

	Procedures Governing Sharing Client Information with MDHHS		
	Protective Services		
	Chapter:	Recipient Rights	Policy #
Section:	Recipient Rights in all CMH Settings	Revision #	1

- I. **PURPOSE:** To establish policy and procedure governing the process of sharing client information with the adult or child Protective Services Unit of the Mason, Lake and/or Oceana County Michigan Department of Health & Human Services (MDHHS) when they are conducting an adult or child protective services investigation.
- II. **APPLICATION:** All programs and services operated by West Michigan Community Mental Health.
- III. **REQUIRED BY:** Michigan Mental Health Code, PA 258, 1974, as amended, Michigan Child Protection Law, PA 238, 1975, as amended, Michigan Social Welfare Act, PA 280, 1939, as amended, Attorney General opinion #6976, March 26, 1998, and Federal Records (42 CFR) governing the confidentiality of alcohol and drug abuse patient records.
- IV. **DEFINITION:**
1. The Michigan Mental Health Code, Section 748 (1), requires information in the record of a recipient and other information acquired in the course of providing mental health services to a recipient shall be kept confidential and shall not be open to public inspection. Section 750 requires privileged communication shall not be disclosed except in the circumstances set forth in this section. Section 748 (7) authorizes disclosure of such records (without recipient consent) to providers of mental or other health services or a public agency, if there is compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.
 2. The Michigan Child Protection Law charges the Department of Health & Human Services with the duty to investigate suspected child abuse or neglect. Child abuse is defined in Section 2(c) of the act to mean “harm or threatened harm to a child’s health or welfare by a parent, legal guardian or any other person responsible for the child’s health or welfare, or by a teacher or teacher’s aide that occurs through the non-accidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment”. Child neglect is defined in Section 2(d) as harm or threatened harm to a child’s health or welfare by a parent, legal guardian or any other person responsible for the child’s health or welfare that occurs through either of the following:
 - Negligent treatment, including a failure to provide adequate food, clothing, shelter or medical care.
 - Placing a child at an unreasonable risk to the child’s health or welfare by failure of the parent, legal guardian, or any other person responsible for the child’s health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
 3. The Michigan Social Welfare Act imposes on the Department of Health & Human Services similar duties regarding the scope of child and adult protective services investigations. With respect to adults, Section 11(b) of the Social Welfare Act provides in relevant part that adult investigations shall include a determination of the nature, extent and cause of abuse, neglect or exploitation; examination of evidence;

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identification, if possible, of the person responsible for the abuse, neglect or exploitation; the names and conditions of other adults in the place of residence, an evaluation of the person or persons responsible for the care of the adult, if appropriate; the environment of the residence; the relationship of the adult to the person responsible for the adult's care; an evaluation as to whether or not the adult would consent to receiving protective services; and any other pertinent data. The investigation may include a medical, psychological, social, vocational and educational evaluation and review. In the course of an investigation, the DHS agency shall determine if the adult is or was abused, neglected or exploited.

4. Attorney General Opinion #6976, of March 26, 1998, clarifies that child protective services workers of the Department of Human Services have legal right to access mental health records, either in the custody of the state, or the local community mental health agency, for the purpose of conducting adult/child abuse or neglect investigations.
 5. Code of Federal Records (42 CFR) Section (2) provides provisions governing the confidentiality of alcohol and drug abuse patient records. 42 CFR 2.65 provides procedures and criteria for court orders authorizing disclosure and use of these records to criminally investigate or prosecute patients. Basically, an application must be made to the court. Pursuant to the provision of the code, there must be a hearing, notice of hearing, opportunity for the patient to be present, opportunity for the patient to be represented and to present facts and testimony in support of the patient's right of nondisclosure. Unless this court procedure(s) is completed, the above State of Michigan statutes and Attorney General's Opinion #6976, dated 3/26/98, do not supersede the confidentiality provisions of 42 CFR.
 6. 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. Unless a written special consent is executed, the Michigan Acts cited in (2) and (3), and the Attorney General's opinion cited in (4) above, do not supersede Michigan's HIV/AIDS confidentiality law and MDCH's public health rules pertaining to the confidentiality of communicable and serious communicable diseases and infections.
- V. **POLICY:** West Michigan Community Mental Health, within the boundaries, limitations, intent and procedures of the above Federal and Michigan laws, and the Attorney General's opinion, shall release client information to MDHHS Child or Adult Protective Services staff when conducting official child/adult abuse or neglect investigations, without consent of the recipient if its representatives are unable to obtain written authorization from the recipient, recipient's parent or legal guardian, for this specific purpose.


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VI. PROCEDURES:

1. During the process of a MDHHS child/adult protective services investigation, should MDHHS Protective Services staff receive information to suggest that the victim or perpetrator has been or is currently a recipient of CMH services, MDHHS will initially attempt to have the identified person (or the parent/guardian of a minor) sign a release of information authorization allowing CMH to share recipient information with MDHHS for the purpose of the Protective Services investigation.

2. If MDHHS is not able to obtain a release of information authorization, a MDHHS protective services staff person will either:
 - 2.1 Provide telephone notification to CMH and to inform CMH that there is reason to believe CMH may have information pertaining to the victim or perpetrator and that MDHHS is seeking confirmation that CMH has recipient information which would support their investigation, i.e., does CMH have mental health assessment, treatment or historical information to support that the person under MDHHS protective services investigation has or is capable of adult/child abuse or neglect; or
 - 2.2 Forward to CMH a completed MDHHS (Protective Services Request form) seeking psychological/psychiatric recipient case record information on either the suspected victim or perpetrator of an adult/child abuse or neglect investigation.

3. CMH will identify key staff to be the recipient of MDHHS protective services investigation inquiries via the Clerical Clinical Support and the Case Holder. The Team Coordinator will assist should the need arise.
 - 3.1 After receiving a MDHHS telephone inquiry, the Clerical Clinical Support will call MDHHS to confirm the authenticity of the call and confirm the MDHHS protective services staff person's identity and CMH information being sought.
 - 3.2 Upon receipt of either a MDHHS protective services phone inquiry or a written inquiry, the CMH Chief Clinical Officer and/or alternate, will review the identified recipient clinical records to determine if the record contains any mental health information that supports a history or probability of adult/child abuse or neglect.
 - 3.3 If it is determined through the above process that CMH has privileged recipient information which supports the MDHHS protective services investigation, only that specific recipient information germane to the investigation will be released to MDHHS. **In the absence of a written authorization to specifically release recipient HIV/AIDS/communicable diseases or alcohol and drug abuse information, all recipient information pertaining to these disorders, regardless of source, will be stricken from the recipient information provided to MDHHS.**
 - 3.4 CMH shall record all recipient information that was released to MDHHS under the procedures and notify the recipient that this release occurred in accordance with

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the legal mandates referenced under Definitions of the policy; (a reasonable effort shall be made to locate any non-active CMH recipient).

4. Any CMH recipient information released to MDHHS under these legal mandates and procedures shall not be released by MDHHS to any other entity unless such release is required by legal statutes governing the adjudication of MDHHS protective services investigations.

VII. SUPPORTING DOCUMENTS: N/A

VIII. POLICY/PROCEDURE REVIEW:

REV#	APPROVED BY	Policy/Procedure	DATE
NC	Executive Team	Procedure	06/2016
NC	COC	Annual Review	11/2019
1	COC	Title Changes	11/2020
Board Approval Date: 02/16/1999			

IX. CHIEF EXECUTIVE OFFICER ENDORSEMENT:

I have reviewed and approved of policy # 5-2-11 Revision # 1.

CEO: Lisa A. Williams Approval Signature: _____