

# HIAWATHA BEHAVIORAL HEALTH BOARD

## Administrative Policy

Chapter: Recipient Rights  
Section: 42 CFR Part 2 Confidentiality (6.27)  
Approved: 5/28/08  
Rescinds:  
Review Committee: Recipient Rights Advisory Committee  
Review Date: 1/28/2010

### I. Purpose

To delineate the exceptions to Hiawatha Behavioral Health Confidentiality and Disclosure, Abuse and Neglect Policy and Procedure, and other guidelines for recipients who are identified as having co-occurring disorders.

### II. Policy

It is the policy of the Hiawatha Behavioral Health Authority to ensure that individuals receiving co-occurring treatment will have their record protected by 42 CFR Part 2.

### III. Definitions

**Consumer with co-occurring disorders** --A consumer who is diagnosed with a serious mental illness and /or a developmental disability and a substance abuse disorder is designated in the demographic reporting data on disabilities as either severely mentally ill or developmentally disabled and substance abuse regardless of whether the substance abuse disorder is in remission or a focus of current treatment. The entire chart of the consumer shall be protected by the rules in 42 CFR Part 2.

**Integrated Treatment program defined:** An integrated treatment program is defined as those consumers with co-occurring disorders and their service providers. The individual IPOS will establish the treatment plan for the individual and those treating providers will be bound by the confidentiality rules of 42CFR Part 2 for all their clinical activities regardless of whether they are responsible for treatment pertaining more to mental illness issues than substance abuse.

**Medical Emergency:** Identifying information may be disclosed to medical personnel who have a need for information about a recipient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

IV. Procedure

A. GENERAL STANDARDS

1. Most disclosures are permissible if the consumer or guardian has signed an authorization to release information.
2. The recipient cannot authorize release of the recipient's information if the information is to be used as part of a criminal investigation or prosecution of a recipient. Staff must contact the agency attorney under those circumstances.
3. There are limited exceptions to releasing information without recipient consent. Staff should contact the Office of Recipient Rights or the Records Supervisor if attempting to release recipient information without written consent.
4. Co-occurring records will not be bifurcated between mental health and substance abuse information. The record will be considered as a whole.

**Exceptions:** Commitment, ATOs and Adolescents, see sections below under procedure

B. SPECIFIC CONSENT REQUIRED TO MEET 42CFR PART 2 AUTHORIZATION REQUIREMENTS

1. The name or general designation of the program(s) making the disclosure;
2. The name of the individual or organization that will receive the disclosure;
3. The name of the recipient who is the subject of the disclosure;
4. The purpose or need for the disclosure;
5. A description of how much and what kind of information will be disclosed;
6. The recipient's right to revoke the consent ;
7. Hiawatha Behavioral Health's ability to condition treatment, payment, enrollment or eligibility of benefits on the consumer agreeing to sign the consent, by stating either the Hiawatha Behavioral Health may not condition services on the recipient signing the consent, or the consequences for the recipient refusing to sign the consent.

8. The date, event or condition upon which the consent expires if not previously revoked;
9. The signature of the recipient, guardian or legal representative;
10. The date on which the consent is signed.
11. The recipient shall receive a copy of the consent.

#### C. WRITTEN PROHIBITION ON REDISCLOSURE

1. Any disclosure made with written recipient consent must be accompanied by a written statement that the information disclosed is protected by federal law and that the recipient of the individual or entity receiving the information cannot make any further disclosure.
2. Any oral disclosures must be followed by a written statement regarding the prohibition on re-disclosure.
3. The recipient may sign a consent form that authorizes re-disclosure of information.

#### D. INTERNAL PROGRAM COMMUNICATIONS

1. Clinical staff who are identified as part of the co-occurring treatment team shall have access to co-occurring recipient information.
2. Administrative staff who need co-occurring recipient information as part of their specific job duties shall have access to protected information.
3. All staff who are identified as needing protected information regarding co-occurring recipients shall be bound by the requirements of 42CFR Part 2.
4. Regional crisis staff would have access to the consumer record in an emergency situation.

#### E. COMMITMENT HEARINGS AND ALTERNATIVE TREATMENT ORDERS

1. Commitment Hearings and Alternative Treatment Orders are an exception to the rule that records will not be bifurcated.
2. Oral testimony about a recipient's mental health diagnosis and treatment may be given at a hearing on commitment or an ATO. Clinical records should not be taken to the court room.

3. No testimony about substance abuse diagnosis or treatment may be provided at a commitment hearing or a hearing on an alternative treatment order.

