

**WEST MICHIGAN COMMUNITY MENTAL HEALTH  
ADMINISTRATIVE MANUAL**

		Chapter: 5	Section: 2	Subject: 1.2
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SECTION: Recipient Rights in all CMH Settings				
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- I. **PURPOSE:** To establish policy and procedures for receiving recipient information from outside agencies, for releasing recipient information to outside agencies, and for recipients to have access to and an accounting of disclosures from their clinical record. A summary of section 748 of the Mental Health Code is a part of each recipient case record.
- II. **APPLICATION:** All programs and services operated by the West Michigan Community Mental Health Governing Body.
- III. **REQUIRED BY:** Michigan's Mental Health Code, Public Act 258, statue 330.1748, Section 748, subject: "Confidentiality" and Section 750, subject: "Privileged Communications." MDCH Mental Health & Substance Abuse Services Recipient Rights Programs in Michigan R 325.14304, Accrediting bodies, Department of Health and Human Services of 1987and 42 Confidentiality Federal Register, Part 2. MDHHS Public Act 129 of 2014.

42 CFR, Part 2, Subpart E. Subsections 2.61 through 2.67 provides procedures and criteria for court orders authorizing disclosure for use of alcohol and drug abuse clinical records.

Michigan's HIV/AIDS Confidentiality Law (MCLA 333.5131) and the Michigan Department of Community Health (Public Health) Rules define communicable diseases and serious communicable diseases and infections as confidential, requiring special consent prior to release. These are defined as Human Immunodeficiency Virus (HIV) disease and tests, Acquired Immunodeficiency Syndrome (AIDS) disease, AIDS Complex (ARC) disease and tests, venereal disease (VD), Tuberculosis (TB) disease and Hepatitis B disease and tests. Written special consent is required for release of this type of information.

**IV. DEFINITIONS:**

1. **Holder of the Record:** The holder of the record for WMCMH is the Executive Director or his/her designee who is ultimately responsible for the clinical record and the information contained in it, pursuant to MCLA 330.1746.
2. **Protected Health Information:** ("PHI" or "information"): The privacy, confidentiality, security, or privileged status of individually identifiable health information which is protected under any state or federal law, regulation or rule, including, but not limited to, 42 CFR Part 2, and the Michigan Mental Health Code. Specifically, and without limitation, protected health information includes all health information, whether in oral, written or electronic form, that:

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- Is received or created by a WMCMH employee; and
  - Relates to the, past present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for health care to an individual; and
  - That identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
3. Privileged Communication: Communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person (e.g., social worker) while participating in the examination, diagnosis, or treatment of a patient or a communication made privileged under other applicable state or federal law.
  4. Responsible Care Manger: An employee of West Michigan Community Mental Health who is primarily responsible for the coordination and delivery of services to a recipient.
  5. Electronic Signature: An electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
  6. Record: Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
  7. Consent to Share Your Health Information: Standard release form that was created by MDHHS. MDHHS requires the CMHSP and its provider network use, accept, and honor the standard release form.

**V. POLICY**: It is the policy of West Michigan Community Mental Health that:

1. All information regarding a recipient is confidential, including all information in the record and that obtained during the course of providing services.
2. There shall be provisions for ensuring the confidentiality of recipient information, which is received from outside agencies.
3. Information shall only be released to outside agencies and professionals in concert with applicable Michigan and federal laws.
4. A recipient shall have access to his/her clinical record within the parameters of sound clinical judgment. However, for case entries made subsequent to March 28, 1996, the

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entire clinical record shall be disclosed to a competent adult recipient without a guardian upon his/her request.

5. Recipient is entitled to an accounting of disclosures of protected health information subsequent to 04-04-03.
6. When information is disclosed, the identity of the individual to whom it pertains shall be protected and released only when authorized in writing or, in special situations when permitted or required by law, such as a court order or duty to warn.
7. Any person receiving information, which is confidential, shall disclose the information only to others to the extent that is consistent with the authorized purpose for which the information was sought and obtained.

**VI. PROCEDURES:**

These procedures are not intended to set forth all of the substantive practices of WMCMH that are designed to effectively handle requests for PHI. Many laws are complex and must be analyzed in a fact specific manner. These procedures deal generally with some of the more important legal principles. Mention of applicable laws or regulations that apply to WMCMH are not intended to present an exclusive list of or to minimize the importance of other laws that may prove applicable. When laws are contrary to one another over the same issue, the more stringent law preempts.

**All information released regarding a client and/or from the clinical record requires proper authorization from the recipient or guardian and **must be processed through the Records Department prior to release.****

1. Information may be released with an adequate authorization for release of information signed by the recipient, recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or a court-appointed personal representative or executor of the estate if a deceased recipient. Prior to disclosing information the following procedures shall occur:
  - 1.1 To an attorney representing the recipient. A fee for copies of clinical records shall be applied at a rate of \$1.00 for search fees and \$0.65 per page thereafter utilizing the Clinical Record Invoice (WMCMH Form #FN023E).
  - 1.2 To an attorney who executes a subpoena in order to have access to a recipient's clinical record; however, if West Michigan CMH receives a subpoena executed

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by an attorney, without adequate authorization for release of information signed by the recipient/legal representative, the Clinical Director or designee shall contact the attorney and inform him/her of Board policy and applicable State laws concerning confidentiality and privileged communication. In addition, a Clinical Record Invoice (WMCMH Form #FN023E) shall be forwarded to the attorney's office indicating the charge for copies. Payment for such copies shall be received by West Michigan Community Mental Health prior to complying with request.

- 1.3 WMCMH may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.
- 1.4 The records, data, and knowledge collected for or by individuals or committees assigned a peer review function including the review function under MCL 330.143a (1) are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena. An incident or peer review report generated pursuant to MCL 330.1143a does not constitute a summary report as intended by this section and shall not be maintained in the clinical record of a recipient.
- 1.5 When authorized to release information of a recipient's record for clinical purposes by the recipient or the recipient's guardian or a parent of a minor, a copy of the entire medical and clinical record shall be disclosed to the provider of mental health services.
- 1.6 To any other person or organization, provided that in the judgment of the holder, the disclosure would not be detrimental to the recipient or others. If the information is being disclosed to a provider of mental health services the entire clinical record shall be released.
- 1.7 If required by federal law, CMHSP grants a representative of the Michigan Protection and Advocacy access to the clinical record if the following conditions are met:
  - 1.7.1 CMHSP must limit the disclosure to the relevant information expressly authorized by statute or regulation.
  - 1.7.2 CMHSP must maintain documentation of any disclosures.

