained in the HBH policies and Procedure.

L. Provision of Information to Private Physicians or Psychologists Appointed or Retained to Testify in Civil, Criminal, or Administrative Proceedings:

1. A physician or psychologist who presents identification and a signed, original court order or true copy appointing the physician or psychologist to examine a recipient for the purpose of diagnosing the recipient's present condition shall be permitted to review at, Hiawatha Behavior Health, 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 330.1750 of the Mental Health Code;
2. The court or other entity that issues a subpoena or order and the Attorney General's Office, when involved, 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.

M. Specific Responsibilities:

1. In keeping with the tenet of informed consent, a properly completed and signed authorization to release information shall include the following:
 - a. Name of the individual that is to release the information;
 - b. Name of the individual or agency that is to receive the information;
 - c. Recipient's full name and date of birth;
 - d. Purpose and need for information;
 - e. Extent or nature of information to be released including inclusive dates of treatment;
 - f. Specific date, event or condition upon which consent will expire, unless revoked earlier. The expiration date is the date for which the purpose has been fulfilled and shall not exceed one year;
 - g. Signature of witness and date signed;
 - h. Signature of recipient, legally authorized representative, or guardian with the authority to consent and date signed.
2. If the release of information does not contain all the information outlined above, the Clinical Records Technician or designee shall contact the individual or agency and inform them of the needed information before releasing any clinical information.

3. When disclosure of clinical records is approved, the Clinical Records Technician or designee and primary clinician shall ensure that the identity of the individual and any other information is not disclosed unless it is essential to the purpose.
4. When authorized by the individual or the individual's guardian with authority or a parent of a minor, HBH, for clinical purposes, shall release a copy of the entire Clinical Case Record to the provider of mental health services.
5. The Clinical Records Technician or designee shall maintain a record of all disclosures which includes:
 - a. Information released;
 - b. To whom it is released;
 - c. The purpose stated by the person requesting the information;
 - d. The subsection of section 330.1748 and/or 330.1748a of the Mental Health Code, or other applicable law, under which disclosure was made;
 - e. A statement on the information that the individual(s) receiving the information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained in accordance with 330.1748 and 330.1748a of the Mental Health Code and Administrative Rules Rule 330.7051.
 - f. Substance abuse disclosures shall be stamped with the statement that information disclosed can not be re-disclose unless further disclosure is expressly permitted by the written consent of the recipient in accordance with 42 CFR.
6. Following authorized release of clinical information, the signed authorization will be retained in the clinical record.
7. Notification of disclosure of confidential information shall be provided to the recipient upon their request.
8. Copies of the disclosed information shall be provided to the recipient upon request.
9. There may be a charge imposed for requests which require more than twenty pages of copying and/or more than thirty minutes of search, collection and/or examination according to the Charging for Released Confidential Information Policy and Procedure.
10. There shall be a summary of Mental Health Code Section 330.1748 maintained in each recipient's clinical case record.

V. Application

All Programs Directly Operated and Under Contract With HBH

VI. Cross Reference and Legal Authority

- A. Act 258 of the Public Acts of 1974, as amended, Mental Health Code, Sections - 330.1748, 330.1748a, 330.1749, 330.1750, 330.1931
- B. Department of Community Health Administrative Rules - R - 330.7051
- C. Act 238 of the Public Acts of 1975, as amended, Child Protection Law
- D. Act 519 of the Public Acts of 1982, as amended, Adult Protection Law
- E. HBH Policy & Procedure – 6.10 Informed Consent, 6.22 Services Suited to Condition.
- F. 42 and 45 CFR - Federal Statutes and Regulations