#### F. MINOR RECIPIENTS

1. Hiawatha Behavioral Health must always obtain the minor's consent for disclosures.
2. If the parent with legal custody or guardian must consent to services, the parent and the child must sign the authorization to release information.
3. If the parent with legal custody or guardian does not need to consent to services, the parent with legal custody or guardian cannot receive information about the minor's treatment unless the minor has signed a valid authorization.
4. Hiawatha Behavioral Health may not disclose information about a minor or give access to the minor's records to a guardian ad litem unless the minor signs an authorization or a court of competent jurisdiction issues an order that meets the requirements of 42CFR Part 2.

#### G. MENTALLY INCOMPETENT AND DECEASED RECIPIENTS

1. Only legally appointed guardians may consent to release of information for recipients of co-occurring services.
2. Hiawatha Behavioral Health will not honor authorizations signed by anyone other than the court appointed guardian or the recipient. Authorizations signed by a personal representative (power of attorney) are not valid for co-occurring recipients.

#### H. MEDICAL EMERGENCIES

1. Immediately following the disclosure, the program shall document the disclosure in the patients records, setting forth in writing
  - a) The name of the medical personnel to whom the disclosure was made and their affiliation with any health care facility;
  - b) The name of the individual making the disclosure;
  - c) The date and time of the disclosure;
  - d) The nature of the emergency;
2. Unless a valid authorization has been obtained, family members of recipients may not be contacted about the emergency.

3. At intake, recipients should be asked to sign an authorization to release information in the event of an emergency.

#### I. COURT-ORDERED DISCLOSURES

1. Hiawatha Behavioral Health will release information to a court only if the court order meets the requirements of 42CFR Part 2.
2. Upon receipt of a court order to release information about a co-occurring recipient, staff shall contact the agency attorney or the Office of Recipient Rights.

#### J. SUBPOENAS AND WARRANTS

1. Hiawatha Behavioral Health will honor subpoenas and warrants that meet the requirements of 42CFR Part 2.
2. When presented with a subpoena or warrant, staff will contact the agency attorney.
3. A copy of 42CFR requirements for subpoenas and warrants shall be kept with each Recipient Rights Office.

#### K. PATIENT CRIMES ON HIAWATHA BEHAVIORAL HEALTH PREMISES OR AGAINST PROGRAM PERSONNEL

1. Staff may report a crime or threatened crime by a recipient on Hiawatha Behavioral Health premises.
2. Staff will report threats made by a recipient to Human Resources, their Supervisor, and/or the Chief Executive Officer.
3. Information that may be disclosed to law enforcement includes:
  - a) Recipient's name;
  - b) Recipient's address;
  - c) Recipient's last known whereabouts;
  - d) Identifying the individual as a recipient of services.
4. Information regarding other recipients that may have been present is not permitted unless the other recipients have consented by signing an authorization form.

#### L. CHILD ABUSE AND NEGLECT REPORTING

1. Hiawatha Behavioral Health staff shall report suspected child abuse or neglect.
2. There shall not be further release of co-occurring patient information after the initial report and written confirmation to Protective Services or law enforcement unless there is a valid authorization signed by the recipient or guardian or a court order that complies with 42CFR Part 2.

#### M. ADULT ABUSE AND NEGLECT REPORTS

1. Staff cannot identify a recipient for the purpose of reporting suspected abuse of a vulnerable adult to Adult Protective Services.
2. Staff should contact the Office of Recipient Rights if they suspect abuse or neglect of a vulnerable adult.

#### N. QUALIFIED SERVICE ORGANIZATION/BUSINESS ASSOCIATES AGREEMENTS

1. Hiawatha Behavioral Health may communicate without a valid authorization to a QSO that agrees:
  - a) That in receiving, storing, processing, or otherwise dealing with any information from Hiawatha Behavioral Health about recipients, it is fully bound by HIPAA, the Michigan Mental Health Code and 42CFR Part 2.
  - b) To resist, in judicial proceedings if necessary, any efforts to obtain access to information pertaining to recipients except as permitted by 42CFR Part 2.
  - c) To use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information;
  - d) To report to Hiawatha Behavioral Health any use or disclosure of the protected information not provided for in the agreement of which it comes aware;
  - e) To ensure that any agent, including a subcontractor, to whom the QSO/BA provides the protected information received from Hiawatha Behavioral Health, or that it creates or receives on behalf of Hiawatha Behavioral Health, agrees to the same restrictions and conditions that apply through the QSO/BA agreement.