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- 1.7.3 A recipient or other empowered representative has consented to the access.
- 1.7.4 A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
  - 1.7.4.1 Due to mental or physical condition, the recipient is unable to consent to the access;
  - 1.7.4.2 If the recipient does not have a guardian or other legal representative, or if the recipient's guardian is the state; and
  - 1.7.4.3 Michigan Protective and Advocacy Services has received a complaint on behalf of the recipient or there is probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
- 1.8 A recipient who has a guardian or other legal representative if all of the following apply:
  - 1.8.1 A complaint has been received by the Michigan Protection and Advocacy system or there is probable cause to believe the health or safety of the recipient is in serious or immediate jeopardy;
  - 1.8.2 Upon receipt of the name and address of the recipient's legal representative, Michigan Protection and Advocacy Services has contacted the representative and offered assistance in resolving the situation; and
  - 1.8.3 The representative has failed or refused to act on behalf of the recipient.
- 2. Prior to disclosing information, the following procedures shall occur:
  - 2.1 The recipient, guardian, parent with legal custody of a minor or executor of the estate of a deceased recipient shall sign a Consent to Share Your Health Information form, which includes the following:
    - 2.1.1 The recipient's name, social security or Medicaid ID number, and date of birth;
    - 2.1.2 The name of the person, agency, or organization to which the information is to be disclosed;

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- 2.1.3 The information to be disclosed or an exception to what the individual does not want disclosed
- 2.1.4 The purpose for requesting disclosure;
- 2.1.5 A specific date when the Consent shall terminate; and
- 2.1.6 Statement that the Consent is revocable at any time unless action has already been taken in reliance upon it; and
- 2.1.7 The date the Consent was signed and the signature of the recipient/ guardian/custodial parent of a minor/executor of the estate and the person requesting the information.
- 2.1.8 Statement indicating how the disclosed information is germane to the stated purpose.
- 2.1.9 The subsection of section 748 of the Mental Health Code, or other state law, under which a disclosure was made.
- 2.1.10 Statement that persons receiving the disclosed information can only further disclose with the authorized purpose for which it was released.
- 2.1.11 A copy of the signed Consent to Share Your Health Information will be provided to the recipient.
- 2.2 Requests for information shall not be accepted if the signed Consent is beyond termination date of authorization.
- 2.3 If the Consent to Share Health Information does not contain the above information, the Clinical Records Specialist and/or designee shall contact the individual, agency or organization requesting the information. The Clinical Records Specialist and/or designee shall inform the requesting party of the information needed prior to releasing any information to them.
- 2.4 Authorization signatures that are typewritten shall not be accepted. The Clinical Records Specialist and/or designee shall contact the individual, agency or organization if the Consent to Share Health Information is not acceptable, and inform them of WMCMH policy regarding the release of recipient information.

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- 2.5 All Consents to Share Health Information and subpoenas from outside sources (initial or faxed) shall be submitted to the Clinical Records Coordinator and/or designee to document the date the Consent to Share Health Information was received, the name of the individual, agency or organization requesting the information, the name of the recipient, and the name of the responsible care manager who is/was seeing the recipient.
- 2.6 After the above information is logged, the Consent to Share Health Information will be submitted to the appropriate responsible care manager.
- 2.7 The responsible care manager will be responsible for reviewing the clinical record and determining if the information being requested would be detrimental to the recipient or others. However, for case record entries made subsequent to March 28, 1996, information made confidential by Mental Health Code Sec. 748 (4) shall be 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. In accordance with the MDCH Administrative Rules for Substance Abuse Programs in Michigan R 325.14304(4) A substance use disorder recipient has the right to review, copy, or receive a summary of his or her program records, unless, in the judgment of the Deputy Director of Clinical Services or his/her designee, such action will be detrimental to the recipient or to others.
- 2.7.1 If the responsible care manager determines that part or all of the information being requested would be detrimental, he/she shall document his/her reasons in a letter to the individual, agency or organization requesting the information.
- 2.7.2 If the responsible care manager determines that part of the information would be detrimental to the recipient or others, he/she shall pull the information, which is not considered detrimental from the clinical record, and submit it to the Clinical Records Specialist and/or designee. The responsible care manager shall also include the initial Consent to Share Health Information and a typed letter to the individual, agency or organization requesting the information. If the person requesting the information does not agree with the decision of the responsible care manager not to release all or part of the information being requested he/she can appeal to the CMH Executive Director or his/her designee. The CMH Executive Director or his/her designee has three days if the record is on site and 10 days if the record is off site to review the information being requested and make a determination whether the

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disclosure would be detrimental. If the CMH Executive Director or his/her designee determines that the information being requested would be detrimental to the recipient if all or part of it was released the person requesting the information can then appeal to the Recipient Rights office having jurisdiction.

- 2.8 If it is determined through the above process that CMH has privileged recipient information, only that specific recipient information germane to the purpose will be released.
- 2.9 Information for HIV, AIDS, ARC, serious communicable diseases and/or drug and alcohol treatment and prevention records including test results or any reference to these conditions are protected under state and federal statutes. Disclosures shall not be made without an adequate release of information signed by the recipient or legal representative. In the absence of an adequate recipient authorization all disclosures containing these referenced conditions will be stricken prior to the disclosure of information. A subpoena alone even one signed by the court of record for disclosure of these conditions is not sufficient under the regulations unless an authorizing court order is entered.
- 2.10. The Clinical Records Specialist and/or designee shall produce the Information, include a cover sheet citing the Mental Health Code section 748 (3) regarding confidentiality along with a copy of the Consent to Share Your Health information and any correspondence submitted by the responsible care manager.
- 2.11. Prior to the Clinical Records Specialist and/or designee mailing the above information, he/she shall document the date the information was sent, what information was sent, the number of pages and the amount of the charge (if applicable) in the Releases Data Log stored in E-Records. The records and IS are the only departments with access to the log.
- 2.12. After completing the above, the Clinical Records Specialist and/or designee shall index the initial Consent to Share Health Information with a copy of any correspondence attached to it in the legal section of the recipient's clinical record.
3. The following conditions are considered to meet mandatory reporting requirements when releasing information regarding a recipient, and do not require a recipient to sign a Consent to Share Your Health Information:



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- 3.1 To the court or the legislature, when there is an order or a subpoena, unless the information is made privileged by some provision of the law;
  - 3.2 To the prosecutor for non-privileged information or privileged information if it contains information relating to names of witnesses to acts, which support the criteria for involuntary admission or information relevant to alternatives to admission to a hospital or facility.
  - 3.3 To the Department of Community Health when information is necessary in order for the Department to discharge a responsibility placed upon it by law;
  - 3.4 To the Department of Human Services per the provisions of the child and adult protection service requirements within 14 days after receipt of written request;
  - 3.5 To the Office of the Auditor General when the information is necessary for the office to discharge its constitutional responsibility;
  - 3.6 To a surviving spouse of the recipient 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 recipient as defined in civil law, but only if spouse or closest relative has been designated the personal representative or has a court order;
  - 3.7 To disclose information that enables a recipient to apply or receive benefits only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health services; and
  - 3.8 If the recipient is a Medicaid Beneficiary, per the Medicaid application, information will be shared with other Medicaid providers including the recipient's primary care physician. If information is released under this condition, any SUD information will be redacted from the document prior to release.
  - 3.9 When necessary to comply with another provision of the law.
4. The following information may be disclosed at the discretion of the holder of the record:
    - 4.1 As necessary, for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the recipient who is the subject of the information can be identified from the disclosed information only if such

