

**WEST MICHIGAN COMMUNITY MENTAL HEALTH
ADMINISTRATIVE MANUAL**

		Chapter: 5	Section: 2	Subject: 1.2
CHAPTER: Recipient Rights				
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." MDHHS/CMHSP Managed Mental Health Supports & Services Contract; MDHHS Mental Health & Substance Abuse Services Recipient Rights Programs in Michigan R 325.14304; Administrative Rules Part 7; Accrediting bodies; Department of Health and Human Services of 1987; 42 Confidentiality Federal Register, Part 2.; MDHHS Public Act 129 of 2014; Public Act 559 of 2016; HIPAA of 1996, Public Law 104-191.

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

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limitation, protected health information includes all health information, whether in oral, written or electronic form, that:

- 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
 - 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.
 8. Treatment: The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
 9. Care Coordination: A set of activities designed to ensure needed, appropriate and cost-effective care for beneficiaries. As a component of overall care management, care coordination activities focus on ensuring timely information, communication and

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collaboration across a care team and between Responsible Plans. Major priorities for care coordination in the context of a care management plan include:

- Outreach and contacts/communication to support patient engagement,
- Conducting screening, record review and documentation as part of Evaluation and Assessment,
- Tracking and facilitating follow up on lab tests and referrals,
- Care Planning,
- Managing transitions of care activities to support continuity of care,
- Address social supports and making linkages to services addressing housing, food, etc., and
- Monitoring, Reporting and Documentation.

Care Coordination also refers to the levels of coordinated care management and care coordination activities carried out under the auspices of PIHP and MCO contractors. (Contractors means Medicaid Health Plans and Prepaid Inpatient Health Plans) (Responsible Plans means Contractors with responsibility of Medicaid beneficiaries within the shared service area.

10. Payment:

- (1) The activities undertaken by:
 - (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or
 - (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
- (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided.

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.

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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 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 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 Attorneys who are retained or appointed by a court to represent a recipient and who presents identification and a consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor shall be permitted

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to review, on the provider's premises, a record containing information concerning the recipient. An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor shall be allowed to review the records [AR 7051(4)(a)]. Attorneys who are not representing recipients may review records only if the attorney presents a certified copy of an order from a court directing disclosure of information concerning the recipient to the attorney [AR 7051(4)(b)]. Attorneys shall be refused information by phone or in writing without the consent or release from the recipient or the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney [7051(4)(c)]. 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 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 Information may be provided as necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with HIPAA of 1996 [MHC 1748(7)(b)].
- 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.

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- 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.
 - 1.7.3 A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor's parents with physical and legal custody of the recipient, or other empowered representative have 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;

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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.

1.9 It is the intent of the MDHHS and CMHSP to promote the use and acceptance of the standard release form that was created by MDHHS under Public Act 129 of 2014 (MDHHS – 5515 Consent to Share Behavioral Health Information for Care Coordination Purposes) for all non-electronic Health Information Exchange environments.

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;

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.

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- 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.
- 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 If consent has been obtained from: a) the recipient, b) the recipient's guardian who has the authority to consent, c) a parent with legal custody of a minor recipient, or d) court appointed personal representative or executor of the estate of a deceased recipient information made confidential by 1748 information may be disclosed to: 1) a provider of mental health services to the recipient, or 2) the recipient, his or her guardian, the parent of a minor, or another individual or agency unless, in the written judgement of the holder (of the record) the

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disclosure would be detrimental to the recipient or others. The information will be released as expeditiously as possible, but in no event later than the earlier of 30 days of the request or prior to release from treatment. 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. 1748 (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. Once the decision has been made not to release information based on detriment following a request for confidential information by a person or agency not covered under 1748(4) the executive director of the provider or designee shall determine if a part of the information requested may be released without detriment. The executive director of the provider or his/her designee shall make a determination of detriment within 3 business days from the date of the request if the record is on site and within 10 business days if the record is off site [MHC 1776(6)] & [[AR 7051(3)]. 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 part or all of the information being requested would be detrimental, the responsible care manager shall document the reasons in a letter to the individual, agency or organization requesting the information.
- 2.7.2 If part of the information would be detrimental to the recipient or others, the responsible care manager 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 disagrees with the decision of the executive director of the provider or designee not to release all or part of the information being requested he/she can file a complaint with the Recipient Rights office having jurisdiction [AR 7051(3)].

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- 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 Form to Share Their Health Information:
 - 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

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admission to a hospital or facility, and other information designated in policies of governing body [AR 7051(6)(a-c)];

- 3.3 To the Department of Health and Human Services when information is necessary in order for the Department to discharge a responsibility placed upon it by law;
 - 3.4 To the Department of Health and Human Services per the provisions of the child protective services, to review and provide pertinent records and information within 14 days after receipt of written request [MHC 1748a (1)];
 - 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 under one or more of the following circumstances:
 - 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 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;

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- 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.
- 4.4 As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
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.
6. When staff members are requesting information from another agency or professional, the following procedures shall be implemented:

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- 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 services, shall complete a Recipient Request for Inspection of Clinical Record form (WMCMH 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 upon presentation of identification and a certified copy of a court order, be permitted to review the clinical records of the recipient on the providers' premises. Before the review, notification shall be provided to the reviewer and to the court if the records contains privileged communication which cannot be disclosed in court, unless the disclosure is permitted because of an express waiver of privilege or because of other conditions that, by law, permit or requires disclosure [AR 7051(5)(a-b)].
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

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statement correcting or amending the information at issue. The statement shall become part of the record.

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. Recipient is allowed to consent to disclose their information using a general designation to individual(s) and/or entity(-ies) (e.g., "my treating providers") to allow recipients to benefit from integrated health care systems. This provision ensures recipient choice, confidentiality, and privacy as recipients do not have to agree to such disclosures. Recipients who have agreed to the general disclosure designation have the option to receive a list of entities to whom their information has been disclosed to, if requested, 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 purposes of conducting scientific research, audit and evaluations activities, including financial and quality assurance functions critical to Accountable Care Organizations and other health care organizations, 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

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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 that 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.

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

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VII. **SUPPORTING DOCUMENTS:**

Appendix 5-2-1.2A: MDHHS Consent to Share Behavioral Health Information for Care Coordination Purposes (MDHHS Form 5515)

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

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

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

Please refer to:

Telefax Transmission Form (WMCMH Form #IS003E)

Request for Inspection of Records by the Recipient (WMCMH Form #CR092)

Clinical Record Invoice (WMCMH Form #FN023E)

Notice of Privacy Practices (WMCMH Form #CR090)

5-2-1.2 Release of Information

Revised: 03/06; 09/06 tb; 08/09 tb; 09/11 tb; 7/12 tb; 01/13 tb; 8/13 tb; 10/15 tb; 11/16; 08/17; 11/17; 5/18, 9/18