- f) To provide access to the protected information at the request of Hiawatha Behavioral Health, or to an individual as directed by Hiawatha Behavioral Health, in order to meet the requirements of 45CFR164.524.
  - g) To make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from Hiawatha Behavioral Health, or created or received by the QSO/BA on behalf of Hiawatha Behavioral Health, to Hiawatha Behavioral Health or Health and Human Services for purposes of determining the program's compliance with HIPAA.
  - h) To document disclosures of protected information, and information related to such disclosures, as would be required for Hiawatha Behavioral Health to respond to a request by an individual for an accounting of disclosures in accordance with 45CFR164.528.
  - i) To provide to either Hiawatha Behavioral Health or the requesting individual information necessary to allow Hiawatha Behavioral Health to respond to a request by an individual for an accounting of disclosures in accordance with 45CFR164.528.
  - j) That the program may terminate the agreement if it determines that the QSO/BA violated any material term;
  - k) That upon termination of the agreement for any reason, the QSO/BA will not retain any copies of the protected information, and will return or destroy all protected information received from Hiawatha Behavioral Health, or created or received by the QSO/BA on behalf of Hiawatha Behavioral Health;
  - l) That in the event that the QSO/BA determines that returning or destroying the protected information is infeasible, it will notify Hiawatha Behavioral Health of the conditions that make return or destruction infeasible and will extend the protections of the agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction infeasible, as long as it maintains the information.
2. Hiawatha Behavioral Health cannot enter into a QSO/BA with law enforcement agencies.
3. Hiawatha Behavioral Health cannot enter into a QSO/BA with another agency that provides the same drug or alcohol abuse diagnosis, treatment, counseling or referral services that Hiawatha Behavioral Health provides to its recipients.

O. DUTY TO WARN

1. There is no “duty to warn” exception to release information without consent under 42 CFR Part 2.
2. If staff believe that they have a co-occurring recipient that has made a threat of violence against a third party that meets the requirements of MCL330.1946, they should contact the Office of Recipient Rights.

P. MICHIGAN PROTECTION AND ADVOCACY SERVICE

1. There is no exception under 42CFR Part 2 for release of information to Michigan Protection and Advocacy Service.
2. Michigan Protection and Advocacy Service must have a release of information to obtain co-occurring recipient information, regardless if MP&A is investigating an allegation of abuse under MCL.

Q. DUTY TO WARN

1. When assessing and responding to consumers threats of harm to others, information will be elicited through non-threatening inquiry. The following elements at a minimum need to be present for the Duty to Warn to take effect:
  - a. A threat of physical violence;
  - b. Against a reasonably identifiable third person;
  - c. With apparent intent;
  - d. And ability to carry out the threat;
  - e. In the foreseeable future.
2. If, in the judgment of the worker, there is a Duty to Warn, the following steps must be taken:
  - a. Notify your supervisor. The supervisor will be responsible for notifying the Section Director or CEO or designee.
  - b. Evaluate for involuntary or voluntary hospitalization.
  - c. Document everything in the client’s progress notes, giving rationale for every decision.
3. If the third party who is threatened is a minor or is considered incompetent by other than age, the worker must:
  - a.. Do step 2 above.
  - b. Communicate with the Department of Human Services.
  - c. Communicate with the parent or legal guardian.

4. In all such cases, treatment must be continued. Documentation in client progress notes must be comprehensive and concise, giving rationale for every decision.

#### R. RESPONDING TO A SUBPOENA

1. If, upon receipt of the subpoena there is sufficient time, contact will be made by the individual or entity issuing the subpoena, citing the federal regulations and explaining that, by law, no disclosure can be made until the standards have been complied with.

2. The subpoenaed record will be transported to the court in a sealed envelope marked “confidential.”

3. Once an individual has been called and sworn as a witness in the proceedings, the subpoenaed individual will cite for the record, the applicable federal standards regulations (citation) governing disclosure to the court and will not disclose client information or respond to questions until so ordered by the court.

4. After complying with step 3, if the court orders the subpoenaed individual to respond to the questioning, the individual must state for the record their request to testify in chambers or after the courtroom has been cleared of all non-essential personnel.

5. Should the Court refuse to honor the Federal regulations and refuse to hold the remainder of the hearing in chambers or only in front of essential personnel then the staff has done all that is required by the regulations. The staff may then disclose information determined by them to be in the best interest of the client and the therapeutic relationship.

#### V. LEGAL AUTHORITY.

A. Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Sections 748, 748 (a), 750 and 946.

B. 45 CFR Part 164 section 512 (e) (j)

C. 42 CFR Part 2 Subpart D and Part 2 Subpart E, section 261