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identification is essential in order to achieve the purpose for which the information is 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;

- 4.2 As necessary, for the recipient or surviving spouse, or if none, closest relative, to receive and/or in order to apply and receive benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order;
- 4.3 To providers of mental or other health services or public agencies when there is a compelling need for disclosure based upon a substantial probability of harm to the individual seeking treatment or other persons. CMH staff members shall also notify the Clinical Director if information is provided to him/her that substantial or serious physical injury may come to the recipient or another person.
5. When there is a need to disclose information (i.e. medical emergency, psychiatric emergency, to prevent the recipient from harming him/herself or others) without prior consent from the recipient, guardian, or parent with legal custody of a minor, the following information shall be documented in the recipient's progress note and/or on the Emergency Contact form:
  - 5.1 The date when the recipient, guardian or parent with legal custody of a minor was informed that the information was released;
  - 5.2 The date the information was released;
  - 5.3 The person to whom the information was released;
  - 5.4 The reason the information was released;
  - 5.5 The reason written consent could not be obtained; and
  - 5.6 The specific information released.
  - 5.7 The specific information released will be documented in the Releases Data Log stored in E-Records

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6. When staff members are requesting information from another agency or professional, the following procedures shall be implemented:
    - 6.1 The responsible care manger shall have the recipient sign a Consent to Share Your Health Information form, which includes:
      - 6.1.1 The recipient's name, last 4 digits of their social security, or Medicaid ID number and date of birth;
      - 6.1.2 The name of the person, agency, or organization from which the information is being requested
      - 6.1.3 The information to be disclosed or all exceptions to what the individual does not want disclosed
      - 6.1.4 The purpose and need for the disclosure;
      - 6.1.5 A specific date when the consent shall terminate; and
      - 6.1.6 A statement that the consent is revocable at any time unless action has already been taken in reliance upon it;
      - 6.1.7 The date the Consent was signed and the signature of the recipient/guardian/ parent with legal custody of a minor and the staff person requesting the information.
    - 6.2 A copy of the signed initial Consent to Share Your Health Information form will be provided to the recipient.
    - 6.3 The initial Consent to Share Your Health Information form will be sent or faxed to the agency or organization from which the information is being requested, and a copy indexed in the recipient's clinical record under the legal section.
    - 6.4 All information received from other agencies or organizations shall receive the same level of confidentiality as all other recipient information, except that such third party information shall not be released from the recipient's record. Third party information must be obtained from the agency/professional of origin.
- All information received will be routed to the responsible care manager for review.

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7. The following procedures shall be implemented when a recipient, legal guardian, or parent with legal custody of a minor requests visual examination and/or copies of his/her clinical record;

7.1 A recipient, legal guardian, and/or parent with legal custody of a minor, which at the time of the request for inspection and/or copies is currently receiving West Michigan CMH System services, shall complete a Recipient Request for Inspection of Clinical Record form (WCMCHS Form # CR092). This form shall be submitted to the Clinical Director.

7.2 Within 24 hours the Clinical Director shall consult with the responsible care manager and program manager/supervisor to determine possible detriment to the recipient or others if such information is made available.

7.2.1 If it is determined that it would be detrimental to release any or all information to the recipient, legal guardian, or parent with legal custody of a minor, the reason why shall be submitted in writing to the recipient, legal guardian, or parent with legal custody of a minor with a copy indexed in the legal section of the recipient's clinical record. Determination of detriment shall not control if the benefit of the disclosure to the recipient outweighs the detriment. A decision not to disclose may be appealed to the CMH Executive Director by the person seeking disclosure, a recipient, a legally empowered guardian, or parent with legal custody of a minor who consents to disclosure.

If the individual requesting visual examination and/or copies of his/her clinical record is a competent adult recipient without a guardian, he/she shall have his/her entire clinical record disclosed for case entries made after March 28, 1996. In accordance with the MDCH Administrative Rules for Substance Abuse Programs in Michigan R 325.14304(4) A substance use disorder recipient has the right to review, copy, or receive a summary of his or her program records, unless, in the judgment of the Deputy Director of Clinical Services or his/her designee, such action will be detrimental to the recipient or to others.

7.3 If the request is found not to be detrimental, the responsible care manager shall meet with the recipient, legal guardian, or parent with legal custody of a minor and document the following in the recipient's progress notes: (The recipient, legal guardian or parent with legal custody of a minor shall not be permitted to

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review the record without the responsible care manager or designee being present.)

- 7.3.1 Date, time and duration the clinical record was reviewed;
  - 7.3.2 Indicate that he/she was present when the record was reviewed and the information that was discussed;
  - 7.3.3 Document any information that was reproduced for the recipient, legal guardian, or parent with legal custody of a minor
  - 7.3.4 Sign and date the progress note documenting the above process.
  - 7.3.5 Notify the Records Department of the progress note in order to provide an accounting of disclosures.
- 7.4 A recipient, legal guardian, and/or parent with legal custody of a minor child may request copies of his/her clinical record from past episodes of service.). A fee shall be applied at a rate of \$1.00 for search fees and \$0.65 per page thereafter. No charge will be applied to those recipients, guardians, and/or parent with legal custody of a minor child who demonstrate an inability to pay the required fee for clinical record copies.
8. Prior to providing an individual with an accounting of protected health information disclosures made from their clinical record, the following procedures shall occur:
- 8.1 The recipient, guardian or parent with legal custody of a minor will request an accounting of PHI disclosure from their electronic clinical records from any WMCMH staff person.
  - 8.2 The request for information will be submitted to the Clinical Records Specialist and/or designee to document the date the request for an accounting of disclosure was received, the name of the individual, agency or organization requesting the information, the name of the recipient, and the name of the responsible care manager who is/was seeing the recipient.
  - 8.3 After the above information is logged, the appropriate responsible care manager will be notified of the request for accounting of disclosure.

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- 8.4 The Clinical Records Specialist and/or designee will generate a report from the Releases Data Log stored in E-Records and, a face sheet citing the Mental Health Code section 748(3) regarding confidentiality will be provided with the report of disclosures.
- 8.5 Prior to the Clinical Records Specialist and/or designee mailing the above information, he/she will document the date the information was sent, what information was sent, and the number of copies in the Releases Data Log stored in E-Records. Records and IS are the only departments with access to the log.
- 8.6 After completing the above, the Clinical Records Specialist and/or designee will index the initial Consent to Share Your Health Information form with a copy of the letter attached to it in the legal section of the recipient's electronic clinical record.
9. Documentation of services directly provided by a licensed psychologist, registered social work technician, social worker, certified social worker, or licensed professional counselor, may be declared to be privileged in accordance with Public Act 258, Section 750 of 1974, as amended. In such cases, privileged information shall not be released unless so ordered by a court of the law citing Section 750, of Public Act of 258 of 1974, and the Michigan Occupational Code, as amended.
10. Information provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings shall be notified by the Clinical Director prior to reviewing the clinical record when it contains privileged communication which cannot be disclosed in court. Privileged information shall not be disclosed unless the disclosure is permitted because of an express waiver of privilege or by law, which permits or requires disclosure.
11. Upon the receipt of a court order/subpoena ordering the release of an entire clinical record, under the direction of the Clinical Director, the Support Services Coordinator and/or designee will produce the clinical case record, certify it be a true and exact copy of the original record, and forward it to the court by certified mail, unless sections are declared to be privileged.
12. A recipient, guardian, or parent with legal custody 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 shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become part of the record.

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13. The recipient shall be informed of the policies and procedures regarding confidentiality, protected health information and sharing of protected health information during his/her first appointment.

**14. Disclosure of Information regarding Substance Use Disorder Services.**

14.1 A Consent to Share Your Health Information authorization indicating the specific information to be disclosed must be obtained before releasing information regarding recipients who are receiving any alcohol or drug abuse related services, including assessment, diagnosis, counseling, or referral for treatment.

14.2 The Substance Use Disorder Services Program may not inform a person outside the program that a recipient attends the program, or disclose any information identifying a recipient as an alcohol or drug abuser unless:

- 14.2.1 The adult or minor recipient signs a written Consent to Share Your Health Information form to disclose PHI about substance use disorder treatment, or
- 14.2.2 The disclosure is allowed by court order, or
- 14.2.3 The disclosure is made to medical personnel in a medical emergency, or
- 14.2.4 The disclosure is made to qualified personnel for research, audit, or program evaluation, or
- 14.2.5 The recipient commits or threatens to commit a crime either at the program or against any person who works for the program, or
- 14.2.6 Information is needed by a qualified service organization in order to provide services to the program, or
- 14.2.7 There is a suspected child abuse and/or neglect which must be reported to DHS Child Protective Services [42 CFR, Part 2, Subpart B 2.12(6) prohibits disclosure of any PHI after the initial report to CPS unless a written authorization for release or a court order for further disclosure is obtained].

Note: 42 CFR, Part 2 provides no permitted disclosure for suspected adult abuse or neglect. However, a report to APS could be made with an authorization for release or by obtaining a court order.

**WEST MICHIGAN COMMUNITY MENTAL HEALTH  
ADMINISTRATIVE MANUAL**

		Chapter: 5	Section: 2	Subject: 1.2
CHAPTER: Recipient Rights				
SECTION: Recipient Rights in all CMH Settings				
SUBJECT: Release of Information				
			Date of Governing Board Action:  2/20/96	Page 16 of 17

**15. Substance Use Disorder of Minors**

15.1 Any written release of information must be authorized only by the minor recipient, of any age, that acts alone to apply for and/or obtain substance use disorder services. This restriction includes, but is not limited to, any disclosure of PHI to the parent or guardian for the purpose of obtaining financial reimbursement.

15.2 If a parent, guardian or other person authorized under state law to act in the minors behalf has provided consent to a minor's substance use disorder treatment, any written authorization for release of information must be given by both the minor and his or her parent, guardian or other person authorized under state law to act in the minor's behalf.

15.2.1 The facts of a minor's application for treatment may be communicated to the minor's parent, guardian or other person authorized under state law to act in the minor's behalf, only if the minor gives written authorization to the disclosure, or if the Deputy Director of Clinical Services or his/her designee determines, in accordance with 42 CFR, Part 2, Subpart B 2.14(d), that the minor lacks the capacity to make a rational choice then the disclosure of facts relevant may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf

**VII. SUPPORTING DOCUMENTS:**

Appendix 5-2-1.2A: Telefax Transmission Form (WMCMH Form #IS003)

Appendix 5-2-1.2B: MDCH Consent to Share Your Health Information DCH-3927

Appendix 5-2-1.2C: Request for Inspection of Records by the Recipient (WMCMH Form # CR092)

Appendix 5-2-1.2D: 42 CFR Part 2 Rule; Confidentiality of Alcohol and Drug Abuse Patient Records.

Appendix 5-2-1.2E: Clinical Record Invoice (WMCMH Form #FN023E)

Appendix 5-2-1.2F: Notice of Privacy Practices (WMCMH Form #CR090)

Appendix 5-2-1.2G: Steven E. Burnham, Attorney at Law, correspondence dated February 17, 2004

Appendix 5-2-1.2H: Robert R. Tremp, Attorney at Law, correspondence dated December 31, 2001



**TELEFAX TRANSMISSION FORM**



**DATE:**

**TO:**

**LAKE COUNTY**  
Atwell Building  
1090 N. Michigan Ave.  
Baldwin, MI 49304  
(231) 745-4659  
Fax (231) 745-2942

**FROM:**

**DEPARTMENT:**

**MASON COUNTY**  
Harold E. Madden Center  
920 Diana St.  
Ludington, MI 49431  
(231) 845-6294  
Fax (231) 845-7095

**TOTAL # PGS.:**  
**(Including Cover Page)**

**OCEANA COUNTY**  
105 Lincoln St.  
Hart, MI 49420  
(231) 873-2108  
Fax (231) 873-2455

**FAX # OF INTENDED RECIPIENT:**

**COMMENTS:**

*“The information contained in this facsimile message is privileged and confidential and intended for the use of the addressee listed above. If you are neither the intended recipient or the employee or agent responsible for delivering this information to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the content of this telecopied information is strictly prohibited. If you received this copy in error, please immediately notify us by telephone to arrange for return of the original documents to us.”*

**CONFIDENTIAL:** *This information has been disclosed to you from records protected by Federal confidentiality rules (42CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.*

**CONSENT TO SHARE BEHAVIORAL HEALTH INFORMATION  
FOR CARE COORDINATION PURPOSES**

Michigan Department of Health and Human Services

**This form cannot be used for a release of information from any person or agency that has provided services for domestic violence, sexual assault or stalking. A separate consent must be completed with the person or agency that provided those services.** (See FAQ at [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent) to determine if this restriction applies to you or your agency.)

Individual's Name	Date of Birth	Individual's ID Number
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Under the Health Insurance Portability and Accountability Act (HIPAA), a health care provider or agency can use and share most of your health information in order to provide you with treatment, receive payment for your care, and manage and coordinate your care. However, your consent is needed to share certain types of health information. This form allows you to provide consent to share the following types of information:

- Behavioral and mental health services
- Referrals and treatment for an alcohol or substance use disorder

This information will be shared to help diagnose, treat, manage and get payment for your health needs. You can consent to share all of this information or just some information. (See FAQ at [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent))

**I. I consent to share my information among:**

1. West Michigan CMH	6. _____
2. _____	7. _____
· (Primary Care Physician)	_____
<input type="checkbox"/> No PCP/list provided <input type="checkbox"/> Decline to provide	
3. _____	8. _____
· (School if applicable)	_____
4. _____	9. _____
5. _____	10. _____
· _____	

**II. I consent to share:**

- All of my behavioral health and substance use disorder information
- OR**
- All of my behavioral health and substance use disorder information except:  
(List types of health information you do not want to share below)

---

I understand the HIPAA allows providers and other agencies to use and share much of my health information without my consent in order to provide me with treatment, receive payment for my care, and to manage and coordinate my care.

**III. By signing this form I understand:**

- I am giving consent to share my behavioral health and substance use disorder information. Behavioral health and substance use disorder information includes, but is not limited to, referrals and services for alcohol and substance use disorders.
- My information may be shared among each agency and person listed above.
- My information will be shared to help diagnose, treat, manage and pay for my health needs.
- My consent is voluntary and will not affect my ability to obtain mental health or medical treatment, payment for medical treatment, health insurance or benefits.
- My health information may be shared electronically.

- Other types of my information may be shared with my behavioral health and substance use disorder information. HIPAA allows my providers and other agencies to use and share most of my health information without my consent in order to provide me with treatment, receive payment for my care, and to manage and coordinate my care.
- The sharing of my health information will follow state and federal laws and regulations.
- This form does not give my consent to share psychotherapy notes as defined by federal law.
- I can withdraw my consent at any time; however, any information shared with or in reliance upon my consent cannot be taken back.
- I should tell all agencies and people listed on this form when I withdraw my consent.
- I can have a copy of this form.
- My consent will expire on the following date, event or condition unless I withdraw my consent. (If expiration date is left blank or is longer than one year, the consent will expire 1 year from the signature date.)

\_\_\_\_\_

I have read this form or have had it read to me in a language I can understand. I have had my questions about this form answered.

Signature of person giving consent or legal representative	Date
Relationship to individual	
<input type="checkbox"/> Self	<input type="checkbox"/> Parent
<input type="checkbox"/> Guardian	<input type="checkbox"/> Authorized Representative

<b>WITHDRAW OF CONSENT</b>	
I understand that any information already shared with or in reliance upon my consent cannot be taken back.	
<b>I withdraw my consent to the sharing of my health information:</b>	
<input type="checkbox"/> Between any of the following persons or agencies:	
_____	_____
_____	_____
_____	_____
<b>OR</b>	
<input type="checkbox"/> For all persons and agencies:	
Signature of person giving consent or legal representative	Date
Relationship to individual	
<input type="checkbox"/> Self	<input type="checkbox"/> Parent
<input type="checkbox"/> Guardian	<input type="checkbox"/> Authorized Representative
<b>Verbal Withdraw of Consent:</b>	
This consent was verbally withdrawn.	
Signature of person receiving verbal withdraw of consent	Date

Individual provided copy

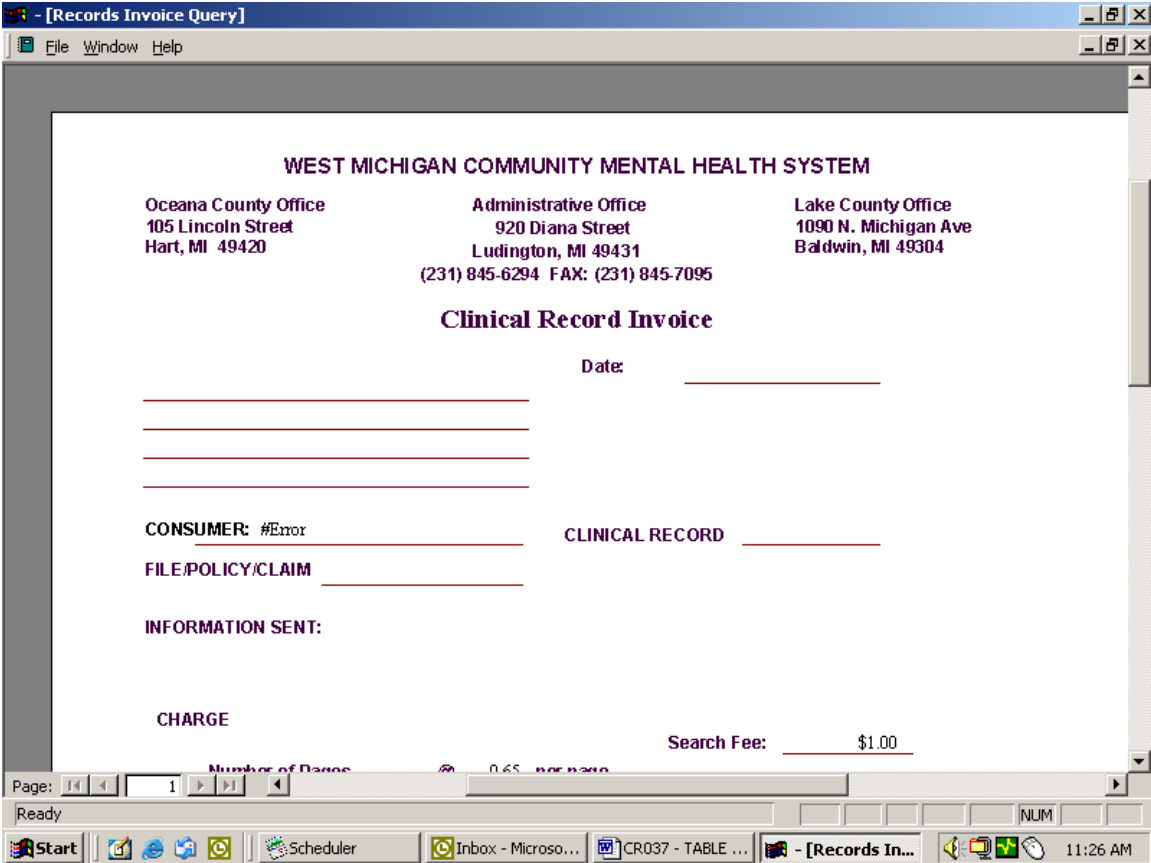
Individual declined copy

<b>AUTHORITY:</b>	This form is acceptable to the Michigan Department of Health and Human Services as compliant with HIPAA privacy regulations, 45CFR Parts 160 and 164 as modified August 14, 2002, 42 CFR Part 2, PA 258 of 1974 and MCL 330.1748 and PA 368 of 1978, MCL 333.1101 et seq and PA 129 of 2014, MCL 330.1141a.
<b>COMPLETION:</b>	Is Voluntary, but required if disclosure is requested.
The Michigan Department of Health and Human Services (MDHHS) does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, <u>political beliefs or disability</u> .	



CLINICAL RECORD INVOICE

FN023E – IN E- RECORDS ONLY



**West Michigan CMH - Notice of Privacy Practices**

This notice describes how we may use and disclose Protected Health Information about you and how you can get access to this information. Please review this notice carefully.

This notice is being provided to you pursuant to the federal law known as HIPAA and an amendment to that law, known as HITECH. If you have any questions about this notice, please contact the West Michigan Community Mental Health (CMH) Recipient Services, 920 Diana Street, Ludington, MI 49431; 1-800-992-2061 or (231) 845-6294. [Other statutes and regulations, including, for example, the Michigan Mental Health Code and Part 2 of Title 42 of the Code of Federal Regulations may further restrict our use and disclosure of Protected Health Information. When that is the case, the greater restrictions or protections apply.](#)

Protected Health Information (PHI) is all individually identifiable health information that is created or received by West Michigan CMH that relates to your past, present or future physical or mental health condition, the provision of health care services and payment for those services. Examples of identifiable health information includes: your name, address, telephone number and date of birth; your diagnosis (the condition for which you are receiving treatment) and your treatment plan and goals.

**Our Pledge Regarding Your Protected Health Information:** We understand that your health and medical information about you is personal. We are required by law to maintain the privacy of your PHI, to notify you following a breach of your unsecured PHI, and to provide you with this notice of our legal duties and privacy practices with respect to your PHI. This notice applies to the medical records and information we maintain concerning the services you receive from West Michigan CMH. Each service provider may have different policies and/or notices regarding the use and disclosure of your PHI created and provided by that service provider's organization.

This notice will tell you about the ways in which we may use and disclose (share with others) your PHI. It also describes our obligation and your rights regarding the use and disclosure of PHI.

**How we May Use and Disclose PHI About You:** We may use and disclose PHI for a variety of reasons. We have a limited right to use and/or disclose your PHI without your authorization for purpose of treatment, payment or our health care operations. Other uses and disclosures require your written authorization unless the law permits or requires us to make the use or disclosure without your authorization. If we disclose your PHI to a third party in order for that party to perform a function on our behalf, the third party must agree that it will extend the same degree of privacy protection to your PHI that we do. Subject to the limitations of the Michigan Mental Health Code, and Title 42, Part 2 of the Code of Federal Regulations, we may use or disclose your PHI without your authorization as follows:

**1. Treatment.** We will use and disclose your PHI to health care providers under contract with West Michigan CMH in order to provide and coordinate your health care and related services. For example, we may disclose the needed parts of your PHI to a home health agency or Adult Foster Care home who are involved in taking care of you. Also, we may disclose your PHI to another doctor or health care provider, such as a specialist or laboratory that helps us with your treatment. We may also use a sign-in sheet at the registration desk where you will be asked to sign your name, and/or we may call you by name in the waiting room. We may use or disclose your PHI, such as your name and address to contact you to remind you of your appointment.

**2. Payment.** We will disclose your PHI in order to receive payment for the services we provide you. For example, we may disclose your PHI to the Medicaid program or private insurance companies to see if they will pay for the kind of service you are requesting, to make sure services provided to you are medically necessary and to facilitate and/or receive payment for the treatment and services you receive.

**3. Health Care Operations.** We may use and disclose your PHI to support the business activities of this agency (operations purposes). For example, we may use your PHI in connection with: making sure we meet important goals and standards; judging how well our employees do their job; training workers and volunteers; licensing or accreditation of our agency; fraud and abuse detection programs; business planning and development and other general administrative activities.

**4. Fundraising and Other Communications.** We may use or disclose parts of your PHI to offer you information that may be of interest to you. For example, we may use your name and address to send you newsletters or other information about activities. If we contact you to raise funds, we will inform you of our intention and your right to opt out of receiving such communications.

**5. Business Associates and Subcontractors.** We may contract with individuals and entities known as Business Associates to perform various functions or provide certain services. In order to perform these functions or provide these services, Business Associates may receive, create, maintain, use and/or disclose your PHI, but only after they sign an agreement with us requiring them to implement appropriate safeguards regarding your PHI. Similarly, a Business Associate may hire a Subcontractor to assist in performing functions or providing services in connection with your services. If a Subcontractor is hired, the Business Associate may not disclose your PHI to the Subcontractor until after the Subcontractor enters into a Subcontractor Agreement with the Business Associate that also requires the Subcontractor to safeguard your PHI.

**6. Avert a Serious Threat to Health or Safety.** We may use and disclose your PHI when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.

**7. Public Health.** We may disclose parts of your PHI to the Public Health Department when the law requires us to do so. This disclosure would only be made for the purpose of controlling disease, injury or disability.

**8. Health Oversight Entities.** We may disclose your PHI to agencies that are responsible for making sure our services meet quality standards. They may need your PHI for activities such as audits, investigations and inspections. Agencies that use this information include the Center for Medicare and Medicaid Services, the Michigan Department of Community Health and Michigan Protection and Advocacy.

**9. Law Enforcement.** We will disclose your PHI when required to do so by federal, state or local law. For example, we may disclose PHI in the course of any court or administrative proceeding, if we are ordered to do so and/or to meet legal requirements. We may also disclose PHI for law enforcement purposes, such as investigation of a crime, but only if such disclosures comply with Michigan law.

**10. Food and Drug Administration.** We may disclose your PHI if the Food and Drug Administration requires it: for example, to report adverse events or product defects or problems; help track products; and allow product recalls.

**11. Coroners or Medical Examiners.** We may disclose PHI to a coroner or medical examiner for identification purposes, determining cause of death or for the coroner or medical examiner to perform other duties.

**12. Research Organizations/Individuals.** We may disclose your PHI to researchers only with your authorization.

**13. Workers' Compensation.** We may disclose your PHI to comply with Michigan workers' compensation laws.

**14. Correctional Facilities.** We may use or disclose your PHI if you are an inmate of a correctional facility and West Michigan CMH created or received your PHI in the course of providing care to you.

**15. Department of Health and Human Services (HHS).** We must release your PHI to HHS so they can make sure we are following the law. We also will release your PHI if we suspect there may have been child or vulnerable adult abuse or neglect. Federal and State Laws require these reports. Michigan law does not require us to notify you when we make a report about abuse or neglect.

**16. Military and or Veteran's Administration.** If you are a member of the armed forces, we may release your PHI as required by military command authorities. We may also release PHI about foreign military personnel to the appropriate foreign military authority. We may also release PHI for you to receive and/or coordinate benefits.

**17. As Required by Law.** We will disclose your PHI when required to do so by federal, state or local law.

**18. Disclosure to Health Plan Sponsor.** PHI may be disclosed to health plans for purposes of facilitating claims payments under that plan. In addition, your PHI may be disclosed to a Plan Sponsor and its personnel for the purpose of administering benefits under the Plan or as otherwise permitted by law and the Plan Sponsor's HIPAA privacy policies and procedures. We must agree to a request to restrict disclosure of PHI to a health plan if the disclosure is for payment or health care operations and pertains to a health care item or service for which you have paid out of pocket in full.

**Your Rights Regarding Your Protected Health Information (PHI):** You have the following rights regarding your PHI which we maintain:

**1. You have the right to inspect and receive a copy of your PHI.** You have the right to request access to the portion of your PHI that is contained in a designated records set for as long as we maintain the PHI. "Designated record set" means medical and billing records and any other records that this agency uses for making decisions about you. This includes the right to inspect the information as well as the right to a copy of the information. You may request that the information be sent to a third party. You must submit a request for access in writing to the West Michigan CMH Medical Records staff and/or Recipient Services. If you request a copy of the information, we may charge a reasonable fee for the costs of copying, mailing or other supplies associated with your request (such as a thumb drive in the case of a request for electronic information). We may deny your request to inspect and copy in certain circumstances. If you are denied access to medical information, you may request that the denial be reviewed by contacting our Recipient Services.

If we maintain your PHI electronically in a designated records set, we will provide you with access to the information in an electronic form and format you request if readily producible or, if not, in a readable electronic form and format as agreed to by you and West Michigan CMH.

Under federal law you may not see or copy the following that may be contained in your record: psychotherapy notes; information gathered for use in court or at hearings; PHI that is covered by a law that states you may not see it and/or information assigned or developed as part of a peer review function.



**2. Right to Amend.** If you feel that PHI we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for West Michigan CMH. To request an amendment, your request must be made in writing and submitted to the Recipient Services. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- is not part of the treatment information kept by West Michigan CMH;
- was not created by us, unless the person or entity that created the information is no longer available to make the amendment;
- is not part of the information which you would be permitted to inspect and copy; or
- is accurate and complete.

**3. Right to Request Restrictions.** You have the right to request a restriction or limitation regarding your PHI that we use or disclose for treatment, payment or health care operations. You also have the right to request a limit on your PHI that we disclose to someone who is involved in your care or the payment for your care, like a family member or friend. To request restrictions, you must make your request in writing to the Recipient Services. In your request, you must tell us: what information you want to limit, whether you want to limit our use, disclosure or both, and to whom you want the limits to apply. For example, you may want to limit disclosures to your spouse.

We are not required to agree to your request. We will allow your PHI to be used or released if your treatment professional believes it is in your best interest. If your treatment professional does agree to your request, we may not use or release your PHI unless it is needed to provide emergency treatment. Please discuss any restriction you wish to request with your treatment professional.

**4. Right to Request Confidential Communications.** You have the right to request that we communicate with you about your services in a certain way or at a certain location. For example, you can ask that we only contact you at work or that we send mail to your Post Office box instead of your home address. To request confidential communications you must make your request in writing to the Recipient Services. We will not ask you the reason for your request. We will accommodate all reasonable requests. Your request must specify how or where you wish to be contacted.

**5. Right to an Accounting of Disclosures.** You have the right to request an accounting of certain disclosures of your PHI. The accounting will not include disclosures to carry out treatment, payment and health care operations, disclosures to you about your own PHI, disclosures pursuant to an individual authorization or other disclosures as set forth in HIPAA privacy policies and procedures. To request this list or accounting of disclosures, you must submit your request in writing to the Recipient Services. Your request must state a time period which may not be longer than six years. Your request should indicate in what form you want the list (for example, paper or electronic). The first list you request within a 12 month period will be free. For additional lists, we may charge you for the reasonable costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

Effective at the time prescribed by federal regulations, you may also request an accounting of uses and disclosures of your PHI maintained as an electronic health record.

**6. Right to a Paper Copy of this Notice.** Even if you received this notice electronically, you have the right to a paper copy of this notice. You may ask us to give you a paper copy of this notice at any time. To obtain a paper copy of this notice, contact the Recipient Services.

**Genetic Information:** If we use or disclose PHI for underwriting purposes with respect to your services, we will not use or disclose PHI that contains your genetic information for such purposes.

**Breach Notification Requirements:** You have a right to be notified upon a compromised breach of your unsecured PHI. We will also inform HHS and take any other steps required by law.

**Changes to this Notice:** We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for PHI we already have about you as well as any information we receive in the future. We will notify you in the event of a change.

**Complaints:** If you believe your privacy rights have been violated, you may file a complaint with West Michigan CMH by contacting the West Michigan CMH Recipient Services. You may also file a complaint with the Secretary of the U.S. Department of Health and Human Services.

**Your Written Permission is Required for Other Uses and Disclosures of Your PHI**

The following uses and disclosures of your PHI will be made only with your written authorization:

- Uses and disclosures of PHI for marketing purposes;
- Disclosures that constitute a sale of your PHI; and

- Uses and disclosures of psychotherapy notes other than to carry out the treatment, payment, and health care operations set forth at 45 CFR § 164.508(a)(2).

Other uses and disclosures of your PHI not covered by this notice or applicable laws will be made only with your written permission. If you provide us permission to use or disclose your PHI, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose your PHI for the reasons covered by your written authorization. You understand that we are unable to take back any disclosures we have already made with your permission.

**Effective Date:** This notice is effective April 2015.

**JANIS MEIJA JR. & ASSOC., P.C.  
ATTORNEYS AT LAW**

Janis Meija Jr. Asher Court Kalamazoo Office Steven E. Burnham 321 West Lake Lansing Rd., Ste. 100 Tel 269-492-0636 East Lansing, Michigan 48823 Tel (517)336-7115 Fax (517) 336-7116

February 17, 2004

Rich VandenHeuvel  
West Michigan Community  
Mental Health System 920  
Diana Street  
Ludington, MI49431

Dear Mr. VandenHeuvel:

You have requested that I provide an overview of the various statutes, rules and regulations that have an impact on your agency's ability to respond to subpoenas or other similar requests for consumer records. All of the consumer files in your agency's possession, or any agency under contract with you, are subject to a number of state and federal laws regarding confidentiality and the release of information. West Michigan Community Mental Health System (WCMCHS) is the designated Holder of Record of certain clinical records which pursuant to MCLA330.1746you, and your contract agencies, are required to keep and maintain for each recipient of mental health and substance abuse services. The intent of this letter is to briefly review the Michigan Mental Health Code and two federal statutes concerning clinical/medical records. Further this letter makes some recommendations on how to effectively and efficiently handle subpoena or other requests for information.

*Privileges*

In the typical matter you will be dealing with at least one of the following privileges. The first is the social worker privilege which is found at MCLA 339.1610. This privilege prohibits a social worker from disclosing communications made during the course of treatment. The privilege may only be waived by the client or disclosed under the duty to warn third parties requirement of the mental health code-MCLA 330.1946. The other two privileges are those attached to the psychologist/patient and the psychiatrist/patient relationship. These two privileges are found at MCLA 330.1750. The latter two privileges are traditionally called absolute privileges, in other words they must be specifically waived by the consumer in order for WCMCHS to testify or produce documents.

*Federal Drug and Alcohol Confidentiality Law*

Another instance in which WCMCHS may be requested to turn over records or provide testimony involves drug and alcohol treatment and prevention records. These records are protected under Federal statute, 42 CFR Part 2, which requires the consumer to specifically state on a disclosure that these records may be released. HIV, AIDS and ARC records including the fact a consumer has been tested for these conditions or any reference to these conditions, are protected. The release must specifically state that this information may be released; a general statement releasing medical records will not pass muster under Federal law.

A court may issue an order authorizing the release of these records ONLY after it has followed certain procedures and made specific determinations. Under Federal Law, a subpoena alone, even one signed by the court and labeled a court order is not sufficient for an agency or provider to release substance abuse information. A subpoena can be used to compel attendance at a hearing to determine if the requisite findings required by 42 CFR Part 2 may be found.

42 CFR Part 2 requires that the court make specific determinations that 'good cause' exists for the disclosure. Good cause may be determined if the court finds that the public interest and the need for disclosure outweigh any adverse effect that the disclosure will have on the consumer, the doctor-patient relationship, and the effectiveness of the program's services. If the information could be obtained through other sources then, under 42 CFR Part 2, the court should not make a finding to order the records release.

#### *Health Insurance Portability and Accountability Act (HIPAA)*

The final set of rules and regulations that come into play are those surrounding the Health Insurance Portability and Accountability Act (HIPAA), which became effective April 14, 2003. HIPAA purports to set out new standards for protecting the privacy of health information held by entities such as health plans and health care providers. WCMCHS is a covered entity under HIPAA. At first glance HIPAA, the Michigan Mental Health Code and the Federal Law on Substance Abuse would seem to regulate the same subject, health record privacy.

Under such instances, and according to well established legal principles, you need to attempt to give effect to both laws if at all possible. This is typically called a pre-emption analysis. Without going into great detail I can indicate to you that in almost every instance relative to this discussion the requirements of the Mental Health Code and the Federal Drug and Alcohol law are much more stringent and therefore pre-empt HIPAA.

#### *Responding to a Subpoena*

Where everyone seems to get confused is distinguishing between a subpoena and the right to discovery. Generally speaking a subpoena only compels attendance in court (See MeR 2.506); the right to discover or compel production of something in court is governed by another court rule, MCR 6.20I. Section C of the Court Rule for Discovery is specific that "*there is no right to discover information or evidence that is protected from disclosure by constitution, statute or privilege...*" This restriction obviously includes a record created and maintained under MCLA 330.1746.

As the requested records are subject to the previously mentioned privileges and rules they should not be disclosed to anyone other than the consumer without one of the following:

1. A written authorization and consent duly signed by the consumer, specifying to whom the records are to be delivered and identifying the specific records: or
2. A true copy of a court order requiring production of the records, specifying to whom the records are to be delivered and identifying the specific records.

In the event you receive a subpoena for the production of records without any accompanying authorization and consent, or court order you will need to take certain steps. First and foremost the subpoena should not be ignored even if it lacks the requisite releases permitting its disclosure. Failure to respond to a subpoena, either by complying with its terms or by appearing in court to object to it, may constitute contempt. You should immediately contact the court or attorney issuing the subpoena and request either a properly signed consent and authorization or a court order. If consent is in place request that a copy of it be faxed to you for review and determination that it is adequate for the purposes requested. If one is not in place politely indicate that you will have to object to the request until either an appropriate release/consent is in place (offer to provide a copy of a release/consent form you like-if not you will receive a very broad standard legal release which may or may not satisfy the mental health code standards) or the court makes an appropriate determination. At this point it may become necessary to formalize your objection by means of a motion under MCR 2.506(E) and (H) or premised on the principles outlined by the Michigan Supreme Court in *State of Michigan v. Stanaway*. 446 Mich 643; 521 NW2d 557 (1994)

I recommend that while all of these steps are taking place that you ready the file and/or case manager/therapist. Under usual circumstances you will likely end up turning over all or some of the file. You never want to be seen as

Obstructing or unnecessarily delaying court proceedings. You DO want to be seen as having a legitimate right (and obligation) to protect the confidentiality and integrity of your services.

Finally, I recommend that you communicate your standard approach to the local prosecutor's office. I also recommend that the clerk of the court (some jurisdictions have different clerks processing these for the defense bar, the prosecutor's office and the court itself) be made aware of your practice. This will save time and take the surprise out of the process.

I hope this brief letter is of assistance as you wrestle with the dilemma of cooperating with the various courts, law enforcement agencies and attorneys while complying with the myriad state and federal rules you with which you are mandated to comply. If I can provide further assistance please let me know.

Very Truly Yours,

Steven E. Burnham  
Attorney At Law

**ROBERT P. TREMP, P.L.C.**

ATTORNEYS AND COUNSELORS AT LAW

**LAW FOR PUBLIC BODIES**

P.O. Box 3250  
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December 31, 2001

The Board of Directors  
West Michigan Community Mental Health System and  
Ms. Tracy Bonstell  
Ludington Office  
920 Diana Street  
Ludington, MI 49431

Dear Board Members and Ms. Bonstell:

Please consider this as a legal memorandum, provided at your request, which is thereby protected from disclosure pursuant to the attorney-client privilege. You may discuss this memorandum at a closed session and the same is exempt from disclosure under the Freedom of Information Act.

Introduction

Before we discuss the specific issues presented under your document entitled "Electronic Signature," "Agenda Items" we feel it will be beneficial to discuss parts of the "Uniform Electronics Transitions Act." This law is found under P.A. 2000 No. 305, Ind. Eff. Oct. 16, 2000; MCLA Sec. 450.831 et. seq.

Under the definition sections of the Act a person:

"means an individual, corporation, partnership, limited liability company, association, governmental entity, or any other legal entity"  
(emphasis added)

Transaction is defined as:

"an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial or governmental affairs." (emphasis added)